OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

February 16, 2007

Ann McGeehan
Director of Elections
Texas Secretary of State
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Re: **ES&S Voting System Unity v3.0.1.1 and AutoMARK v1.1; Examination 1/19/07**

Dear Ms. McGeehan:

Pursuant to Texas Election Code §122.036 and 1 Texas Administrative Code §81.60, this serves as my examiner's report of the Secretary of State's ("SOS") voting system examination of January 19, 2007. On that date, we examined ES&S's Unity Election System v3.0.1.1 and AutoMARK v1.1 voting system.

The background for this report is the presentation and statements made by ES&S representatives during the examination I attended with Assistant Attorney General Suzanna Rickard on January 19. A "technical" non-legal report is prepared for the SOS by Jim Sneeringer, our office's expert designee.

ES&S seeks to certify its voting system called Unity Election System version 3.0.1.1, which includes changes from the previously-certified version 2.4.3. ES&S provided evidence that its new version 3.0.1.1 received EAC/NASED certification on August 31, 2006, under the 2002 Federal Voting System Standards. Major changes in Unity version 3.0.1.1 were presented by ES&S representatives to be as follows:

- Improved iVotronic (DRE) audit file management protection resulting in the DRE being able to be used in early voting and also on election day with system protections that prevent loss of votes;

- Enhanced handling of damaged/folded ballots by the M100 precinct ballot counter;

- M100 also has added functionality to unconditionally accept, reject, or query voters on undervotes;

- M650 Central Count Ballot Tabulator now has green sensor mark detection instead of red for broader mark recognition;

- M650 can now sort undervoted ballots during tabulation;

- iVotronic (DRE) voting terminal now has GUI (graphical user interface);

- iVotronic now has a VVPAT called a Real Time Audit Log ("RTAL"); and

- iVotronic now has a 4-button ADA volume control panel.

ES&S's AutoMARK v1.1 was presented as having improvements such as upgraded system performance and memory management and improved write-in interface.
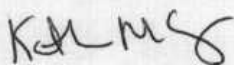
There were a number of problems during the January 19, 2007, examination. These included the following:

- Errors installing the PEB access cards to open the iVotronic (DRE) machines for voting. As a result, the voting system was not available to some of the examiners for several hours;

- Error printing the zero tape from the iVotronic due to a paper jam that was eventually able to be cleared;

- Vote tally discrepancies (the test ballot deck vote totals did not match totals being calculated by ES&S's voting system);

- Unintended choices made on the iVotronic touch-screen because of "fat finger" issues;

- Miscalculated vote totals due to errors while the vote totals were uploaded into central count. As a result, where some ballots were not counted due an incorrect selection; and

- The manner in which the examiners were directed by the SOS to be divided into groups to view the various tests and were unable to view all of the tests of all of the components of the system.

The issues encountered during this examination prevent me from being able to represent that the legal requirements of the Texas Election Code have been met in this instance. Specifically, I am unable to ascertain from what I personally saw during the January 19, 2007, examination, whether or not the parts of the system tested operate safely, efficiently and accurately. For this reason, I am unable to recommend that the Secretary certify ES&S's Unity Election System v3.0.1.1 and AutoMARK v1.1 voting system at this time.

Finally, the examiners observed the iVotronic with RTAL (VVPAT) and identified several issues with respect to whether it meets even existing standards for voting system certification in Texas. However, because I do not recommend certification on the system as a whole for reasons mentioned herein, I will not discuss any possible VVPAT issues in this report.

Sincerely,

Katherine Minter Cary
Chief, General Counsel Division
Office of the Attorney General
Voting Examiner