



# **Voting System Companies Fail to Meet New York State’s Requirements for “Responsible Contractors”**

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# Diebold, ES&S, Sequoia, and Liberty Voting System Companies Fail to Meet New York State's Requirements for "Responsible Contractors"

New York State procurement laws require that state agencies award contracts only to responsible contractors. Four guidelines in the form of questions are enumerated for determining whether a contractor is responsible. <sup>1</sup>

This paper provides fully documented evidence revealing that Diebold Election Systems, Election Systems and Software (ES&S), Sequoia Voting Systems, and Liberty Election Systems fail to meet the criteria for responsible contractors.

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## Diebold Election Systems

**New York Guideline #1:** Does the contractor possess the integrity to perform the contract? Factors to be considered include criminal indictments, criminal convictions, civil fines and injunctions imposed by governmental agencies, anti-trust investigations, ethical violations, tax delinquencies, debarment by the federal government, prior determinations of integrity-related non-responsibility, etc.

### *Ethical Violations and Violations of State Laws*

1. **December 2003. California.** Secretary of State Kevin Shelly discovered that Diebold installed uncertified voting system software throughout California before the recall election, in violation of state law and without informing county officials. <sup>2</sup> The news article reports:

"An audit of Diebold Election Systems voting machines in California has revealed that the company installed uncertified software in all 17 counties that use its electronic voting equipment. ... Diebold admitted wrongdoing Tuesday at a meeting of the state's Voting Systems Panel."

The audit uncovered discrepancies between what Diebold said was installed in counties and what auditors actually found.

At least five counties were using versions of software or firmware that were different from what Diebold indicated they were using.

All counties were using uncertified software, but the most serious issues related to the tabulation software known as GEMS, or global election management system. GEMS sits on a server in each county election office, counting the votes and producing summary reports of totals.

Although the last version of GEMS certified in California was 1.17.17, auditors found that no county was using it. Instead they were using later versions such as 1.17.20, 1.17.23 and 1.18.18.102. Versions 1.17.20 and 1.18.18.102 were never qualified by federal independent testing authorities.

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<sup>1</sup> **Bulletin No. G-221. November 1, 2004. Vendor Responsibility: Standards, Procedures, and Documentation Requirements.** <http://www.osc.state.ny.us/agencies/gbull/g221.htm>

<sup>2</sup> **E-Voting Undermined by Sloppiness.** Wired News. December 17, 2003. By Kim Zetter. [http://www.wired.com/news/evote/0,2645,61637,00.html?tw=wn\\_tophead\\_2](http://www.wired.com/news/evote/0,2645,61637,00.html?tw=wn_tophead_2)

2. **December 13, 2005.** A Securities Fraud Class Action suit was filed against Diebold, Inc. (stock symbol: **DBD**) naming eight top executive officers in the company as co-defendants.

The suit was filed by plaintiff Janice Konkol, alleging securities fraud against the North Canton, Ohio-based manufacturer of Voting Systems and ATM machines on behalf of investors who owned shares of Diebold stock and lost money due to an alleged fraudulent scheme by the company and its executives to deceive shareholders during the “class period” of October 22, 2003 through September 21, 2005.<sup>3</sup>

On December 12, 2005, Walden O’Dell resigned as President of the company.<sup>4</sup>

In the first quarter of 2006, the Securities and Exchange Commission began an informal investigation and converted it to a formal investigation in the second quarter.

The company was informed during the first quarter of 2006 that the staff of the SEC had begun an informal inquiry relating to the company’s revenue recognition policy. The SEC indicated in its letter to the company that the inquiry should not be construed as an indication by the SEC that there has been any violation of the federal securities laws. In the second quarter of 2006, the company was informed that the SEC’s inquiry had been converted to a formal, non-public investigation. The company is continuing to cooperate with the SEC in connection with the investigation. The company cannot predict the length, scope or results of the investigation, or the impact, if any, on its results of operations.<sup>5</sup>

As of March 31, 2006, there were 10 outstanding lawsuits against Diebold, charging SEC violations.<sup>6</sup> On October 20, 2006, several pending lawsuits were consolidated.<sup>7</sup>

### *Civil Fines and Injunctions Imposed by Governmental Agencies*

1. **Alameda County, California. March, 2005.** Diebold paid \$2.6 million to settle a false claims lawsuit filed by private citizens and the California Attorney General.

A Qui Tam (false claims) lawsuit was filed against Diebold Election Systems on behalf of Alameda County, California by Bev Harris, Executive Director of Black Box Voting, and Jim March, a board member of Black Box Voting.

In September, 2004, California’s Attorney General Bill Lockyer joined in the false claims suit, saying that he was suing Diebold over fraudulent claims he believes that company has made with regards to their electronic voting machines. In November 2004, Diebold announced its intent to settle, and the case was formally settled in March 2005.<sup>8</sup>

The proposed settlement calls for Diebold to pay a total of \$2.6 million. The payment would be allocated as follows: \$1.25 million to the state and \$100,000 to Alameda County to resolve alleged violations of the state’s False Claims Act (FCA); \$375,000 each to Alameda County and the state to resolve alleged violations of the state’s Unfair Competition Law; and \$500,000 to the UC Berkeley Institute of Governmental Studies (IGS). The IGS would use the \$500,000 to fund research aimed at training poll workers in the use of electronic voting technology.

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<sup>3</sup> [http://securities.stanford.edu/1035/DBD05\\_01/20051213\\_f01c\\_052873.pdf](http://securities.stanford.edu/1035/DBD05_01/20051213_f01c_052873.pdf)

<sup>4</sup> <http://www.bradblog.com/?p=2154>

<sup>5</sup> <http://sec.edgar-online.com/2007/03/01/0000950152-07-001690/Section5.asp>

<sup>6</sup> <http://www.sec.gov/Archives/edgar/data/28823/000095015206004170/119791ae10vq.htm#111>

<sup>7</sup> [http://www.milbergweiss.com/files/tbl\\_s47Details%5CFileUpload265%5C228%5CDieboldLPDecision.pdf](http://www.milbergweiss.com/files/tbl_s47Details%5CFileUpload265%5C228%5CDieboldLPDecision.pdf)

<sup>8</sup> **Attorney General Lockyer Announces \$2.6 Million Settlement with Diebold in Electronic Voting Lawsuit.** Attorney General’s November 10, 2004 Press Release. <http://ag.ca.gov/newsalerts/release.php?id=843>

In addition to the \$2.6 million, the settlement would require Diebold to pay the costs of providing optional paper ballots to voters in Alameda and Plumas counties in the November 2, 2004 general election, if the counties request such reimbursement. Diebold's obligation under this provision would be limited to the cost of providing paper ballots for up to 25 percent of the registered voters in the two counties.

2. **April 20, 2004. California.** After an Investigation of Diebold, the Secretary of State's staff issued a report highly critical of Diebold for its deceptive practices and dishonesty to state officials.<sup>9</sup> Citing Diebold's misconduct outlined in the staff report, then-Secretary of State Kevin Shelley decertified the company's AccuVote-TSx electronic voting machines.

The investigation concluded that Diebold:

- marketed and sold the AV-TSx system before it was fully functional, and before it was federally qualified;
- misrepresented the status of the AV-TSx system in federal testing in order to obtain state certification;
- failed to obtain federal qualification of the AV-TSx system despite assurances that it would;
- failed even to pursue testing of the firmware installed on its AV-TSx machines in California until only weeks before the election, choosing instead to pursue testing of newer firmware that was even further behind in the ITA testing process and that, in some cases, required the use of other software that also was not approved in California;
- installed uncertified software on election machines in 17 counties;
- sought last-minute certification of allegedly essential hardware, software and firmware that had not completed federal testing; and
- in doing so, jeopardized the conduct of the March 2004 Primary.

### *Criminal Convictions of Key Personnel*

1. **Seattle, Washington. December 2003.** Investigative journalist Bev Harris announced her discovery that a Diebold programmer had been convicted of stealing money by tampering with computer records. According to a public court document released before Diebold hired him, Dean served time in a Washington state correctional facility for stealing money and tampering with computer files in a scheme that "involved a high degree of sophistication and planning."<sup>10</sup>

At least five convicted felons secured management positions at a manufacturer of electronic voting machines, according to critics demanding more stringent background checks for people responsible for voting machine software.

Voter advocate Bev Harris alleged Tuesday that managers of a subsidiary of Diebold, one of the country's largest voting equipment vendors, included a cocaine trafficker, a man who conducted fraudulent stock transactions and a programmer jailed for falsifying computer records.

The programmer, Jeffrey Dean, wrote and maintained proprietary code used to count hundreds of thousands of votes as senior vice president of Global Election Systems, or GES. Diebold purchased GES in January 2002.

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<sup>9</sup> <http://voteraction.org/States/California/Documents/Information/dieboldhist.html>

<sup>10</sup> **Con Job at Diebold Subsidiary.** Wired News. December 17, 2003. by AP.  
[http://www.wired.com/news/evote/0,2645,61640,00.html?tw=wn\\_tophead\\_3](http://www.wired.com/news/evote/0,2645,61640,00.html?tw=wn_tophead_3)

**New York Procurement Guideline #2.** Has the contractor performed at acceptable levels on other governmental contracts? Factors to be considered include reports of less than satisfactory performance, early contract termination for cause, contract abandonment, court determinations of breach of contract, etc.

### *Less than Satisfactory Performance*

1. **Montgomery County, Maryland. November, 2004.** The IT report to the County Elections Board revealed widespread problems with the electronic voting machines on election day. As of February 16, 2005, Diebold in Maryland was unable to diagnose the problems and was shipping the systems out of state for testing.<sup>11</sup>

Here are some excerpts from the report:<sup>12</sup>

#### **Election Day Equipment Review**

For Election Day, 2,597 voting units were deployed. An additional 80 voting units were sent to about 65 polling places on Election Day to replace malfunctioning units. A few were sent out to accommodate long lines at polling places.

From Help Desk tickets and GEMS reports, 189 voting units (7%) of units deployed failed on Election Day. An additional 122 voting units (or 5%) were suspect based on number of votes captured.

#### **Of the 189 voting units that failed:**

1. On Election morning, 58 voting units failed to boot up, showing a Ballot Exception Error. These units were unusable and were immediately taken out of service. No votes were captured on these units.
2. 106 voting units experienced screen freezes. In staff opinion this is the most serious of errors. Election judges and technical staff reported that many of these units froze when the voter pressed the Cast Ballot button. This leads to great confusion for judges and voters. The voter leaves the polling place with little or no confidence that their vote was counted. In many cases, the election judges are unable to provide substantial confirmation that the vote was, in fact, counted.
3. 25 voting units failed due to a variety of problems including card readers, printers, and power problems.
4. The additional 122 suspect voting units were identified because few votes were captured compared to other units in the same polling place. A unit was considered suspect if it had 25-50 votes captured when all other units in the polling place had over 150 votes.
5. Of the 1,245 encoders deployed, approximately 30 failed and were replaced on Election Day. Preliminary tests indicate that the failures are a result of little or no battery power.
6. Prior [to] election day, we prepared approximately 95 voting units using new touch screen units and new PC memory cards. Of these, 5 failed; 4 with screen freezes and 1 with a ballot exception error. Another 4 units were in the suspect category.

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<sup>11</sup> **Diebold Memo.** <http://www.truevotemd.org/Resources/DieboldMemo2-16-05.jpg>

<sup>12</sup> **IT Report to the Montgomery County Election Board.** 2004 Presidential General Election Review Lessons Learned Page 11. [http://www.truevotemd.org/Resources/Lessons\\_Learned.pdf](http://www.truevotemd.org/Resources/Lessons_Learned.pdf)

2. **November 2005. California.** Consultants hired to test voting systems for the California Secretary of State found that systems Diebold claims to be HAVA compliant fail to meet federal accessibility requirements for people with disabilities.

The Diebold TSx touch screen voting machine they examined provided **no special features for people with physical disabilities**. Workarounds are proposed, but one such workaround disables the voter-verified paper record feature, and the other has never been tested. The consultants' report says:

There are no separate features supporting physically disabled voters other than the ability to remove the screen from the voting booth configuration and bringing it closer to the voter in different orientations. In this mode, the AVPM is disconnected and no AVVPAT records will be available for audit. DESI has proposed that physically disabled voters may use mouth-sticks, taking advantage of the touchscreen sensitivity.<sup>13</sup>

... This option has not been tested and may also result in no AVVPAT record if it becomes necessary that the touch-screen is removed to place it within the operational reach of a mouth-stick. (page 8)

Nearly a year and a half later, the TSx system had not been improved.<sup>14</sup>

3. **1998 through June 2006.** Dozens of reports of Diebold equipment failures have been in the news across the United States. A partial list compiled in a twenty-eight page document includes such problems as tabulation errors, vote-switching on electronic voting machines, malfunctioning voter access cards, breakdowns on election day, paper jams, data transfer failures, and excessively high undervotes (for example, 11% ballots failing to register a vote for president in one county).<sup>15</sup>
4. **November 2006.** A partial list of reported failures in the mid-term election (34 reports from 12 states) includes such problems as breakdowns on election day, tabulation errors, contests failing to appear on computer ballots, vote-switching on electronic voting machines, screen freezes, and data transfer failures.<sup>16</sup>

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<sup>13</sup> [http://www.sos.ca.gov/elections/voting\\_systems/consultant\\_report.pdf](http://www.sos.ca.gov/elections/voting_systems/consultant_report.pdf), page 5.

<sup>14</sup> **Improving Access to Voting**, February 2007. By Noel Runyan.  
[http://www.voteraction.org/reports/nrreport/Improving\\_Access\\_to\\_Voting\\_.pdf](http://www.voteraction.org/reports/nrreport/Improving_Access_to_Voting_.pdf), page 12

<sup>15</sup> **Diebold in the News – A Partial List of Documented Failures**. Compiled by VotersUnite.  
<http://www.votersunite.org/info/Dieboldinthenews.pdf>

<sup>16</sup> Online problem log maintained by VotersUnite. <http://www.votersunite.org/electionproblems.asp>

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## Election Systems & Software

**New York Guideline #1:** Does the contractor possess the integrity to perform the contract? Factors to be considered include criminal indictments, criminal convictions, civil fines and injunctions imposed by governmental agencies, anti-trust investigations, ethical violations, tax delinquencies, debarment by the federal government, prior determinations of integrity-related non-responsibility, etc.

### *Violations of State Laws, Civil Fines and Injunctions, Ethical Violations*

1. **March, 2004. Indiana.** The election commission discovered that ES&S had installed an uncertified version of firmware in the iVotronic electronic voting machines in four counties. When confronted, representatives agreed to reinstall the certified version. Then the commission learned that the certified version didn't tabulate the votes correctly, so they allowed the use of the uncertified version but required ES&S to put up a \$10Million bond to insure against problems and lawsuits. Excerpts from a WISH TV story: <sup>17</sup>

"Am I so damn stupid...that for me to use the word "work," do you understand that to run an election for something to work, it's gotta count the votes?" asked an exasperated election commissioner S. Anthony Long to ES&S executive Ken Carbullido.

"I just think I was absolutely lied to by your CEO and I'm more than on the slow burn about it. I sat in this room and you all lied to me. You're so derelict in your duties that you can't look at a piece of paper and answer the question? Give me a break," said Brian Burdick, who also serves on the election commission.

2. **April 2004. Indiana.** Specifically in response to the unethical behavior of ES&S described above, the Indiana state legislature passed a law providing penalties for voting machine vendors who act on their own initiative without the permission of the state. <sup>18</sup>

"We are now going to make it illegal for a voting system vendor to operate in Indiana -- that is sell, market, lease a system that is uncertified," said Todd Rokita, secretary of state.

As the state's chief election official, Rokita allows it wasn't easy getting there. "One of the very few pieces of legislation that got passed this session and was actually signed by the governor," he said.

It prohibits companies from marketing, selling, leasing or installing a voting system improvement or change in Indiana without state election commission approval. "And if they do, there will be severe economic penalties," said Rokita.

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<sup>17</sup> **Election Commission Bails Out Voting Machine Maker In Time for May Primary.** March 11, 2004;  
<http://www.verifiedvotingfoundation.org/article.php?id=1529>

<sup>18</sup> **Penalties Established for Voting Machine Companies That Don't Deliver.** April 14, 2004;  
<http://www.verifiedvotingfoundation.org/article.php?id=1846>

3. **Marion County, Indiana. August 2005.** Severe economic penalties were imposed on ES&S when the company, once again, installed uncertified software in the county's voting systems. ES&S paid Marion County \$1.2 million to settle a lawsuit. The Daily Journal News reports:<sup>19</sup>

County Clerk Doris Anne Sadler charged that ES&S had lied to her about swapping out the uncertified software on its optical-scan voting machines. She lodged a complaint with the prosecutor. And the Marion County Election Board will conduct hearings to consider canceling that county's contract with ES&S.

The Team 4 Pittsburgh television station investigation team checked with ES&S about the settlement and reports:

A spokeswoman for Election Systems and Software called Team 4 to say the company does not characterize its \$1.2 million payment to Marion County, Indiana, as a settlement, but rather an agreement that stemmed from software certification issues.

4. **Arkansas. February 2002.** Arkansas Secretary of State Bill McCuen pleaded guilty to felony charges that he took bribes, evaded taxes, and accepted kickbacks. Part of the case involved Business Records Corp. now merged into Election Systems & Software. The scheme also involved Tom Eschberger, an employee of BRC, but Eschberger received immunity from prosecution for his cooperation. Today, Eschberger remains employed with ES&S.<sup>20</sup>

The Team 4 Pittsburgh television station investigation team checked with ES&S about this story and reports the following conversations:<sup>21</sup>

Todd Mullen, Election Systems and Software: "Back then, it was Business Records Corporation. That wasn't an ES&S activity that happened."

Parsons: "But Tom Eschberger went to work for your company, right?"

Mullen: "Tom Eschberger does not work for us anymore."

Parsons: "He did go to work for you after the merger, right?"

Mullen: "Yes."

... A spokeswoman for Election Systems and Software called Team 4 ... [and ] ...confirmed that Tom Eschberger does still work for Election Systems and Software as an independent contractor. He was the company executive who was granted immunity from prosecution in Arkansas in exchange for cooperation.

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<sup>19</sup> **Team 4 Investigates Electronic Voting.** WTAE-TV. February 17, 2006.  
<http://www.thepittsburghchannel.com/news/7161565/detail.html>

**County struggles with voting quandary.** Daily Journal News. May 14th, 2004. By Bryan Corbin.  
<http://www.verifiedvotingfoundation.org/article.php?id=2095>

<sup>20</sup> **Arkansas Secretary of State pleads guilty to taking bribes in computer voting equipment case.** The Baton Rouge Advocate. <http://www.ejfi.org/Voting/Voting-110.htm#snippets>.

<sup>21</sup> **Team 4 Investigates Electronic Voting.** WTAE-TV. February 17, 2006.  
<http://www.thepittsburghchannel.com/news/7161565/detail.html>

5. **June 2007. California.** In violation of its certification conditions, ES&S failed to deliver software source code to the Secretary of State within the allotted time, and ES&S' contract with the escrow agent was in violation of state law.

On June 21, 2007, California Secretary of State Debra Bowen announced that ES&S had refused to deliver source code for the software version certified in California, and that she had requested ES&S's source code from the escrow company, Iron Mountain. The source code was to be delivered by June 20. The Secretary's press release stated:<sup>22</sup>

ES&S was first notified 87 days ago – on March 26 – that it had 30 days, under the conditions imposed in April 2006 by the previous Secretary of State when he certified the InkaVote Plus Voting System, to provide the Secretary of State with its equipment, a certified version of the source code, funding to cover the reasonable cost of conducting the review, and an acknowledgement of the terms of a confidentiality agreement. The company has provided the Secretary of State's office with some voting system equipment, but nothing else.

"ES&S is clearly trying to undermine the review by refusing to abide by the conditions that were imposed in order for its InkaVote Plus system to be certified for use in California last year," continued Bowen. "That leaves me with no choice but to use the authority I have under the law to require the escrow company to provide me with a copy of ES&S's source code."

As of June 21, Iron Mountain had not delivered the source code to the Secretary.<sup>23</sup>

On June 25, ES&S sent a letter to the Secretary's office agreeing to supply the source code by June 26 and requesting the Secretary to cancel her request to Iron Mountain under threat that, otherwise, ES&S will attempt to prohibit Iron Mountain from complying.<sup>24</sup>

As ES&S is providing the InkaVote Plus voting system source code directly to your office, ES&S requests that you send a letter to Iron Mountain retracting your request for the InkaVote Plus voting system source code.

This will provide the required notification to Iron Mountain that you are no longer in need of the requested source code and allow Iron Mountain to close your request. In addition, this will avoid ES&S from having to issue contrary instructions to Iron Mountain to prohibit the release of the InkaVote Plus voting system source code."

On July 5, the Secretary's office sent a letter to ES&S pointing to discrepancies between versions and violations of state law in the terms of the contract with the escrow agent.<sup>25</sup>

... it has come to our attention that there are version number discrepancies between the description provided by ES&S to Iron Mountain of the source code deposited in escrow and the description of the system as certified by the Secretary of State on April 21, 2006.

... Finally, after obtaining a copy of the 2006 escrow contract between ES&S and Iron Mountain, it appears the contract is in violation of California law which specifically gives the Secretary of State the right of access to escrowed source code for any purpose that is in furtherance of her responsibilities ...

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<sup>22</sup> **Secretary of State Debra Bowen Moves To Tap ES&S's Escrowed Source Code After Vendor Violates Conditions of Its State Certification.** June 21, 2007 press release.  
[http://www.sos.ca.gov/executive/press\\_releases/2007/DB07\\_029.pdf](http://www.sos.ca.gov/executive/press_releases/2007/DB07_029.pdf)

<sup>23</sup> **Unprecedented: CA SoS Pulls Voting Machine Co. Source Code Out of Escrow.** Bradblog. June 21, 2007. by John Gideon. <http://www.bradblog.com/?p=4713>

<sup>24</sup> <http://www.bradblog.com/wp-content/uploads/Letter%20to%20Deputy%20SOS%20Finley-06.25.07%20Final.pdf>

<sup>25</sup> <http://www.votersunite.org/info/FinleytoPearsonreInkaVotePlus070507.pdf>

**New York Procurement Guideline #2.** Has the contractor performed at acceptable levels on other governmental contracts? Factors to be considered include reports of less than satisfactory performance, early contract termination for cause, contract abandonment, court determinations of breach of contract, etc.

## *Breach of Contract*

1. **April, 2006. Oregon.** Secretary of State sued ES&S and nullified a contract. <sup>26 27</sup>

Secretary of State Bill Bradbury has filed a lawsuit against Election Systems & Software, Inc. (ES&S), for breach of contract for failure to deliver the electronic voting machines that would allow people with disabilities to vote privately and independently.

“I’m disappointed in ES&S,” said Bradbury. “They agreed to provide us with voting machines, they didn’t follow through on that agreement, and that failure directly punishes people with disabilities.”

ES&S submitted the winning bid to a request for proposals issued by the Secretary of State in July 2005. In that bid, ES&S agreed to all of the standard state contract terms, and agreed to provide one million dollars worth of AutoMark touch-screen electronic voting machines by the January 1, 2006 federal deadline.

On January 10, 2006, ES&S informed the Secretary of State that it would not agree to the terms of the contract, and would not deliver the voting machines unless the Secretary changed the terms of the contract. Bradbury refused to alter the contract to meet ES&S’s demands, which then led to this lawsuit.

“We will not leave our elections in the hands of companies that do not follow through on their obligations, and we will not be coerced into altering our contracts,” said Bradbury.

## *Formal Complaints Filed by Governmental Agencies*

1. **April 2006. Indiana.** Secretary of State Rokita filed a formal complaint against ES&S for failures to provide working equipment and ballots in several counties in time for early primary voting in the Hoosier State: <sup>28</sup>

Rokita already had been investigating problems that counties have had with the company — which include delays in the delivery of crucial voting equipment and ballots and errors in programming. But his action Friday launches a formal process that could result in fines of \$300,000 for each violation of state law.

He has scheduled a 9 a.m. hearing on May 8 to consider evidence and testimony.

“Hoosiers deserve voting systems that comply with the high standards mandated by Indiana law,” Rokita said in a written statement. “The May 8th hearing is a mechanism for voters, election administrators, and vendors to know that Indiana will hold accountable, where appropriate, those who wrongly put at risk the integrity of our voting process.”

... According to Rokita’s complaint, ES&S provided defective voting system equipment, software and services to Johnson, St. Joseph and Marion counties. Election officials in other counties have complained of similar problems.

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<sup>26</sup> <http://www.sos.state.or.us/executive/pressreleases/2006/0420.html> (press release)

<sup>27</sup> [http://www.votetrustusa.org/pdfs/Oregon/Oregon\\_ESSComplaint\\_041906.pdf](http://www.votetrustusa.org/pdfs/Oregon/Oregon_ESSComplaint_041906.pdf) (lawsuit)

<sup>28</sup> **Legal Actions Filed in Indiana and West Virginia.** By John Gideon, VotersUnite.org. April 29, 2006. [http://www.votetrustusa.org/index.php?option=com\\_content&task=view&id=1238&Itemid=51](http://www.votetrustusa.org/index.php?option=com_content&task=view&id=1238&Itemid=51)

2. **April, 2006. West Virginia.** The County Commissioners Association announced it will file legal action against ES&S with the help of the Secretary of State and Attorney General for problems similar to those that Indiana experienced. The Charleston Daily Mail reported that Kanawha County, Commission President Kent Carper has locked up a check made out for \$1.2M, which represents payment for the county's ES&S voting machines, in his desk.<sup>29</sup>

"(The company) has embarrassed themselves," Carper said. "I got a feeling this will get their attention."

Last September, company officials promised commissioners the machines would be available and compliant by the Jan. 1, 2006 deadline required by the Help America Vote Act.

"They sat there and told us that they would be very careful with Kanawha County, that they would have a presence here," Carper said. "Now they are hiding out."

3. **May 2006. West Virginia.** Secretary of State Betty Ireland filed a complaint against ES&S.<sup>30</sup>

CHARLESTON, W.Va.: Secretary of State Betty Ireland filed a formal complaint with the federal Election Assistance Commission (EAC) today regarding the performance of the state's voting machine vendor Election Systems & Software (ES&S). ES&S's delays in programming ballots for the new electronic voting machines placed great hardship on state and county election officials in getting ready for the May 9th Primary Election.

### *Less than Satisfactory Performance*

1. **May 2006. Arkansas.** Secretary of State Charlie Daniels began an investigation into why the state's \$15 million contract with ES&S for the voting machines wasn't completely fulfilled by the time voting started in party primaries. Officials in four of Arkansas' 75 counties were not able to use the touch-screen voting machines provided by ES&S, and ES&S failed to provide the programmed computer chips that optical scanners use to tabulate the votes.<sup>31</sup>

3. **March 2006.** All 1000 new memory cards delivered to North Carolina failed. Of those delivered to Summit County, Ohio, about 30% failed. The Beacon Journal reports:<sup>32</sup>

Keith Long, North Carolina voting system manager, said he read Akron Beacon Journal articles about problems with the memory cards in optical-scan voting equipment and called ES&S to see if any of the cards had been sent to his state.

"All 1,000 (memory cards) that had been shipped here had the same problems," Long said.

3. **May 2000. Venezuela.** The election had to be postponed because of problems with the ES&S electronic voting system.

[I]n Venezuela, an electronic voting system produced that very same year [2000] what is widely known as the "mega-flop."

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<sup>29</sup> **Legal Actions Filed in Indiana and West Virginia.** By John Gideon, VotersUnite.org. April 29, 2006.  
[http://www.votetrustusa.org/index.php?option=com\\_content&task=view&id=1238&Itemid=51](http://www.votetrustusa.org/index.php?option=com_content&task=view&id=1238&Itemid=51)

<sup>30</sup> <http://www.wvsos.com/pressoffice/historical/051006essproblems.pdf> (Press Release)  
**Ireland Files Complaint Over Voting Machines: Vendor ES&S blamed for causing hardships for counties.** State Journal. May 10, 2006. By Jack Kane. <http://www.statejournal.com/story.cfm?func=viewstory&storyid=10786>

<sup>31</sup> **Phillips County Reports Problems; Sec. of State to Review Contract** KATV television, May 23, 2006 (no byline).  
<http://www.katv.com/news/stories/0506/330402.html>

<sup>32</sup> **Voting system's troubles spread.** Beacon Journal. March 16, 2007. By Lisa Abraham.  
<http://www.votersunite.org/article.asp?id=6559>

The biggest election in Venezuela's history was supposed to take place on May 28, 2000. More than 6,000 public offices were up for grabs, and Chavez, elected in 1998, was seeking re-election.

But two days before the vote, the Supreme Court postponed the election because of problems with computer software needed to tabulate votes and register more than 36,000 candidates. It was humiliating for election officials who had insisted things were going smoothly.

The Omaha, Neb.-based software provider, Election Systems & Software, blamed constant changes by election authorities in posting thousands of candidates.

... the postponement prompted authorities to reject any new deal with ES&S.<sup>33</sup>

4. **February 2007.** ES&S electronic voting machines marketed as providing independent access to people with disabilities, do not meet even the minimal accessibility standards of the 2002 Federal Voluntary Voting System Standards.

The standards require:<sup>34</sup>

- a. For electronic image displays, permit the voter to:
  - 1) Adjust the contrast settings;
  - 2) Adjust color settings, when color is used;

In a review of voting system accessibility, Noel Runyan, a blind accessibility expert, reports that the ES&S electronic voting machines provide neither of these features:<sup>35</sup>

Systems such as the Sequoia Edge II and ES&S iVotronic are not accessible for many people with astigmatism, colorblindness or other visual impairments because they do not provide for contrast control or foreground background color selection.

5. A compilation of 48 news reports of vote mis-tabulation from 2002 to 2006 caused by ballot programming errors shows that 40 were about errors made by ES&S. Some reports involved one county; some involved more; one report involved 13 counties in West Virginia.<sup>36</sup>
6. **1996 through May 2006.** Dozens of reports of ES&S equipment failures have been in the news across the United States. A partial list (over **100** reports) compiled in a fifty-one page document includes such problems as ballot programming errors that affected outcomes, vote-flipping on the selection screen and the review screen, breakdowns on election day, battery failures, software that reached 32,000 votes and began subtracting votes, malfunctioning vote data cartridges, electronic ballots irretrievably lost, excessive and unexplainable undervote rates.<sup>37</sup>
7. **November 2006.** A partial list of reported failures in the mid-term election (80 reports from 18 states) includes such problems as breakdowns, tabulation errors, contests failing to appear on computer ballots, vote-switching on electronic voting machines, screen freezes, and data transfer failures. <sup>38</sup>

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<sup>33</sup> **Venezuela Using Untested Voting Machines.** ABC News. July 11, 2004.

<http://www.wjla.com/news/stories/0704/158551.html>

<sup>34</sup> **Voluntary Voting System Standards.** [http://www.eac.gov/election\\_resources/vss.html](http://www.eac.gov/election_resources/vss.html), page 2-12

<sup>35</sup> **Improving Access to Voting.** February 2007. By Noel Runyan.

[http://www.voteraction.org/reports/nrreport/Improving\\_Access\\_to\\_Voting\\_.pdf](http://www.voteraction.org/reports/nrreport/Improving_Access_to_Voting_.pdf), page 55

<sup>36</sup> **Vote-Switching Software Provided by Vendors.** VotersUnite.Org. September 2006.

<http://www.votersunite.org/info/mapVoteSwitch.pdf>

<sup>37</sup> **ES&S in the News – A Partial List of Documented Failures.** Compiled by VotersUnite.

<http://www.votersunite.org/info/ES&Sintheneews.pdf>

<sup>38</sup> Online problem log, maintained by VotersUnite. <http://www.votersunite.org/electionproblems.asp>

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# Sequoia Voting Systems

**New York Guideline #1:** Does the contractor possess the integrity to perform the contract? Factors to be considered include criminal indictments, criminal convictions, civil fines and injunctions imposed by governmental agencies, anti-trust investigations, ethical violations, tax delinquencies, debarment by the federal government, prior determinations of integrity-related non-responsibility, etc.

## *Criminal Indictments/ Convictions of Key Personnel*

1. David Philpot, Sequoia's exclusive agent in Louisiana, was convicted of bribery in a 1999 kickback scandal. Phil Foster, a Sequoia salesman indicted in 2001 by a grand jury for related crimes, had been granted immunity for his testimony in the scandal and was not tried. Foster has since risen in the company and at present is serving as the Vice President Administration & Strategies.

In November 2001, the San Francisco Business Times reports that two Florida counties, Indian River and Pinellas, halted purchases of Sequoia voting systems after learning of the background of Phil Foster, who was then the regional manager in Florida.<sup>39</sup>

Foster was indicted for conspiracy to commit money laundering and malfeasance. According to court documents, he participated in kickbacks to a Louisiana election official, who oversaw the purchase of Sequoia equipment there and is now serving a prison term. Foster's lawyer denies the charges.

... The charges against Foster stem from alleged connections to Jerry Fowler. The former Louisiana state commissioner of elections is serving a federal prison sentence for tax evasion and a decade-long kickback scheme from the purchase of voting machines supplied by Sequoia, according to court documents.

Those documents say Fowler was convicted of overpaying by millions for equipment from David Philpot, Foster's brother-in-law. Philpot was installed as Sequoia's exclusive agent in the state and later pleaded guilty to bribery charges.

A Pittsburgh television station's investigator, more recently checking into the backgrounds of voting machine employees, reports:<sup>40</sup>

In 1999, a company salesman for Sequoia Voting Systems was granted immunity in a kickback scheme investigation that landed Louisiana's top elections official in prison. Sequoia electronic voting machine salesman Philip Foster got the immunity in exchange for his testimony before a grand jury.

Foster himself was later indicted in the scheme, but a court tossed it out because of his immunity. He then got the charges expunged.

Phil Foster is still one of Sequoia's key employees. He served on the Palm Beach County Election Technology Advisory Committee, from September 2005 through May 2006.<sup>41</sup>

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<sup>39</sup> **Exec's indictment hits Oakland vote firm.** San Francisco Business Times. November 16, 2001. John Rhine. <http://sanfrancisco.bizjournals.com/sanfrancisco/stories/2001/11/19/story4.html>

<sup>40</sup> **Team 4 background checks.** February 17, 2006. Jim Parsons, WTAE-TV Pittsburgh. <http://www.thepittsburghchannel.com/news/7161565/detail.html>

<sup>41</sup> **Palm Beach County Election Technology Advisory Committee Meeting Minutes.** September 15, 2005 [http://www.votersunite.org/info/PBC\\_ETAC\\_Meeting\\_Minutes.pdf](http://www.votersunite.org/info/PBC_ETAC_Meeting_Minutes.pdf) and **Palm Beach County Election Technology Advisory Committee Final Report.** August 23, 2006. [http://www.votersunite.org/info/PBC\\_ETAC\\_finalreport.pdf](http://www.votersunite.org/info/PBC_ETAC_finalreport.pdf)

## *Ethical Violations*

1. **November 2006. Denver.** After Sequoia's electronic pollbook system caused chaos in the general election, Sequoia's Vice President Howard Cramer lied to the Mayor's panel in an attempt to blame the Election Commissioners for his own company's failure.

Cramer attempted to convince the Mayor's panel that the software Sequoia developed for Denver was not intended as an electronic pollbook, but documents proved that Sequoia had been commissioned to build precisely that software.

Experts who examined Denver's technology faulted the Sequoia-designed software for crashing Denver's voter check-in system, leading to lines as long as three hours at some vote centers. Officials estimate that more than 20,000 people didn't vote because of the delays.

But Sequoia vice president Howard Cramer told the mayor's panel he was surprised to learn Denver was using the company's technology as an "e-pollbook" to check in voters at the polls.

"The first time I heard about it was on election night," Cramer told the panel, which was appointed by Mayor John Hickenlooper.

On Thursday, Sequoia spokeswoman Michelle Shafer said Cramer's statements may have been misconstrued. "Howard (Cramer) certainly knew that we had a product that was being used in Denver, however, that has never been marketed as an electronic pollbook," she said. "That is not what we provided."

But documents released Thursday show the Election Commission specifically asked for that kind of technology as early as mid- January, about 10 months before Election Day.

A Jan. 12 software request from Sequoia states, "Development in Phase 1 of the registration book involves 'basic' electronic pollbook features."

The request also stated that the pollbook features needed to meet state statutes, which require electronic pollbooks for any county using vote centers. "It is not up for debate," Election Commission operations manager Matt Crane said. "I don't know how we can be any more clear on that."

Crane pointed out several functions that Denver requested for the technology, including the ability for judges at vote centers to verify a person's eligibility to vote.

"That is what an e-pollbook does," he said.

2. **November 2002. Bernalillo County, New Mexico.** Vice President Howard Cramer failed to inform New Mexico officials of a known software bug that mis-tabulated votes. The Albuquerque Tribune reported:<sup>42</sup>

Although about 48,000 people had voted early on 212 Sequoia-supplied touch-screen computers at six sites in the county, the initial figures given to the commissioners indicated that no race - not even for governor - showed a total of more than about 36,000 votes.

The error went undetected for 10 days, when it was noticed by an attorney who had been monitoring the election for one of the candidates. **Sequoia admitted that the same error had been encountered in Clark County, Nevada, several weeks earlier, but Sequoia had not informed the election officials in Bernalillo County.**

Commissioner Tom Rutherford accused Cramer [Howard Cramer, vice president and Western regional manager of Sequoia Voting Systems] of a "cover-up," and said Cramer had never intended to tell officials here about the problem.

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<sup>42</sup> **Election results certified after software blamed.** Albuquerque Tribune; November 19, 2002; By Frank Zoretich, Tribune Reporter. [http://www.abqtrib.com/archives/news02/111902\\_news\\_vote.shtml](http://www.abqtrib.com/archives/news02/111902_news_vote.shtml)

... “We did not anticipate it would occur anywhere but in the Nevada election,” he [Howard Cramer, vice president and Western regional manager of Sequoia Voting Systems] said. Sequoia’s people here were not aware of the Nevada glitch, had not been alerted to watch for it, and had not been told how to fix it, he said.

... Upon learning Friday of the 12,000-vote gap, he said, **Sequoia employees** worked through the weekend in **Denver** to re-run the data - using the software patch this time - and make a new report that included the “missing” ballots.

**New York Procurement Guideline #2.** Has the contractor performed at acceptable levels on other governmental contracts? Factors to be considered include reports of less than satisfactory performance, early contract termination for cause, contract abandonment, court determinations of breach of contract, etc.

### *Less than Satisfactory Performance*

1. **November 2006. Denver, Colorado.** Sequoia’s electronic pollbook system caused chaos and massive disenfranchisement in the 2006 Denver general election.

After an investigation by the mayor, the Denver Post reports:<sup>43</sup>

Software that Denver used to check in voters on Election Day did not “meet, or even approach, professional standards,” consultants told a city investigative panel Wednesday.

... Poorly designed software for checking voters’ registration status overwhelmed Denver’s computer system, making it difficult for election judges to process voters and leading to waits as long as three hours.

Officials estimate that more than 20,000 voters didn’t vote because of the delays.

2. **March 2006. Cook County, Illinois.** After paying more than \$26 million for new equipment from Sequoia, the March election was plagued with severe problems.<sup>44</sup>

A Cook County commissioner says the board should consider revoking a multimillion-dollar contract awarded to a California company that provided the new voting machines blamed for Tuesday’s troubled primary.

Printers jammed, voters waited up to three hours to vote, others were turned away, audio ballots failed, other equipment failed, remote transmission of results was delayed, and combining votes from the dual systems was more complicated than anticipated.

The oversized optical-scan paper ballots jammed in some machines, while audio equipment for blind voters was not installed or did not work in other places... In suburban Cook County, election officials said about 10 optical scanners and 15 touch-screen machines were swapped out during the day ... City officials still were counting their equipment failures but said at least two machines needed to be replaced and 30 to 40 needed repairs during the day. In suburban Summit, election officials confirmed that at least a dozen voters were turned away from the polls in one precinct. ...Maria Pesquina said she first showed up to vote at 7:20 a.m. but didn’t cast a ballot until 12:30 p.m. <sup>45</sup>

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<sup>43</sup> **“Laughable failures” in Denver election.** Denver Post. November 30, 2006. By George Merritt and Katy Human. [http://www.denverpost.com/news/ci\\_4745158](http://www.denverpost.com/news/ci_4745158)

<sup>44</sup> **Vote snafu: Some blame new equipment, others human error.** Chicago Sun-Times. March 23, 2006. By Steve Patterson, Contributing Abdon Pallasch. [http://findarticles.com/p/articles/mi\\_qn4155/is\\_20060323/ai\\_n16159013](http://findarticles.com/p/articles/mi_qn4155/is_20060323/ai_n16159013)

<sup>45</sup> **Low Turnout, Voting Machine Problems Reported.** CBS 2 Chicago, Mar 21, 2006. Rafael Romo reporting. [http://cbs2chicago.com/seenon/local\\_story\\_080134211.html](http://cbs2chicago.com/seenon/local_story_080134211.html)

3. In 2004, Sequoia touch screen machines failed to operate properly when the Spanish language option was selected. Two years later, Spanish language problems have not been corrected.

**Sacramento, California. August 2004.** In a demonstration of the Sequoia Direct Recording Electronic voting machine with a paper trail, the machine failed to report votes cast in Spanish. The Tri-Valley Herald reported:<sup>46</sup>

Last week, Sequoia vice president and former California assistant secretary of state Alfie Charles was showing off the new Veri-Vote printer that his firm is supplying to Nevada when an astute legislative aide in Johnson's office noticed two votes were missing.

Charles tried again to vote in Spanish with the same result: He cast votes on two mock ballot initiatives, but they were absent from the electronic summary screen and the paper trail.

**Palm Beach County, Florida. November 2006.** The parallel testing conducted by the county's supervisor of elections showed that the Sequoia electronic voting machines failed to show certain contests on the confirmation screen. The findings report:<sup>47</sup>

The ballot activated with a language choice of Spanish did not provide for the review of voter selections on the confirmation screen for the Court of Appeals contests or the Constitutional Amendments.

4. Voting machines that Sequoia claims are accessible to people with disabilities fail to meet federal accessibility requirements.

**November 2005. California.** Consultants hired to test voting systems for the California Secretary of State found that Sequoia's sip-puff attachment intended for people with physical disabilities is unusable. The screen is blanked during its use, the audio instructions (which are the only instructions available) are incorrect, the voter has no access to help screens, and the voter cannot reject the ballot if the voter-verified paper record shows that the ballot is incorrect. The consultant's report says:<sup>48</sup>

The implementation of a Sip and Puff device requires the voter to use an audio ballot. The instructions provided to the voter are for the operation of the audio ballot with the audio ballot keypad. Accordingly, the system provides inappropriate and unusable instructions to the voter. The screen is blanked out because the machine is in audio ballot mode. When the ballot is printed, the voter has no option to reject the ballot. The voter using the sip and puff device has no access to the help screens.

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**Machine Woes Slow Vote-Counting in Illinois.** Washington Post, March 22, 2006. Staff writers.  
<http://www.washingtonpost.com/wp-dyn/content/article/2006/03/22/AR2006032202171.html>

**New machines, poor training slowed count.** Chicago Tribune. Mar 23, 2006. James Janega, John McCormick and David Kidwell, Tribune staff reporters. <http://www.chicagotribune.com/technology/chi-0603230212mar23,1,353880.story?page=1&coll=chi-technology-hed>

<sup>46</sup> **Lawmakers cut e-voting's paper trail: Manufacturers demonstrating new printers in Nevada were embarrassed when machine failed to recognize votes.** Tri-Valley Herald. August 13, 2004. By Ian Hoffman, Staff Writer. Reproduced at: <http://www.votersunite.org/article.asp?id=2512>

<sup>47</sup> **Limited Parallel Testing Program, Report of Findings.** November 7, 2006 General Election. Dr. Arthur Anderson, Supervisor of Elections, Palm Beach County, Florida. Pages 26, 27, 29.  
<http://www.votersunite.org/info/PalmBeachParallelTesting2006.pdf>

<sup>48</sup> [http://www.sos.ca.gov/elections/voting\\_systems/sequoia\\_consultant\\_report.pdf](http://www.sos.ca.gov/elections/voting_systems/sequoia_consultant_report.pdf)

**February 2007.** Sequoia electronic voting machines, which are marketed as providing independent access to people with disabilities, do not meet even the minimal accessibility standards of the 2002 Federal Voluntary Voting System Standards.

The standards require:<sup>49</sup>

- a. For electronic image displays, permit the voter to:
  - 1) Adjust the contrast settings;
  - 2) Adjust color settings, when color is used;

In a review of voting system accessibility, Noel Runyan, a blind accessibility expert, reports that the Sequoia voting machines provide neither of these features:<sup>50</sup>

Systems such as the Sequoia Edge II and ES&S iVotronic are not accessible for many people with astigmatism, colorblindness or other visual impairments because they do not provide for contrast control or foreground background color selection.

5. **1996 through May 2006.** Dozens of reports of Sequoia equipment failures have been in the news across the United States. A partial list compiled in a twenty-seven page document includes such problems as votes dropped on touch screen systems, screen freezes, tabulation errors, vote-switching on electronic voting machines, breakdowns on election day, paper jams, data transfer failures, malfunctioning vote data cartridges, battery failures, and software that lost votes during tabulation.<sup>51</sup>
6. **November 2006.** A partial list of failures reported in the mid-term election (25 reports from seven states) includes such problems as breakdowns, tabulation errors, contests failing to appear on computer ballots, vote-switching on electronic voting machines, screen freezes, and data transfer failures.<sup>52</sup>

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<sup>49</sup> **Voluntary Voting System Standards.** [http://www.eac.gov/election\\_resources/vss.html](http://www.eac.gov/election_resources/vss.html), page 2-12

<sup>50</sup> **Improving Access to Voting.** February 2007. By Noel Runyan.  
[http://www.voteraction.org/reports/nrreport/Improving\\_Access\\_to\\_Voting\\_.pdf](http://www.voteraction.org/reports/nrreport/Improving_Access_to_Voting_.pdf), page 55

<sup>51</sup> **Sequoia in the News – A Partial List of Documented Failures.** Compiled by VotersUnite.  
<http://www.votersunite.org/info/Sequoiainthenews.pdf>

<sup>52</sup> Online problem log, maintained by VotersUnite. <http://www.votersunite.org/electionproblems.asp>

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## Liberty Election Systems

Note: The LibertyVote machine, marketed in the United States by Liberty Election Systems, is manufactured by the Dutch company NEDAP (NV Nederlandse Apparatenfabriek) and marketed in Europe as the PowerVote Voting System.

**New York Guideline #1:** Does the contractor possess the integrity to perform the contract? Factors to be considered include criminal indictments, criminal convictions, civil fines and injunctions imposed by governmental agencies, anti-trust investigations, ethical violations, tax delinquencies, debarment by the federal government, prior determinations of integrity-related non-responsibility, etc.

### *Ethical Violations*

1. **November 2006, Nederland.** On the day of the national parliamentary election, Jan Groenendaal, CEO of the company that provides software for the NEDAP voting machines, threatened to disrupt the election unless the Dutch government gave in to his demands.<sup>53</sup>

**Background.** The NEDAP machines are used in 90% of the polling places in The Netherlands, and Groenendaal's company writes the software that tabulates the election results on both the local and the national level. According to letters from the Dutch Electoral Council obtained by a Dutch voting integrity group through the Dutch Freedom of Information Act, the Dutch government depends on Groenendaal's company to the extent that it currently cannot hold elections without his help.

In September 2006, that voting integrity group, The "We Don't Trust Voting Computers" Foundation, published a highly critical analysis of the security of the NEDAP voting machine and the software provided by Groenendaal. In October, Rop Gonggrijp, a member of the group successfully hacked a NEDAP e-voting machine on Dutch television.<sup>54</sup>

**Groenendaal's threats to the Dutch government.** In November, Jan Groenendaal, CEO of the software company, wrote letters warning the Dutch Election Ministry not to appoint Ron Gonggrijp to a newly formed committee studying the election process in The Netherlands and attempting to compel the Dutch government to purchase his company. In both cases Groenendaal threatened to withhold his company's cooperation during the elections.<sup>55</sup>

One letter, written 12 days before the national election, states:<sup>56</sup>

It's not a secret that the moment hacker G. would be admitted to such a committee, we will instantly suspend all our activities and invoke the media.

The "We Don't Trust Voting Computers" Foundation reported on the content of other letters (which are not quoted here since they are in Dutch):

On November 22nd 2006 (the day of the national elections) he wrote a letter which doesn't spell blackmail as explicitly to minister Nicolaï, in which he indicates his need to sell quickly because

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<sup>53</sup> **Voting systems company threatens Dutch state: "Buy my company now or you won't have provincial elections"** February 28, 2007. <http://www.wijvertrouwenstemcomputersniet.nl/English/Groenendaal>

<sup>54</sup> [http://votetrustusa.org/index.php?option=com\\_content&task=view&id=1850&Itemid=51](http://votetrustusa.org/index.php?option=com_content&task=view&id=1850&Itemid=51) (Press release)

<sup>55</sup> **Voting Integrity Group Demands Investigation of Voting Machine Manufacturer.** April 27 Press Release. Voting Integrity Project. <http://www.nyvv.org/newdoc/tcsd/SCPPressRelease042707.pdf>

<sup>56</sup> [http://www.wijvertrouwenstemcomputersniet.nl/English/Mail\\_Groenendaal](http://www.wijvertrouwenstemcomputersniet.nl/English/Mail_Groenendaal)

he would like to “abruptly” retire. But when that letter fails to elicit a fast response, Groenendaal writes an alarming e-mail to the Electoral Council in which he says: “We are heading towards a very dangerous situation”. Right in the heat of election preparation, he writes: “I have ordered my employees to halt all activity until we have received an answer that is acceptable to us”, and asks the secretary-director of the Electoral Council to intervene on his behalf. As far as we know, the Dutch government never filed criminal charges in relation to this attempted extortion.

2. **April 2007. Troy, New York.** Liberty Election Systems made false claims about its voting system in a brochure<sup>57</sup> that it distributed in New York. New Yorkers for Verified Voting published a paper pointing out and refuting many of the false claims.<sup>58</sup>

Liberty’s most absurd claim was that “The LibertyVote is not a computer.” As New Yorkers for Verified Voting pointed out:

This statement is patently false – There is no question that the LibertyVote/Nedap DRE is a computer. It has a motherboard, a processor and a keyboard. Its operation depends completely on software, without which it can do nothing, not even start up. It transmits and receives data, communicating with other computers via memory cards. Of course the LibertyVote/Nedap DRE is a computer.

Liberty also claimed the system could not be accessed by hackers, even though a member of The “We Don’t Trust Voting Computers” Foundation had successfully hacked the machine’s Nederland counterpart the previous October. (See item #1 above)

**New York Procurement Guideline #2.** Has the contractor performed at acceptable levels on other governmental contracts? Factors to be considered include reports of less than satisfactory performance, early contract termination for cause, contract abandonment, court determinations of breach of contract, etc.

### *Less than Satisfactory Performance*

1. **Ireland, 2002.** A study by Irish Citizens for Trustworthy Elections revealed that there were serious inconsistencies with the counts in two of the constituencies in which evoting was piloted in 2002 using the NEDAP voting system. <sup>59</sup>

In the case of the Dáil Election in the Dublin West Constituency, these reports indicate the Presiding Officer recorded 29,272 votes as having been cast. The Nedap/Powervote modules recorded 29,988 votes as having being cast, a difference of 716 votes. These 716 unexplained votes represent 2.4% of those who voted in the constituency of Dublin West.

A further flaw emerged in the results of the Dublin North Election in which Ms Nora Owen lost her seat. In Dublin North the documents indicate that the Presiding Officers recorded 45,236 votes as having been cast in that constituency. The Nedap/Powervote ballot modules recorded only 43,942 votes. “This difference of 1,294 votes represents 2.9% of total poll and is extremely worrying” noted Mr Dermot Casey of ICTE.

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<sup>57</sup> [http://www.votersunite.org/info/LibertyBrochure\\_NewYork.pdf](http://www.votersunite.org/info/LibertyBrochure_NewYork.pdf)

<sup>58</sup> **Refuting False Claims and Misleading Statements Made in the Troy City School District Election Brochure.** <http://www.nyvv.org/newdoc/tcsd/RebuttalLibertyBrochure.pdf>

<sup>59</sup> **Serious Inconsistencies Uncovered in E-Voting Pilot Votes (NEDAP Powervote).** By Colm MacCarthaigh, Irish Citizens for Trustworthy Evoting. July 14, 2005. [http://www.votetrustusa.org/index.php?option=com\\_content&task=view&id=403&Itemid=51](http://www.votetrustusa.org/index.php?option=com_content&task=view&id=403&Itemid=51)

2. **Ireland 2003 to present.** Three years after purchasing the PowerVote system, the government is still storing the equipment, unused, because of security and accuracy concerns raised by an independent commission's investigation of the system. New Yorkers for Verified Voting reports: <sup>60</sup>

The Republic of Ireland spent nearly \$60 million on PowerVote equipment intending to use the equipment for the June, 2004 local and European Parliament elections. An Independent Commission on Electronic Voting investigated the system and concluded that it could not recommend its use because of security and accuracy concerns. <sup>61</sup> The system was not used for that election.

Presently, the Irish government says it is "most unlikely" that these systems will be used for the 2007 general election. In fact, they may not be used for several years. The machines are now being stored at an annual expense of over \$800,000.

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<sup>60</sup> **Are LibertyVote DREs the Answer to New York's Voting Needs?** New Yorkers for Verified Voting. October 12, 2005. <http://nyvv.org/reports/LibertyVoteCritique.pdf>

**Electronic Voting Unlikely to be used in Next Election.** The Irish Times, Dublin, Ireland, September 27, 2005. By Carl O'Brien.

<sup>61</sup> [http://www.cev.ie/htm/report/download\\_second.htm](http://www.cev.ie/htm/report/download_second.htm)