August 12, 2016

Mr. Keith Ingram
Director of Elections, Texas Secretary of State
Elections Division
P.O. Box 12060
Austin, Texas 78711-2060

Re: Election Systems & Software Version 5.2.1.0 – June 8 and 9, 2016, Examination

Dear Mr. Ingram:

Pursuant to Texas Election Code §122.036 and 1 Texas Administrative Code §81.60, by this letter I am transmitting my examiner's report for the Secretary of State's ("SOS") June 8th and 9th, 2016, voting system examination. The subject of that examination was Election Systems & Software ("ES&S") voting system version 5.2.1.0, ExpressVote.

The factual background for this report includes ES&S's presentation to the examiners made during the examination at the Secretary of State's office, statements made by ES&S's representatives during that examination, and e-mail answers to follow-up examiner questions sent by ES&S to SOS and then forwarded to the examiners.

Both during and after the examination, the examiners raised some concerns about legal compliance of the ExpressVote system. Specifically, concerns were raised about the configuration of ExpressVote to allow marked ballots to drop into a card bin to be scanned and tabulated at another location. Because the card bin cannot be locked, it does not meet the definition of a "ballot box" under sections 127.061 and 127.063 of the Election Code. Thus, the card bins as currently designed cannot be used to collect marked ballots. In order to be compliant with Texas law, ExpressVote should be configured to return the marked ballot to the voter who can then deposit the marked ballot immediately into either a certified precinct counter to be tabulated on site or a secured ballot box to be transported and tabulated at a central count scanner.

Questions were also raised about whether the Vote Summary Card printed by ExpressVote once the voter had made and approved his selections complies with the ballot requirements under Texas law. The Vote Summary Card contains the voter's selections and a barcode with the same information that can then be scanned by both the DS200 and DS850 tabulators. Section 124.062(b) of the Election Code authorizes the SOS to allow the use of electronic system ballots that comprise two or more separate parts. We understand the SOS agrees that the ExpressVote system's multipart ballots comply with state law. Accordingly, we find this portion of ExpressVote to be legally sufficient.

With the exception of the restricted use of the card bins discussed above, the Office of the Attorney General concludes there are no legal compliance issues with the ES&S's ExpressVote system, version 5.2.1.0. Thus, we recommend certification.

Sincerely,

Amanda Crawford
Deputy Attorney General for Administration and General Counsel
Office of the Attorney General

cc: Examiners
Christina Adkins, SOS