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May 20, 2017

Mr. Keith Ingram
Director of Elections
Texas Secretary of State   **VIA EMAIL**
Elections Division
208 East 10th Street
Austin, Texas 78711

Re: Inspection of Election Systems & Software's EVS 5.4.0.0 System on April 19 and
         20, 2017 (the "ES&S EVS 5.4.4.0 System")

Dear Mr. Ingram:

Pursuant to my appointment by the Texas Secretary of State as a voting systems examiner under TEXAS ELECTION CODE § 122.035, please allow this letter to serve as my report concerning the above referenced examination. I, along with the other statutory examiners and staff from the Secretary of State's office, examined the ES&S EVS 5.4.0.0 System on April 20, 2017, at the offices of Elections Division of the Texas Secretary of State in Austin, Texas.

We examined the ES&S EVS 5.4.0.0 System for compliance with the relevant provisions of the TEXAS ELECTION CODE and Texas Administrative Code related to the requirements for election machines and software. I also reviewed the written materials submitted by ES&S for compliance with the TEXAS ELECTION CODE and Texas Administrative Code requirements for voting equipment.

The ES&S EVS 5.4.0.0 System contains many of the same components as a previous EVS system that the Secretary of State certified on December 15, 2016 and the EVS 5.2.2.0 System that was inspected immediately prior to the insepction of the 5.4.0.0 System. This version of the EVS *does not* include the tabulator machine known as the "DS 450" that was part of the 5.2.2.0 System, but does include various upgrades and/or revisions. Most notably, the ES&S EVS 5.4.0.0 System includes a unique upgrade to the Express Vote terminal that allows it to be used as a tabulator as opposed to only a ballot marking device.

TESTING OF THE HARDWARE AND SOFTWARE

At the beginning of the day, ES&S officials provided an explanation of the differences in the 5.2.2.0 and 5.4.0.0 Systems. A physical inspection and testing of each 5.4.0.0 System was completed. As with the 5.2.2.0 System, the examiners cast several pre-set scripts of ballots on each voting machine included in the ES&S EVS 5.4.0.0 System. The mock votes were then

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tabulated and sorted with the applicable components of the ES&S EVS 5.4.0.0 System, including the DS 200, the DS850 and the ERM system for tabulation and reporting. The tabulations and reports were confirmed to be accurate.

The audit logs from the system related to the cast ballots were also reviewed for each component. These logs showed all of the relevant events of the voting process and any anomalies that occurred during the process.

OBSERVATIONS

General Compliance with Texas Election Code. Each of the separate pieces of hardware and software examined that were used for actually casting a ballot or tabulating votes complied with the applicable requirements listed in §§ 122.001 *et seq.* of the TEXAS ELECTION CODE and the related regulations in Texas Administrative Code.

Use of Express Vote as a Tabulator. A new option for the ES&S EVS 5.4.0.0 System is that the Express Vote machine can be used as a tabulator (as opposed to its traditional function as a ballot marking device). This option requires an optional curved ballot collection box to be attached to the device for the deposit of cast ballots. This created a concern for use in early voting because the box did not have two separate locks (that individually secured the box) when removed from the Express Vote device as required by Texas law. The locks that were available also allowed a small sliver of access to the box where ballots could be added.

This option also caused some minor concern because the paper ballot can be returned to the voter for review before it is fed back into the machine for tabulation. The concern about returning the ballot to the voter was that the voter could then choose to *not* feed the ballot back in to the device for tabulation. However, the same ballot can also be scanned into the DS200 or the Express Vote machine later.

Similar Issues Observed with the 5.2.2.0 System. Because both the 5.2.2.0 and 5.4.0.0 Systems were inspected over two consecutive days, many of the same issues that were observed with the 5.2.2.0 System were present with the 5.4.0.0 System. These included the issues discussed in my report related to the 5.2.2.0 System related to continuous real tme audit log printer for the DS200 device, the large blue bins for the DS200, and the potential for the rescanning of ballots on the DS200 and the DS850 (since the DS450 is not part of the 5.4.0.0 System).

CONCLUSION

Based on the examination and review of the materials, it is my opinion that the ES&S EVS 5.4.0.0 System meets the requirements of Texas law and the applicable administrative rules.
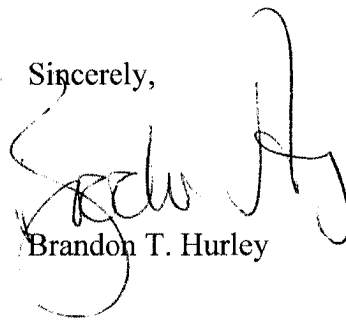
In the event the Secretary of State chooses to certify the ES&S EVS 5.4.0.0 System, I would recommend that the following conditions should be placed on the certification:

- The use of the Express Vote terminal as a tabulation device where paper ballots are stored should be limited to use on the actual election day and not for a similar use during early voting unless a second lock can be placed on the curved ballot box attached to the device;

- All of the conditions listed in my examination report for the ES&S EVS 5.2.2.0 System should also be considered with the 5.4.0.0 System since the same physical components and issues also exist with this system.

This report should not be construed as a comment on any of the technical aspects of the ES&S EVS 5.4.0.0 System. In the event any of the equipment, software or security devices examined or used with the ES&S EVS 5.4.0.0 System are altered, changed or decertified by any accrediting agency (other than a "minor modification qualified for administrative certification process" as that term is defined in § 81.65 of the Texas Administrative Code), this report should be considered withdrawn.

Thank you for the opportunity to serve as an examiner and participate in this important process that protects the integrity of Texas' voting systems.

Sincerely,

Brandon T. Hurley

cc:
Examiners *(via email)*