Secretary of State
DEBRA BOWEN
State of California

September 28, 2009

Ms. Gineen Beach, Chairwoman
Ms. Gracia Hillman, Vice Chairwoman
Ms. Donetta Davidson, Commissioner
Election Assistance Commission
1225 New York Avenue NW, Suite 1100
Washington, DC 20005

Dear Chairwoman Beach, Vice Chairwoman Hillman and Commissioner Davidson:

I am pleased to have the opportunity to comment on the draft version 1.1 of the Voluntary Voting System Guidelines (VVSG). Attached in table form are my comments on Volumes I and II, with Appendices. I am also submitting these comments on a section-by-section basis using the Commission's online commenting interface.

Overall, the National Institute of Standards and Technology (NIST) has done an excellent job in developing these proposed standards. My comments are framed to correspond to the limited goals the Commission has set for this interim revision to the guidelines issued in 2005. It is important for the Commission to proceed promptly with the development of the next full revision of the VVSG, now referred to as VVSG version 2.0. Specifically, I strongly support including requirements for software independence and open-ended vulnerability testing in VVSG version 2.0.

Two of the comments in the attached table warrant special mention. In Volume I, proposed section 3.3.4(c) would require accessible voting stations (Acc-VS) that support ballot submission or vote verification for non-disabled voters to "provide features that enable voters who lack fine motor control or the use of their hands to perform these actions." These voting accessibility capabilities are very important and should be required in future voting systems. Currently, however, at least one Acc-VS, the AutoMARK, cannot meet this requirement. Imposing such a requirement in this interim version of the VVSG conflicts with a key criterion for selection of those provisions that were appropriate for version 1.1: A requirement should be included only if it "would not require hardware changes to current voting systems." (See Volume I – Background – p.3.) The proposed requirement could cause thousands of AutoMARK machines to be taken out of service if, for example, a software patch subject to EAC certification had to be installed to address an unrelated issue. See Volume I – Overview – p. vi. The unintended consequence of proposed section 3.3.4(c) would harm, not help, voters with disabilities meant to be served by accessible voting equipment.
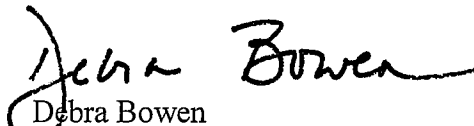
The same concern applies to Volume I – 4.1.5.1 – Hardware Requirements – Ballot Handling. As drafted, section 4.1.5.1(e) would impose a standard for permissible "misfeeds" in electronically assisted ballot marking devices (EBMs) that the current AutoMARK hardware cannot meet. In addition to conflicting with the criterion meant to avoid hardware change requirements, it is not appropriate for the misfeed standard applied to central optical scanners that process thousands of ballots to also be applied to EBMs, which typically process less than 20 ballots in each polling place. One misfeed every 500 ballots could disrupt the central tabulation of ballots dozens of times in a single election. Applying the same 1 in 500 standard to EBMs that process only 20 ballots per election appears unnecessarily strict, permitting a paper jam in only 1 of every 25 polling places.

I look forward to working with the EAC to refine and revise the VVSG. The Guidelines play an important role in protecting the accuracy, accessibility, security and usability of our voting systems and the integrity and trustworthiness of our elections.

Sincerely,

Debra Bowen
Secretary of State

cc: Tom Wilkey, EAC Executive Director
        John Wack, NIST
        The Honorable Trey Grayson
                Secretary of State, Kentucky
                President of the National Association of Secretaries of State

DB:lf:elg