

July 21, 2021

This addresses the July 20, 2021 memorandum to Colorado County Clerks and Election Administrators from Judd Choate, Colorado Elections Director regarding "Background on Certification of Democracy Suite 5.13 Voting System Upgrade." As an appointee and agent of the Colorado Secretary of State (SoS), Choate acts on her behalf. Therefore, his actions and statements are referred to herein as those of his principal, the SoS.

Many of the facts alleged in the SoS' statement appear to be untrue, unsubstantiated, or irrelevant to apparent violations of Colorado law. Those apparent violations relate to the SoS' certifying the use of voting systems that had not been tested by a federally accredited laboratory and promoting the "upgrading" of those systems with components that had not been so tested.

1. The statement asserts that the USEAC "has confirmed that Pro V&V's accreditation did not expire at any time between February 24, 2015 and today, July 20, 2021." The statement cites sources and authority for other factual assertions in the statement, but cites no source or authority for that quoted statement other than to claim the USEAC said so. If the statement were true it would be most surprising considering:
 - a. Pro V&V's 2015 accreditation certificate from the USEAC plainly bears a 2017 expiration date. (https://www.eac.gov/sites/default/files/voting_system_test_lab/files/Pro_VandV_accreditation_certificate_2015.pdf)
 - b. Section 3.8 of the USEAC's Voting System Test Laboratory Program Manual (Manual) provides that an expiring accreditation can be renewed if the laboratory submits an application under the same procedures that apply to new applications. Such application must be filed between 30 and 60 days before the current [2015] accreditation expires [in 2017]. (https://www.eac.gov/sites/default/files/event_document/files/EAC.Voting%20System%20Test%20Laboratory%20Program%20Manual.OMB%20No%203265.0013.7.30.14.pdf)
 - c. There is no record on the USEAC's website of Pro V&V's having filed such an application. The website does contain a memo from Jerome Lovato, Voting System Testing and Certification Director, dated January 27, 2021 stating that Pro V&V's accreditation was extended due to the circumstances arising from Covid-19 and that its accreditation remains in good standing. As is widely known, Covid-19 did not appear until late 2019, 2.5 years after the 2015 accreditation expired in 2017. We are not aware of any procedure approved by the USEAC that empowered Mr. Lovato retroactively to extend an expired accreditation, especially on the basis of events that occurred 2.5 years after the accreditation expired.

Indeed, as explained, the Manual requires a renewal application to be filed before expiration of an existing accreditation. (https://www.eac.gov/sites/default/files/voting_system_test_lab/files/Pro_VandV_Accreditation_Renewal_delay_memo012721.pdf)

- d. In any event, the SoS certified voting systems between 2017 and 2021 during periods when there appears to be no record of Pro V&V's having a valid accreditation.
 - e. The USEAC's website contains documents relating to Pro V&V's accreditations dating back to 2012, including its accreditation certificates. No document posted there indicates that Pro V&V had an accreditation between the 2017 expiration date of its 2015 accreditation and its February, 2021 accreditation. (<https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl/pro-vv>)
 - f. That the USEAC would provide some extraordinary dispensation to Pro V&V as claimed in the 2021 Lovato memo is impeached by the 2018 re-accreditation of another laboratory, SLI Compliance. SLI Compliance of Wheat Ridge, Colorado received an accreditation renewal in January, 2018, effective through and expiring in January, 2021, apparently following the normal rules contained in the Manual. This included approval by a quorum of the USEAC. If SLI Compliance could be recertified during that period, it would seem Pro V&V could have also. Yet they don't seem to have been. (https://www.eac.gov/sites/default/files/voting_system_test_lab/files/SLI_Compliance_Certificate_of_Accreditation011018.pdf)
2. Contrary to the SoS' assertion, the USEAC website contains no statement that an accreditation was in effect for Pro V&V during the lapse period.
 3. The statement asserts, ". . . the EAC states explicitly on its website, Pro V&V's accreditation has been in effect since 2015" In fact, the EAC website says, "Pro V&V was accredited by the EAC on February 24, 2015;" it does not say the accreditation "has been in effect" from any date. As has been pointed out countless times, Pro V&V's 2015 accreditation "expired" by its terms in 2017, the expiration date stated on the accreditation certificate itself. (https://www.eac.gov/sites/default/files/voting_system_test_lab/files/Pro_VandV_Accreditation_certificate_2015.pdf). This is consistent with sec. 3.8 of the EAC's manual on test laboratory accreditation, which provides that accreditation shall not apply for more than two years. (https://www.eac.gov/sites/default/files/event_document/files/EAC.Voting%20Sys

[tem%20Test%20Laboratory%20Program%20Manual.OMB%20No%203265.0013.7.30.14.pdf](#)). Thus, the SoS' statement misquotes the EAC website.

4. The statement asserts that the USEAC lacked a quorum from 2015 to 2021 so it could not have approved a new accreditation. If the SoS' assertion is true that Pro V&V's accreditation never expired, why does she even address the question of whether the USEAC had the quorum necessary to re-accredit Pro V&V? No re-accreditation would have been necessary if the SoS' statements are true. Is this an admission that Pro V&V needed a new accreditation that it never got, as the documentary evidence indicates?
5. Even the SoS' statement that the USEAC lacked a quorum seems to be false. For example, see USEAC Public Meeting 081617, from August 16, 2017, showing three USEAC Commissioners (Hicks, Masterson, and McCormick; a quorum) present. At 0:44 into the video Chairman Masterson states explicitly that the Commission has a quorum. (<https://www.eac.gov/media/video-player-us-eac-public-meeting-081617>). Similarly, the USEAC held a public meeting on April 4, 2017, with a quorum of commissioners present (as indicated by Chairman Masterson's roll call at ~5:45) (<https://www.eac.gov/media/public-meeting-webcasts>).
6. Why would the SoS publish a public statement containing what can only charitably be characterized as less than forthright and poorly documented assertions? The documentation is right there on the USEAC website. Documentary evidence has been provided to the clerks and the SoS indicating that Pro V&V did not have an active federal accreditation during the period stated. The SoS' response has cited 1. Revocation, which is irrelevant because it never happened, and 2. Lack of a quorum, which appears to be false. She further claims the USEAC says the accreditation remained in effect, yet she produces no evidence of that, only a bald claim.

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