Date

Colorado County Commissioners

Boards of County Commissioners

Re: Whether Colorado Electronic Voting Systems Comply with Statute;

Implications for Commissioners

Dear Commissioner So and So,

The exhibits compiled for your convenience on this webpage (<https://www.cofightforfreedom.com/colorado-election-reports-and-evidence.html> are necessary to understand the extent of factual investigation that falls on county commissioners to ensure compliance with Colorado statute. It also should help explain why county commissioners cannot glibly rely on assurances from county clerks & recorders, or even staff of the secretary of state, none of whom has investigated this matter to the extent required of county commissioners.

Recently many citizens have attempted to explain to their county commissioners questions about the legality of electronic voting systems being used in Colorado. Unfortunately, too often the discussion has wandered into, and focused on the question of whether this or that election result appears to be accurate.

This has distracted county commissioners from their core legal responsibility: to ensure that the voting systems they approve and acquire meet Colorado legal standards. Whether the systems produce a facially reliable result is not one of those standards. Because the systems are complex and opaque computer systems, the standards relate to their characteristics as such, not to whether the results of an election appear valid.

**The Essence of The Problem**

Colorado statute imposes duties on county commissioners in connection with the acquisition and use of electronic voting systems. Violations of certain of those duties constitute misdemeanors under Colorado’s election laws. There are strong reasons to believe that commissioners in at least 62 counties in Colorado might be violating those duties by permitting the use of electronic voting systems that do not appear to meet statutory standards. Concern about the systems’ not complying with the 2002 VSS have been expressed by cyber security experts who have studied the systems. Such experts should not be taken lightly. Rather, they should enjoy a strong presumption of correctness, justifying investigation by county commissioners. With due respect to county clerks and recorders, they do not have the expertise credibly to question the experts’ opinions.

**Relevant Provisions of the Colorado Revised Statutes / Related Sources**

1. Colorado Revised Statutes (C.R.S.) 1-5-603 provides that county commissioners may “adopt for use at elections any kind of voting machine fulfilling the requirements . . . set forth in this part 6.” “Part 6” refers to Title 1 (Elections) Article 5 (Notice and Preparation) Part 6 (Authorization and Use of Voting Machines and Electronic Voting Systems). That includes C.R.S. sections 1-5-601 through 1-5-623.
2. C.R.S. 1-5-601.5 provides that all voting systems offered for sale or use in Colorado must meet the voting system standards (VSS) promulgated in 2002 by the federal election commission (FEC). (2002 VSS).
3. The 2002 VSS (two volumes) are available on the above link.
4. C.R.S. 1-13-107 and 1-13-723 provide it is a misdemeanor offense for a public officer or election official to violate any duty under the election code.
5. No provision of Colorado statute empowers any county clerk and recorder to decide whether to use an electronic voting system or, if one is to be used, to select the system. That is exclusively the responsibility of the board of county commissioners.

Accordingly, if county commissioners are permitting the use of election systems that do not meet the 2002 VSS standards, they are out of compliance with state law.

**Reasons to Question Whether Certain Electronic Voting Systems Comply With the 2002 VSS**

**Accreditation**The Election Assistance Commission (EAC) certifies the Voting Systems Testing Labs (VSTL) for a period of 2 years. The VSTL for Colorado is Pro V&V whose Accreditation expired on February 24, 2017 and was not renewed until January 2021. This means the election voting systems used in all elections since 2017 have illegally used uncertified voting systems. Dominion DVS 5.11 was illegally certified by the unaccredited Pro V&V in June 2019. The testing of the current version DVS 5.13 by Pro V&V was not a bottom-up testing, but merely the updated portions were tested on top of the illegally certified version 5.11 foundation. Therefore DVS 5.13 was illegally certified in 2021 and installed on all systems across the state of Colorado and the country.
<https://www.eac.gov/sites/default/files/TestingCertification/State_Requirements_for_Certification09042020.pdf>

For an in-depth dive into the subject please view the following:
<https://www.bitchute.com/video/WffdpkUcjWHZ/>

The following are just a few of the items reviewed for accreditation of the VSTLs to ensure the security of our critical infostructure which are required by the EAC.

1. Ensures the labs are not owned or run by foreign entities.
2. Looks into the CEO’s and board members.
3. Checks out the company policies and practices regarding record keeping and
 conflict of interest.
4. Double checks insurance bond and amounts in case of problems
5. Makes sure the labs sign a contract and letter of compliance and agreement.

Without proper accreditation our systems are at risk for:

1. Foreign influence and manipulation of software and hardware by third parties, including the possibly of ballot images being installed on machines.
2. Potential for software breach or algorithms being inserted.
3. Precinct level tampering from outside entities due to the labs signing off when they may have been run by and funded by foreign interest.
4. Un-vetted labs ‘checking’ the commercial, off-the-shelf components (COTS)
 which could have contained back doors.

**Black Box Systems**The software that runs our Voting systems is considered ‘proprietary’ and is held in escrow by a foreign corporation called the NCC Group. NCC Group plc, a company registered in England and Wales with offices in North America, Europe, Asia Pacific and United Arab Emirates. This creates two glaring security issues. First, the software is being held by a foreign entity who could at any time insert code which could control our election outcomes. Second, no one gets to review the software, not the testing labs, not the Secretary of State’s office. No one. We simply have to trust the word of this foreign corporation, the NCC Group, that everything is fine when the testing labs test all the peripheral components.

**CISA Issued a Warning**
On June 3, 2022 CISA release a Security Advisory on Dominion Voting Systems Democracy Suite ImageCast X “detailing vulnerabilities affecting versions of the DVS ImageCast X, which is an in-person voting system used to allow voters to mark their ballot.” ImageCast X is integrated with the county’s Ballot Marking Devices. This advisory confirms Dr. Halderman’s findings in his Report which has been sealed by a Georgia court. <https://www.cisa.gov/uscert/ncas/current-activity/2022/06/03/cisa-releases-security-advisory-dominion-voting-systems-democracy>

**Dr. Halderman’s declaration and Report (Exhibits 1 and 2)**

Professor J. Alex Halderman is one of the leading experts in electronic election system security. Dr. Halderman’s curriculum vitae is attached as Exhibit 1. On or about July 1, 2021 he filed an expert report in Case 1:17-cv-02989-AT in the Federal District Court for the Northern District of Georgia, Atlanta Division (the Atlanta Court). The report relates to security vulnerabilities of certain Dominion voting systems. Similar systems are used in 62 Colorado counties. Dr. Halderman points that out in his “declaration,” discussed below.

On September 21, 2021 Dr. Halderman filed a declaration with the Atlanta Court explaining why the report should be released. Dr. Halderman’s declaration is attached as Exhibit 2. His reasons relate to the lack of security inherent in the system, which he claims places at risk the security of elections employing the systems. Some highlights from the declaration that are relevant to any county in Colorado that is using Dominion voting systems include:

1. “I am an independent expert who was engaged to conduct an impartial assessment of the security and reliability of the Dominion BMD system, . . . “ [pg 5]
2. “My . . . expert report describes numerous security vulnerabilities in Georgia’s Dominion ICX BMDs.” [pg 1]
3. “They are . . . specific flaws . . . and I am prepared to demonstrate proof-of- concept malware that can exploit them to steal votes cast . . . . “ [pgs 1-2]
4. “ . . . the ICX is very likely to contain other, equally critical flaws that are yet to be discovered…Election officials cannot make an informed decision…until they have assessed the technical findings in my report” [pg 2]
5. “In 2022, the ICX will be used in parts of 16 states…(including)…**large parts of…Colorado**…Officials in these jurisdictions too must act to update the software and their procedures, but they cannot do so without information about the problems.” [Emphasis added; pg 3]
6. “Informing responsible parties about the ICXs’ vulnerabilities is becoming more urgent by the day. Foreign or domestic adversaries who are intent on attacking elections certainly could have already discovered the same problems I did. . . . It is important to recognize the possibility that nefarious actors already have discovered the same problems I detail in my report and are preparing to exploit them in future elections.” [pg 5]

Presumably, Dr. Halderman’s expert report contains more detail on the foregoing points, which are troubling enough on their own. It is respectfully suggested that commissioners should seek Dr. Halderman’s report from the Atlanta court, which has limited access to the report.

**The first forensic report filed as an exhibit in Mesa County litigation involving the Mesa CCR (Exhibit 3, September 2021)**

In addition to Dr. Halderman’s report, there is evidence of non-compliance with the 2002 VSS in the September 2021 Forensic Report #1 on the Mesa County Voting Systems authored by cyber security expert Doug Gould. That report explains many troubling aspects of the Dominion server used in Mesa County, including the deletion of thousands of files that would be necessary for any forensic audit of the system. Aspects of the 2002 VSS with which Dominion systems used in Colorado might not comply include (references are to the 2002 VSS Vol I <https://www.eac.gov/sites/default/files/eac_assets/1/28/Voting_System_Standards_Volume_I.pdf> :

2.2.4.1.g. “Record and report the date and time of normal and abnormal events.” This might have occurred initially when log file entries were created. However, November, 2020 election log files and possibly others were deleted in the Summer, 2021 “trusted build.” Moreover, the vendor-recommended, Secretary of State-promulgated guidance on size of log file repositories on Colorado Dominion systems and on the settings which ensure log files are overwritten, virtually guarantee that newer log file entries will replace (destroy) older entries that are within the statutorily required retention period.

2.2.4.1.h. “Maintain a permanent record of all original audit data that cannot be modified or overridden but may be augmented by designated authorized officials in order to adjust for errors or omissions . . . .” Again, the Summer, 2021 “trusted build” deleted files that might have been necessary to meet this requirement.

2.2.4.1.i. “Detect and record every event, including the occurrence of an error, and condition that the system cannot overcome, and time-dependent or programmed events that occur without the intervention of the voter or a polling place operator.” Again, the so-called “trusted build” wiped out the records necessary to comply.

2.2.5.3 Relating to the use of off the shelf systems such as common PCs and servers. These are used in all Colorado counties’ election systems. There are many recommendations about measures to prevent and to detect penetration of such off the shelf systems through adequate audit procedures. Do county commissioners in the various counties know whether any such procedures have been performed or whether any procedures that might have been performed are adequate to ensure integrity?

4.3 Relating to the retention of data. Several requirements reinforce the obligation to retain data for at least 22 months after an election (federal rule). This was violated by the so-called “trusted build.”

**The second forensic report filed as an exhibit in Mesa County litigation involving the Mesa CCR (Exhibit 4, February 28, 2022)**

The second forensic report regarding Mesa County found numerous deviations from the FEC’s 2002 VSS, including:

1. Lack of security features
2. Failure to employ security features available within the system
3. Presence of unauthorized software that could compromise the system
4. Easy ability to change vote totals

**The third forensic report filed as an exhibit in Mesa County litigation involving the Mesa CCR (Exhibit 5, March 19, 2022)**

The third forensic report regarding Mesa County found that during two consecutive elections (November, 2020 and March 2021) the system created additional internal databases of ballots and votes (the so-called adjudication and tabulation databases), making it impossible to determine the “true” election results because the databases cannot be reconciled with the “main database” where election results are stored. The report found that this phenomenon caused the system to function differently than is described in the vendor’s user documentation and that the phenomenon had the earmarks of interference in the election results.

**CCRs in Colorado Generally Have Rejected Claims of Election System Issues**

County Clerks & Recorders throughout Colorado generally have rejected any and all claims of issues with voting systems employed in the state. I am unaware of any CCR who actually has analyzed the Dominion systems against the 2002 VSS. But the CCRs lack the background and skill to do so. What is required is cyber security experts such as Dr. Halderman and the authors of the Mesa County reports. Fortunately, commissioners have those reports and Dr. Halderman’s declaration available to inform them of the apparent lack of compliance with Colorado law.

Some provisions of the C.R.S. require commissioners to rely on certain certifications by the Secretary of State. C.R.S. 1-5-603 in conjunction with C.R.S. 1-5-601.5, however, provides no such option. These sections are unequivocal that commissioners may adopt only systems that objectively comply with the 2002 VSS. If they cannot so satisfy themselves, they should not approve use of a system. This imposes a duty on commissioners to satisfy themselves of such compliance. The information presented here, as well as other information, suggests non-compliance.

Therefore, we request that you sign into effect the attached Resolution Relating to Electronic Voting Systems to be implemented for the November 2022 election.

Sincerely,