



John Branch
Legal Counsel

October 28, 2010

Mr. Gary Bartlett
Executive Director, North Carolina State Board of Elections
Mr. Don Wright
General Counsel, North Carolina State Board of Elections
PO Box 27255
Raleigh, NC 27611-7255

RE: iVotronic Voting Machine Problems

Dear Mr. Bartlett and Mr. Wright,

As we have discussed a number of times via e-mail over the last week, the North Carolina Republican Executive Committee ("NC GOP") has become aware of calibration problems with the iVotronic voting machines. Specifically, due to calibration problems that have proven elusive to fix, some iVotronic voting machines are not accurately registering certain voters' preferences in voting their ballots.

This problem is significantly more widespread than the NC GOP initially understood. We have received word that Mecklenburg, New Hanover, Randolph, Craven, Cumberland, Wilson, Pender, Forsyth, Lenoir, and other counties have experienced these problems with the iVotronic voting machines. In addition, for every voter that experiences the calibration problem, recognizes the problem, and reports the problem, there must be several more voters who either do not recognize the problem or, if they do recognize it, do not take the time to report the problem. Thus, it is clear that the calibration problems are much broader than we were aware.

Also, the NC GOP has recently learned that, with respect to the iVotronic voting machines, the machines may have default settings that improperly benefit Democratic Party candidates. The NC GOP is informed and believes that, if a voter, for example, unintentionally presses the screen halfway in between the Republican and the Democratic candidate, the iVotronic automatically records that as a vote for the candidate on the top line. It is the NC GOP's understanding that, in almost all cases, the Democratic candidate is on the top line and that, for the purpose of straight-ticket voting, the Democratic Party is on the top line.

This default reaction by the touch screen system may violate the equal protection rights of Republican voters. If an improperly calibrated machine always defaults to the Democrat

section of each voting category, only Republican voters stand to have their vote miscounted to the extent some or possibly many voters do not “catch” the mistake before they electronically submit their vote. Moreover, if improperly calibrated systems always default to the Democrat section, only Republican voters are being forced to give up their right to a secret ballot (due to the fact that only Republican voters are required to ask for assistance from precinct workers because the voting program is improperly calibrated).

Finally, regardless of whether improperly calibrated systems default to the Democrat section of each voting category, voters in touch screen counties do not enjoy an equal right with voters in other counties to have their votes accurately counted according to their intent.

Because of the widespread and recurring nature of these default phenomena, we are deeply concerned that the State Board of Elections and its vendor, Print Elect, knew or reasonably should have known of this default problem. These problems should have been completely addressed long before early voting commenced and, to the extent they were not, the touch screen systems should have been banned as an acceptable voting system.

We have no doubt that any optical scan system for reading paper ballots would have been banned by the State Board if any such system had reported the number of errors already reported from touch screen counties. It is absurd that the right of a voter to have his or her vote counted as he or she intended depends on constant re-calibration of a voting system.

Accordingly, the NC GOP **DEMANDS** that the North Carolina State Board of Elections **IMMEDIATELY** take the following actions:

- (1) Issue an order to all county and local Boards of Election requiring judges and precinct workers to provide written and oral notice to every voter who votes on the iVotronic voting machines that: voters have experienced problems with the iVotronic voting machines accurately recording their voting preferences, voters need to be careful and make sure that the voting machine accurately records their voting preference, and that voters need to carefully review their ballot for accuracy when given the opportunity to do so at the end of the voting process.
- (2) Issue an order to all county and local Boards of Election requiring that all iVotronic Personal Electronic programs and Ballots (i.e. the cartridge that is inserted into the iVotronic voting machine that is used to activate the machine and record the voters' votes) be preserved. This includes preservation of **all** data on the Personal Electronic Ballots, including metadata and source codes. The Board should also take all other steps

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to ensure that any electronic data or programs that might reflect calibration of each touch screen or voter intent are also preserved.

- (3) Issue an order to all county and local Boards of Election requiring that poll workers in all precincts be required to keep a record of all complaints by voters regarding the iVotronic voting machines, including, but not limited to, the identity of the voter, the time the voter voted, the specific voting machine used by the voter, and the nature of the voter's complaint.

Please provide your response by close of business on Thursday, October 28, 2010. Given that the election is only days away, the NC GOP is compelled to move aggressively to ensure that all North Carolinians' votes are accurately counted. Absent your agreement to the above, the NC GOP reserves the right to all appropriate action, including but not limited to federal civil and injunctive remedies.

Sincerely,



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North Carolina Republican State Executive Committee

Enclosure

CC: Kieran Shanahan

Tom Farr

George Holding