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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14
15 JOSEPH HOLDER, PETER CANTISANI,
DOLORES HUERTA, JUDY
16 BERTELSEN, CHARLES L. KRUGMAN,
DAVID HAGUE GOGGIN, ALYCE E.
17 FRET LAND, HELEN ACOSTA, MARY
C. KENNEDY, CHARLES FOX, MARTY
18 KRASNEY, MITCH CLOGG, BEN P.
VAN METER, NANCY TILCOCK,
19 CHARLES O. LOWERY, JR., LILLIAN
RITT, HAROLD C. CASE, SUSAN J.
20 CASE, KENNETH MARTIN
STEVENSON, LARRY MARKS, HARRY
21 JOHN RAPF, MERRILEE DAVIES,
BERNICE M. KANDARIAN, VICTORIA
22 POST, and VERONICA ELSEA,
individuals,

23 Plaintiffs/Petitioners,
24

25 v.

26 BRUCE MCPHERSON, as California
Secretary of State; ELAINE GINNOLD, as
Elections Official of Alameda County;
27 VICTOR E. SALAZAR, as Elections
Official of Fresno County; CAROLYN
28 WILSON CRNICH, as Elections Official of

ENDORSED
FILED
San Francisco County Superior Court

MAR 21 2006

GORDON PARK-II, Clerk
BY: DEBORAH STEPPE
Deputy Clerk

No. CPF 06-506171

VERIFIED PETITION FOR WRIT OF
MANDATE (ELEC. CODE 13314(a);
CODE CIV. PROC. §§1085, 1094.5),
DECLARATORY AND INJUNCTIVE
RELIEF

IMMEDIATE ACTION REQUESTED,
ELECTION LAW MATTER CALENDAR
PREFERENCE PURSUANT TO ELEC.
CODE §13314(a)(3)

1 Humboldt County, ANN BARNETT, as
Elections Official of Kern County;
2 THERESA NAGEL, as Elections Official
of Lassen County; CONNY
3 MCCORMACK, as Elections Official of
Los Angeles County; MICHAEL SMITH,
4 as Elections Official of Marin County;
MARSHA WHARFF, as Elections Official
5 of Mendocino County; MAXINE
MADISON, as Elections Official of Modoc
6 County; JIM MCCAULEY, as Elections
Official of Placer County; KATHLEEN
7 WILLIAMS, as Elections Official of
Plumas County; MIKEL HASS, as
8 Elections Official of San Diego County;
DEBBIE HENCH, as Elections Official of
9 San Joaquin County; JULIE RODEWALD,
as Elections Official of San Luis Obispo
10 County; JOSEPH E. HOLLAND, as
Elections Official of Santa Barbara County;
11 COLLEEN BAKER, as Elections Official
of Siskiyou County; DERO FORSLUND,
12 as Elections Official of Trinity County;
JERRY T. MESSINGER, as Elections
13 Official of Tulare County; and DOES 1
through 50.

14 Defendants/Respondents.
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1 Plaintiffs and Petitioners Joseph Holder, Peter Cantisani, Dolores Huerta, Judy
2 Bertelsen, Charles L. Krugman, David Hague Goggin, Alyce E. Fretland, Helen Acosta,
3 Mary C. Kennedy, Charles Fox, Marty Krasney, Mitch Clogg, Ben P. Van Meter, Nancy
4 Tilcock, Charles O. Lowery, Jr., Lillian Ritt, Harold C. Case, Susan J. Case, Kenneth Martin
5 Stevenson, Larry Marks, Harry John Rapf, Merrilee Davies, Bernice M. Kandarian, Victoria
6 Post, and Veronica Elsea (collectively "Petitioners") allege as follows:
7

8 INTRODUCTION

9 1. Petitioners bring this Verified Petition For Writ Of Mandate, Declaratory And
10 Injunctive Relief (the "Petition") to protect their fundamental rights to vote and to protect the
11 integrity of their votes in California elections. Petitioners seek to reverse a decision by the
12 California Secretary of State improperly certifying an electronic voting system that does not
13 satisfy state law requirements and that presents unacceptable risks of vote manipulation,
14 election uncertainty and disputation, and incorrect election outcomes. Petitioners also seek
15 to prevent county election officials from using electronic voting equipment that does not
16 comply with applicable state law (or the federal requirements it incorporates), and from
17 expending their limited resources to purchase computerized voting systems that do not meet
18 these requirements and should not have been certified for use in California.

19 2. On February 17, 2006, Defendant/Respondent California Secretary of State Bruce
20 McPherson "conditionally" certified an electronic voting system manufactured by Diebold
21 Election Systems, Inc. (the "Diebold Voting System" or "Voting System") for use in
22 elections in California, including statewide elections to be held on June 6, 2006 and
23 November 7, 2006. The Diebold Voting System includes both the AccuVote-OS ("AV-
24 OS"), an optical scanner that reads votes from paper ballots, and the AccuVote-TSx ("AV-
25 TSx"), a Direct Recording Electronic ("DRE") device that allows a voter to vote by pressing
26 choices displayed on a computer "touchscreen."

27 3. As is explained in greater detail below, the Secretary of State's "conditional"
28 certification of the Voting System was improper and unlawful on numerous independent

1 grounds:

2 (a) *First*, the Secretary of State's certification of the AV-TSx violated
3 Petitioners' constitutional rights to vote, to have their votes counted, and to equal protection
4 of laws with respect to their votes in California elections. The Diebold AV-TSx does not
5 meet disability access requirements and is fraught with demonstrated substantive
6 vulnerabilities to "hacking," fraud and vote manipulation. Indeed, the Secretary's own
7 experts' analysis recognized that the Diebold Voting System failed to meet the requirements
8 of state law, that it has a large number of security flaws, and that there are additional known
9 security vulnerabilities outside the limited scope of their investigation. Moreover, the AV-
10 TSx does not meet accessibility requirements and its thermal paper "toilet roll" voting record
11 is inadequate to meet the vote audit and/or recount requirements. Use of the Diebold Voting
12 System poses a grave and present danger to the integrity of California elections in violation
13 of Petitioners' constitutional rights.

14 (b) *Second*, the Secretary of State's certification decision was unlawful
15 because, as his own voting experts acknowledged, the Voting System software was not
16 compliant with federal voluntary standards for voting system software because it contains
17 prohibited "interpreted code." The federal voluntary standards were adopted as mandatory
18 requirements in California law and the acknowledged presence of "interpreted code" in the
19 Voting System renders the Secretary of State's certification illegal.

20 (c) *Third*, the Secretary's attempt to impose "conditions" on the certification
21 was improper and unlawful. The Secretary's certification purports to require counties using
22 the Voting System to implement certain physical security regulations. However, these stop-
23 gap physical security regulations were designed to be *short-term* measures for *local*
24 elections, and they were designed by computer scientists with at best limited expertise in the
25 areas of physical and procedural, as opposed to programming, safeguards to the integrity of
26 the vote. The Secretary of State also did not address the feasibility or efficacy of adoption of
27 the new physical security regulations by California county election officials and poll
28 workers. For example, they may be ineffective because the AV-TSx memory cards, which

1 the measures are designed to protect, appear to be accessible and programmable *even when*
2 *the cards are inserted and sealed into AV-TSx terminals*. Moreover, these new regulations
3 were not previously disclosed, have never been tested, and materially change the way in
4 which elections using the Voting System will be conducted. Nonetheless, the Secretary of
5 State improperly adopted them without holding a public hearing on the new regulations or
6 subjecting them to public scrutiny.

7 (d) *Fourth*, the Secretary of State’s certification of the Voting System violated
8 California law requirements with respect to audits of election results. The AV-TSx system
9 does not include a paper ballot that can be subjected to the election audit required by state
10 law. California law requires that county elections officials perform a manual (*i.e.* non-
11 computer assisted) recount of at least 1% of each county’s ballots, and perform a full manual
12 recount under certain circumstances. While votes counted by the other main component of
13 the Diebold Voting System, the AV-OS optical scanner, can be easily audited by using the
14 original paper ballots that were passed through the scanner, the AV-TSx records votes
15 electronically from the AV-TSx’s touchscreen, then prints them on a continuous roll of thin
16 thermal paper. The AV-TSx system does not utilize, and has not been certified as utilizing,
17 an “auditable” paper trail in accordance with the Elections Code. In fact, the Secretary of
18 State has never tested the usability or the durability of the AV-TSx’s thermal paper roll
19 under the conditions of the 1% and sometimes full manual audit required by the Elections
20 Code, and the evidence shows that the AV-TSx is not auditable by any reasonable standard.

21 (e) *Fifth*, the Secretary of State’s certification of the AV-TSx system was
22 improper because the AV-TSx does not comply with California requirements that a paper
23 record be “accessible” to blind and visually impaired voters. California law requires that all
24 DREs, such as the AV-TSx, create *accessible* voter-verified paper trails. By statute, a DRE
25 must be able to convey the information contained in the paper trail by both visual *and* non-
26 visual means, such as through an audio component. As the Secretary of State has already
27 acknowledged, the AV-TSx does not provide an audible “read-back” of its thermal paper roll
28 record for blind and visually-impaired voters. Rather, it provides an audible “read-back” of

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1 an electronic vote record that may or may not be the same as the information shown on the
2 thermal roll paper trail. As such, any thermal paper roll records generated by the AV-TSx
3 are not “accessible” to blind and visually impaired voters.

4 (f) *Sixth*, the Secretary of State’s certification of the AV-TSx also was
5 improper because the system fails to comply with Section 301 of the federal Help America
6 Vote Act because the AV-TSx has no feature to enable low-dexterity individuals to vote
7 privately and independently. Compliance with the act is made mandatory in California
8 under the Secretary of State’s certification of the system.

9 (g) *Seventh*, perhaps recognizing the problems inherent in his certification of
10 machines that failed to comply with state and federal requirements, the Secretary of State
11 added language to his certification order purporting to shift potential liability for non-
12 compliance with state law and federal requirements to Diebold and, more objectionably, to
13 the county elections officials responsible for purchasing voting machines. In light of the
14 Secretary of State’s statutory duty to insure that voting machines he certifies comply with
15 the law, this was an improper delegation of duty.

16 4. On information and belief, Defendants/Respondents county elections officials
17 (“County Elections Officials”) plan to purchase or use the AV-TSx system in statewide
18 elections in 2006.

19 5. The procedural and substantive flaws in the AV-TSx certification compel a
20 finding that the AV-TSx system, as it is currently configured, cannot be used for elections in
21 California and should not have been certified. Petitioners therefore seek: (1) a writ of
22 mandate requiring that the Secretary of State to rescind the certification of the AV-TSx; (2) a
23 writ of mandate requiring that the County Elections Officials not use, or make contracts for
24 the use of, the AV-TSx in the general election scheduled for November 7, 2006; (3)
25 declaratory relief that the AV-TSx certification is invalid as a matter of law; (4) declaratory
26 relief that the new regulations and requirements accompanying the AV-TSx certification are
27 invalid as a matter of law; (5) injunctive relief barring the Secretary of State from re-
28 certifying the AV-TSx until its security, auditability and accessibility flaws have been

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1 addressed; and (6) injunctive relief barring counties' purchase or use of the AV-TSx until it
2 meets the requirements of state law.

3 6. Petitioners also bring this action to address a different, but related, violation of
4 the Elections Code. Pursuant to Elections Code 15360, county elections officials are
5 required to manually audit ballots tabulated on voting systems from one percent of a
6 county's precincts. This audit helps protect against fraud and problems in the voting
7 systems' technology. On information and belief, some county elections officials are not
8 complying with Elections Code 15360, either because they are not conducting any post-
9 election manual audit, or because they are not including absentee and early voter mail-in
10 ballots as part of their audits. Petitioners seek a declaration that neither of these procedures
11 complies with Elections Code 15360.

12
13 **THE PARTIES**

14 7. Plaintiff/Petitioner JOSEPH HOLDER is a resident and registered voter of San
15 Joaquin County, California.

16 8. Plaintiff/Petitioner PETER CANTISANI is a resident and registered voter of
17 Alameda County, California. Mr. Cantisani is also blind.

18 9. Plaintiff/Petitioner DOLORES HUERTA is a resident and registered voter of
19 Kern County, California.

20 10. Plaintiff/Petitioner JUDY BERTELSEN, M.D. is a resident and registered voter
21 of Alameda County, California.

22 11. Plaintiff/Petitioner CHARLES L. KRUGMAN is a resident and registered voter
23 of Fresno County, California. Mr. Krugman is also blind.

24 12. Plaintiff/Petitioner DAVID HAGUE GOGGIN is a resident and registered voter
25 of Humboldt County, California.

26 13. Plaintiff/Petitioner ALYCE E. FRET LAND is a resident and registered voter of
27 Humboldt County, California.

28 14. Plaintiff/Petitioner HELEN ACOSTA is a resident and registered voter of Kern

1 County, California.

2 15. Plaintiff/Petitioner MARY C. KENNEDY is a resident and registered voter of
3 Los Angeles County, California.

4 16. Plaintiff/Petitioner CHARLES FOX is a resident and registered voter of Marin
5 County, California. Mr. Fox has advanced multiple sclerosis, low vision, and full
6 quadriplegia.

7 17. Plaintiff/Petitioner MARTY KRASNEY is a resident and registered voter of
8 Marin County, California.

9 18. Plaintiff/Petitioner MITCH CLOGG is a resident and registered voter of
10 Mendocino County, California.

11 19. Plaintiff/Petitioner BEN P. VAN METER is a resident and registered voter of
12 Modoc County, California.

13 20. Plaintiff/Petitioner NANCY TILCOCK is a resident and registered voter of
14 Placer County, California.

15 21. Plaintiff/Petitioner CHARLES O. LOWERY, JR., is a resident and registered
16 voter of San Diego County, California.

17 22. Plaintiff/Petitioner LILLIAN RITT is a resident and registered voter of San
18 Diego County, California.

19 23. Plaintiff/Petitioner HAROLD C. CASE is a resident and registered voter of San
20 Luis Obispo County, California.

21 24. Plaintiff/Petitioner SUSAN J. CASE is a resident and registered voter of San Luis
22 Obispo County, California.

23 25. Plaintiff/Petitioner KENNETH MARTIN STEVENSON is a resident and
24 registered voter of Santa Barbara County, California.

25 26. Plaintiff/Petitioner LARRY MARKS is a resident and registered voter of
26 Siskiyou County, California.

27 27. Plaintiff/Petitioner HARRY JOHN RAPF is a resident and registered voter of
28 Trinity County, California.

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1 28. Plaintiff/Petitioner MERRILEE DAVIES is a resident and registered voter of
2 Tulare County, California.

3 29. Plaintiff/Petitioner BERNICE M. KANDARIAN is a resident and registered
4 voter of Santa Clara County, California. Ms. Kandarian has low vision. Ms. Kandarian is
5 the President of the Council of Citizens with Low Vision International.

6 30. Plaintiff/Petitioner VICTORIA POST is a resident and registered voter of San
7 Francisco County, California. Ms. Post is also blind.

8 31. Plaintiff/Petitioner VERONICA ELSEA is a resident and registered voter of
9 Santa Cruz County, California. Ms. Elsea is also blind.

10 32. Defendant/Respondent BRUCE MCPHERSON is the Secretary of State of
11 California and the Chief Elections Officer for the state.

12 33. Defendant/Respondent ELAINE GINNOLD is the Acting Registrar of Voters for
13 the County of Alameda and is responsible for conducting statewide primary and statewide
14 general elections in that county. On information and belief, Alameda County intends to use
15 Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

16 34. Defendant/Respondent VICTOR E. SALAZAR is the Registrar of Voters for the
17 County of Fresno and is responsible for conducting statewide primary and statewide general
18 elections in that county. On information and belief, Fresno County intends to use Diebold
19 AV-TSx touchscreen systems in upcoming 2006 elections.

20 35. Defendant/Respondent CAROLYN WILSON CRNICH is the Registrar of Voters
21 for the County of Humboldt and is responsible for conducting statewide primary and
22 statewide general elections in that county. On information and belief, Humboldt County
23 intends to use Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

24 36. Defendant/Respondent ANN BARNETT is the Registrar of Voters for the County
25 of Kern and is responsible for conducting statewide primary and statewide general elections
26 in that county. On information and belief, Kern County intends to use Diebold AV-TSx
27 touchscreen systems in upcoming 2006 elections.

28 37. Defendant/Respondent THERESA NAGEL is the County Clerk for the County of

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1 Lassen and is responsible for conducting statewide primary and statewide general elections
2 in that county. On information and belief, Lassen County intends to use Diebold AV-TSx
3 touchscreen systems in upcoming 2006 elections.

4 38. Defendant/Respondent CONNIE MCCORMACK is the County Clerk for the
5 County of Los Angeles and is responsible for conducting statewide primary and statewide
6 general elections in that county. On information and belief, Los Angeles County intends to
7 use Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

8 39. Defendant/Respondent MICHAEL SMITH is the Registrar of Voters for the
9 County of Marin and is responsible for conducting statewide primary and statewide general
10 elections in that county. On information and belief, Marin County intends to use Diebold
11 AV-TSx touchscreen systems in upcoming 2006 elections.

12 40. Defendant/Respondent MARSHA WHARFF is the County Clerk for the County
13 of Mendocino and is responsible for conducting statewide primary and statewide general
14 elections in that county. On information and belief, Mendocino County intends to use
15 Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

16 41. Defendant/Respondent MAXINE MADISON is the County Clerk for the County
17 of Modoc and is responsible for conducting statewide primary and statewide general
18 elections in that county. On information and belief, Modoc County intends to use Diebold
19 AV-TSx touchscreen systems in upcoming 2006 elections.

20 42. Defendant/Respondent JIM MCCAULEY is the County Clerk for the County of
21 Placer and is responsible for conducting statewide primary and statewide general elections in
22 that county. On information and belief, Placer County intends to use Diebold AV-TSx
23 touchscreen systems in upcoming 2006 elections.

24 43. Defendant/Respondent KATHLEEN WILLIAMS is the Registrar of Voters for
25 the County of Plumas and is responsible for conducting statewide primary and statewide
26 general elections in that county. On information and belief, Plumas County intends to use
27 Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

28 44. Defendant/Respondent MIKEL HASS is the Registrar of Voters for the County

1 of San Diego and is responsible for conducting statewide primary and statewide general
2 elections in that county. On information and belief, San Diego County intends to use
3 Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

4 45. Defendant/Respondent DEBORAH HENCH is the Registrar of Voters for the
5 County of San Joaquin and is responsible for conducting statewide primary and statewide
6 general elections in that county. On information and belief, San Joaquin County intends to
7 use Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

8 46. Defendant/Respondent JULIE RODEWALD is the County Clerk for the County
9 of San Luis Obispo and is responsible for conducting statewide primary and statewide
10 general elections in that county. On information and belief, San Luis Obispo County intends
11 to use Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

12 47. Defendant/Respondent JOSEPH E. HOLLAND is the County Clerk for the
13 County of Santa Barbara and is responsible for conducting statewide primary and statewide
14 general elections in that county. On information and belief, Santa Barbara County intends to
15 use Diebold AV-TSx touchscreen systems in upcoming 2006 elections.

16 48. Defendant/Respondent COLLEEN BAKER is the County Clerk for the County of
17 Siskiyou and is responsible for conducting statewide primary and statewide general elections
18 in that county. On information and belief, Siskiyou County intends to use Diebold AV-TSx
19 touchscreen systems in upcoming 2006 elections.

20 49. Defendant/Respondent DERO B. FORSLUND is the County Clerk for the
21 County of Trinity and is responsible for conducting statewide primary and statewide general
22 elections in that county. On information and belief, Trinity County intends to use Diebold
23 AV-TSx touchscreen systems in upcoming 2006 elections.

24 50. Defendant/Respondent JERRY T. MESSINGER is the Registrar of Voters for the
25 County of Tulare and is responsible for conducting statewide primary and statewide general
26 elections in that county. On information and belief, Tulare County intends to use Diebold
27 AV-TSx touchscreen systems in upcoming 2006 elections.

28 51. All Defendants/Respondents, apart from the Secretary of State, are referred to

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1 herein collectively as the “County Elections Officials.”

2 52. Petitioners are unaware of the true names and capacities of the individuals sued
3 herein as Does 1 through 50, inclusive, and therefore sue these Defendants/Respondents by
4 such fictitious names pursuant to Code of Civil Procedure Section 474. Petitioners will
5 amend this Petition to state the true names and capacities of such fictitiously named
6 Defendants/Respondents when ascertained. Petitioners are informed and believe, and on
7 that basis allege, that the Defendants/Respondents fictitiously named as Does 1 through 25
8 are County Elections Officials from California counties who seek to purchase or use Diebold
9 Voting Systems in California elections and/or are failing or threatening to fail their election
10 audit responsibilities under Elections Code 153600. Petitioners are informed and believe,
11 and on that basis allege, that the Defendants/Respondents fictitiously named as Does 26
12 through 50 are also in some manner connected with the matters alleged herein and similarly
13 subject to the relief requested herein.

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14
15 **JURISDICTION AND VENUE**

16 53. Petitioners bring this action for mandamus pursuant to Elections Code Section
17 13314(a) and/or Code of Civil Procedure Section 1085, for administrative mandamus
18 pursuant to Code of Civil Procedure Section 1094.5, for declaratory relief pursuant to Code
19 of Civil Procedure Section 1060 and Government Code Section 11350, and for injunctive
20 relief pursuant to Civil Code Sections 3420 through 3422. This Court has jurisdiction over
21 actions arising under California law.

22 54. Pursuant to Elections Code Section 13314(b)(1) and Code of Civil Procedure
23 Section 393, venue in this action is proper in Sacramento County. However, “whenever it is
24 provided by any law of this State that an action or proceeding against the State or a
25 department, institution, board, commission, bureau, officer or other agency thereof shall or
26 may be commenced in, tried in, or removed to the County of Sacramento, the same may be
27 commenced and tried in any city or city and county of this State in which the Attorney
28 General has an office.” Code Civ. Proc. §401(1). *See Harris v. Alcoholic Beverage Control*

