

PUBLIC HEARING  
STATE OF CALIFORNIA  
SECRETARY OF STATE

FIRST FLOOR AUDITORIUM  
1500 11TH STREET  
SACRAMENTO, CALIFORNIA

TUESDAY, MARCH 17, 2009  
10:00 A.M.

KATHRYN S. SWANK, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13061

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

HEARING PANEL

Ms. Jennie Bretschneider, Moderator

Mr. Chris Maio, Infrastructure Manager, Information  
Technology Division

Ms. Laura Baumann, Counsel, Elections Division

Mr. Chris Reynolds, Deputy Secretary of State for HAVA  
Activities

STAFF

Mr. Lowell Finley, Deputy Secretary of State for Voting  
Systems Technology and Policy

ALSO PRESENT

Mr. Justin Bales, Premier Election Solutions

Ms. Kim Alexander, California Voter Foundation

Mr. Paul Allen, Voting Rights Task Force

Ms. Judy Alter, Protect California Ballots

Ms. Judy Bertelsen

Mr. Kevin Collins, Humboldt County Election Transparency  
Project

Ms. Carolyn Crnich, Humboldt County Registrar of Voters

Mr. Alan Dechert, Open Voting Consortium

Mr. Tom Pinto, Humboldt County Election Transparency  
Project

Mr. Richard Tamm, Voting Rights Task Force

Mr. Brent Turner, Election Reform Activists for Obama

Ms. Gail Work, San Mateo County Democratic Party

INDEX

	PAGE
I. Introductory Remarks	1
II. Presentation of the Secretary of State's Report on Premier Election Solutions' GEMS version 1.18.19 Voting System	3
III. Voting System Vendor Response	17
IV. Public Comment on the Potential Withdrawal of Approval of Premier Election Solutions' GEMS version 1.18.19 Voting System	27
V. Adjournment	52
Reporter's Certificate	53

1 PROCEEDINGS

2 MODERATOR BRETSCHEIDER: Good morning, and thank  
3 you for coming.

4 I'm Jennie Bretschneider, Assistant Chief Deputy,  
5 Secretary of State, and I'll be moderating the proceedings  
6 today.

7 This public hearing is designed to discuss the  
8 Secretary of State's report to the Election Assistance  
9 Commission and the potential withdrawal of approval of  
10 Premier Election Solutions, formerly Diebold, GEMS version  
11 1.18.19 voting system.

12 Before we get started, I'd like to take a moment  
13 to take care of some housekeeping items:

14 For those of you in the audience who would like to  
15 speak during the public comment period, there are sign-in  
16 cards at the table at the entrance of the auditorium.  
17 We'll take speakers in the order in which they have signed  
18 in. Each person speaking under public comment will be  
19 allotted three minutes for a presentation. Anyone who  
20 wishes to submit written testimony can do so by delivering  
21 a hard copy or emailing an electronic copy to  
22 [votingsystems@sos.ca.gov](mailto:votingsystems@sos.ca.gov) by this Friday, March 20th.  
23 We'll post the written testimony we receive on the  
24 Secretary of State's website.

25 This hearing is being taped for broadcast, and

1 it's also being transcribed and carried via conference  
2 call. That means all comments made verbally, or in  
3 writing, as part of this hearing will become a matter of  
4 public record.

5 Please be courteous to all speakers; no  
6 interruptions will be tolerated.

7 The goals of this hearing are to hear the Premier  
8 GEMS 1.18.19 voting system report to the EAC presented  
9 publicly; to hear the Secretary of State's Office of  
10 Voting Systems Technology Assessment staff report; give  
11 Premier and the public an opportunity to comment publicly  
12 on the reports; and collect information from Premier and  
13 the public that may help inform the Secretary of State's  
14 decision on whether to withdraw approval of Premier's GEMS  
15 version 1.18.19 voting system.

16 The Secretary of State will be reviewing this  
17 information and testimony provided by the public, the  
18 counties, the vendors, and others prior to taking action  
19 on this report.

20 The panelists here today won't be voting or  
21 deciding on whether to adopt the report, nor will they be  
22 commenting on the report's findings or expressing opinions  
23 on what the Secretary of State may or should do as a  
24 result of the findings in this report. Rather, the panel  
25 is here to formally receive the verbal report, receive

1 comments from the voting system vendor and the public, and  
2 bring a variety of perspectives to the issues raised in  
3 the reports, so that the panel may present that to the  
4 Secretary when it comes time for her to sit down to review  
5 and analyze all of the information that's been collected.

6 The panel members for today's hearing are Chris  
7 Maio, Infrastructure Manager for the Secretary of State's  
8 Information Technology Division; Laura Baumann, Counsel  
9 for the Secretary of State's Elections Division; and Chris  
10 Reynolds, Deputy Secretary of State for HAVA Activities.

11 Delivering the report that the Secretary of State  
12 submitted to the EAC will be Lowell Finley, Deputy  
13 Secretary of State for Voting Systems Technology and  
14 Policy.

15 After Mr. Finley is finished, Premier will have an  
16 opportunity to provide comments, and after both  
17 presentations are finished, we'll move to the public  
18 comment period.

19 With that, let me introduce Lowell Finley.

20 DEPUTY SECRETARY OF STATE FOR VOTING

21 SYSTEMS TECHNOLOGY AND POLICY FINLEY: Good  
22 morning. I am Lowell Finley, Deputy Secretary of State  
23 for Voting Systems Technology and Policy.

24 And as Jennie Bretschneider said, I will be  
25 presenting here a summary of Secretary of State Bowen's

1 report to the Elections Assistance Commission on errors  
2 and deficiencies that were discovered in Premier Elections  
3 Solutions, formally Diebold Elections Solution, GEMS  
4 version versus 1.18.19.

5           The first thing I would like to acknowledge is  
6 that the discovery of the initial software error was not  
7 through the efforts of our office, but through a unique  
8 collaboration between the Registrar Of voters Carolyn  
9 Crnich of Humboldt County, California, and a volunteer  
10 community organization called the Humboldt County  
11 Transparency -- Election Transparency Project. And we  
12 are -- the Secretary is grateful to them for putting in  
13 all of the time and effort that led to the discovery of  
14 this problem.

15           On December 3rd of 2008, our office received a  
16 call from what we think of as the outer reaches of our  
17 state, Humboldt County, and it was Carolyn Crnich on the  
18 line. And her message was essentially, "Sacramento, we  
19 have a problem." And the problem was that the county had  
20 discovered that after it had certified its final results  
21 for the November 4th, 2008, general election, it  
22 determined that approximately 200 tallied ballots had been  
23 left out of the final results. And at the point we spoke  
24 with Carolyn Crnich, she had only provisional response  
25 from Premier Elections Solutions. In a second call that

1 day, she did receive confirmation from the company that  
2 the loss of the bulk of those ballots had been caused by  
3 an error in the software version that was being used by  
4 Humboldt County. And, again, that is GEMS version  
5 1.18.19.

6 That version of the core software component of  
7 Diebold Premier Voting Systems was released by Diebold on  
8 January 14th of 2004, and received federal qualification  
9 from the National Association of State Elections Directors  
10 on February 3rd, 2004, just a couple of weeks later.

11 Certifications at the federal level up to  
12 succeeding voting systems that used GEMS 1.18.19 were  
13 subsequently issued, the third being on September 19th of  
14 2004, and this was for a version of the system that  
15 included the central count server and the use of the  
16 AccuVote optical scan central count device.

17 The problem was discovered in Humboldt County  
18 through the use of a system that had been developed there  
19 by volunteers, to make it possible to have a completely  
20 independent scan of all of the optical scan ballots that  
21 had been cast in the county, using, essentially, an  
22 off-the-shelf commercial scanning device so that images  
23 could be made available to any member of the public, of  
24 all the ballots; and secondly, one of the members of the  
25 transparency project, Mitch Trachtenberg had written open

1 source software that enabled users of those images to  
2 conduct their own tally of the ballots and to analyze the  
3 results in various ways.

4 The independent scanning of the ballots, which  
5 occurred after the official scanning, of course, was  
6 conducted under strict security precautions and chain of  
7 custody measures and took some period of time, primarily  
8 because it was a volunteer effort.

9 When the final count was conducted, the project  
10 determined that there were something just over 200 ballots  
11 in their count that were not present in the official  
12 county count. And they informed the Registrar of Voters,  
13 Carolyn Crnich, of this fact. And as soon as they had  
14 some indication of where the problem had originated, that  
15 was when she contacted us.

16 The way they determined which particular set of  
17 ballots was involved was by looking at the results on a  
18 precinct-by-precinct basis and finding in the official  
19 results a precinct that had a much lower reported turnout  
20 rate than its neighboring precincts. And they zeroed in  
21 on that precinct, went back, and recovered the original  
22 paper optical scan ballots and hand counted those, and  
23 came up with a count that was 197 ballots higher than what  
24 had ended up in the official results for that precinct.

25 They then confirmed that by going back to the

1 totals printout from the optical scanning machine, from  
2 the day that that precinct's vote-by-mail ballots, which  
3 is what is involved here, had been tallied.

4           Upon further investigation and after multiple  
5 consultations with Premier Elections Solutions officials  
6 and programmers and developers, our office determined that  
7 the software error, which has come to be known as the  
8 "deck zero" error is one in which ballots that are  
9 initially properly tallied by the central system can be  
10 subsequently deleted when a fairly commonplace sequence of  
11 events takes place. And that sequence is that at any  
12 point after the very first deck of voted ballots is  
13 scanned into the GEMS database and automatically named  
14 deck zero by GEMS 1.18.19, the central count server  
15 portion of GEMS, if it is closed and then subsequently  
16 reopened -- and this is common, because tallying is often  
17 done over many different days when you are dealing with  
18 vote-by-mail ballots that are received prior to the  
19 election, election night ballots, and subsequent counting  
20 of vote-by-mail ballots that are received on or just  
21 before election day. So tallying can occur on several  
22 different days, and that presents an opportunity to the  
23 likelihood of closing and then reopening the GEMS server  
24 component -- I'm sorry, the central count server  
25 component, GEMS.

1           So the first event is the closing and reopening of  
2 the central count server. The second is the deletion by  
3 the operator of GEMS of any subsequent deck of ballots.  
4 And this commonly occurs because a problem is encountered  
5 in the scanning of that subsequent set of ballots. There  
6 could be a jam in the scanner, the official operating the  
7 scanner can have a concern that two ballots may have been  
8 taken through simultaneously, or some other reason to  
9 suspect that the count may not be accurate.

10           And the standard practice at that point is to  
11 delete the electronic record of those ballots from the  
12 GEMS database and to rescan those ballots.

13           So when those two steps occur, something that is  
14 not supposed to happen in the voting system happens, and  
15 that is, rather than deleting simply the deck that the  
16 official intends to delete -- say, it's deck 253 -- the  
17 software erroneously deletes deck zero. That is, the  
18 first deck of ballots that was tallied through the system.

19           In this case, that deck of ballots had been  
20 tallied prior to election day because it was one of the  
21 batches of vote-by-mail ballots.

22           After subsequent investigation, the transparency  
23 project volunteers and Registrar of Voters Crnich and her  
24 staff determined that there were, in fact, 197 ballots  
25 that were dropped as a result of the deck zero software

1 error and that 19 other discrepancies that remained at  
2 that point, they were able to track down and attribute to  
3 problems that were not connected to the operation of the  
4 voting system.

5 One of the concerns that our office developed as  
6 we conducted the investigation was with the insufficiency  
7 of the notice of the existence of this deck zero software  
8 error that was provided to customer jurisdictions by then  
9 Diebold.

10 We determined, and the company confirmed, that it  
11 knew sometime in October of 2004 of the existence of this  
12 software error, yet it provided no notification to the  
13 National Association of State Election Directors, that had  
14 issued the federal qualification for the system; no notice  
15 to the California Secretary of State; and subsequently,  
16 when the Election Assistance Commission took over the  
17 duties of NASED, no notice to the EAC as well.

18 Also, there was only the most informal sort of  
19 notice provided to customer jurisdictions, and in our  
20 report to the EAC, we reproduced an e-mail message that  
21 was sent by Diebold's western regional support manager at  
22 the time, on October 19th, of 2004, to the elections  
23 officials in counties that were at that point using  
24 systems with GEMS 1.18.19. And it is, to say the least,  
25 an extremely vague message that without identifying a

1 problem, states that "it is very important that you follow  
2 these instructions." And then attached to the e-mail was  
3 a message with no authorship shown, not even the name of  
4 the company listed on the file, and it said that it was a  
5 document designed to provide a working solution for an  
6 issue.

7           And the issue was discussed in these terms: "An  
8 issue exists with correctly sorting committed decks in  
9 some reports and also deleting other decks under certain  
10 conditions." There was no mention of a software error, no  
11 mention of the specific extremely troublesome outcome,  
12 which we now know could occur, which was the deletion of  
13 an entire deck of ballots.

14           At the time, again, in the fall of 2004, the  
15 county elections officer in Humboldt County who received  
16 this cryptic e-mail from Diebold did follow the workaround  
17 that was recommended in the attachment, which involved  
18 creating and then immediately deleting deck zero at the  
19 very beginning of the tally process -- deleting it when it  
20 hit. It had no ballots processed through it.

21           And the officials in other California counties  
22 that were also using the same version of the software used  
23 that workaround and did not encounter the deletion of  
24 tallied ballots.

25           But what occurred in 2008 is an illustration of

1 the dangers that lie in providing only informal  
2 notification of serious problems in a loading system.  
3 There was a change in personnel in Humboldt County. The  
4 person who knew about this workaround left the County to  
5 work elsewhere, without having passed along the  
6 information about the workaround to anyone else in the  
7 office, and without ever having written it into the  
8 County's own procedural guidelines.

9 As a result of that, four years after the problem  
10 was known by the company, four years after they had  
11 provided minimal notice to the Counties, the loss of  
12 ballots in Humboldt County occurred, because at that  
13 point, no one in the office knew about this.

14 And here, it's important to note that at no point  
15 during those four years had Diebold, and, subsequently,  
16 Premier, attempted to upgrade its formal, official  
17 documentation for the system to provide an explanation of  
18 this problem and also to provide the steps that should be  
19 followed to avoid the loss of ballots.

20 I'm going to move on now to a separate set of  
21 issues that were discovered by our office in the course of  
22 investigating the deck zero problem, and this is a set of  
23 problems with various audit logs in the GEMS system. And  
24 I will just list the three problems that were identified.  
25 This was not an exhaustive search. In fact, we don't know

1 whether there might be others.

2           The first is the failure of the system to log  
3 important system events. And the most striking example is  
4 the failure of any audit log or audit trail mechanism in  
5 that version of GEMS to create any record when an  
6 elections official intentionally deletes a deck of  
7 ballots. So in terms of being able to track down the  
8 precise mechanism by which the problem had occurred in  
9 this election, critical information was simply never  
10 recorded.

11           The second problem was the fact that the system  
12 created inaccurate date and time stamps on various  
13 important events with respect to the tallying of decks of  
14 ballots. And one example is listed in our report of a  
15 batch of ballots that was scanned and committed to the  
16 GEMS results data base on November 3rd, but which was  
17 showed in a report called the "Status Report by Deck,"  
18 produced by GEMS, as having been performed on  
19 November 25th, several weeks later.

20           The third problem in the audit logs was, I must  
21 say, a shock when we discovered it, and this was the  
22 presence of clear buttons on two of the logs, the first  
23 being the central count server log and the second being  
24 the poster log.

25           The clear button is the equivalent of a delete or

1 erase button, except unlike the typical versions of  
2 Windows, there isn't any backup area to which that audit  
3 log record is held after it's been deleted so that it can  
4 be recovered subsequently; the deletion is permanent.

5           And as we detail in the report to the Election  
6 Assistance Commission, the presence of these clear buttons  
7 was a violation of established standards going back to the  
8 1990 federal voting system guidelines under which this  
9 version of GEMS had been tested at the federal level, that  
10 plainly required that there be an indestructible archival  
11 record of all system activity related to the vote tally  
12 and, particularly, any activities involving unusual  
13 intervention by the election official.

14           As we noted in the report, the fact that these  
15 clear buttons were included at any point in the time  
16 period 2003/2004 in a version of GEMS goes against basic  
17 knowledge that existed within the company, that the  
18 addition of clear buttons to logs was something that was  
19 easy to do but to quote an internal e-mail, "There are too  
20 many reasons why doing that is a bad idea." That e-mail  
21 was from 2001, three years before this set of clear  
22 buttons was introduced into the system.

23           Now, the clear buttons were removed in a version  
24 of GEMS 1.18.20, that was issued by Diebold exactly two  
25 weeks after GEMS 1.18.19 was released. So again, there

1 was a recognition within the company that those clear  
2 buttons should not be there, but at no time did the  
3 company attempt to correct the problem in version 1.18.19  
4 as it proceeded through the federal, and then state,  
5 certification and approval processes.

6           And as a result, there are not only the three  
7 jurisdictions in California that were still using 1.18.19  
8 last year, but also many jurisdictions across the country,  
9 including many counties in Texas and Florida that still  
10 are using GEMS versions that have these clear buttons in  
11 place.

12           I would like to just briefly refer to -- well,  
13 before I move on, in addition to the clear, in our view,  
14 violation of the federal standards that 1.18.19 was  
15 required to adhere to, the problem of inaccuracy caused by  
16 the deletion of the 197 tallied ballots is also a  
17 violation of the error rate standard that was permitted  
18 under the Help America Vote Act when it was enacted in  
19 2002. HAVA incorporated the error rate standard that had  
20 been adopted in the 2002 federal voting system standards.  
21 That is the set that replaced the 1990 standards. And  
22 that is a very strict error standard indeed, one which  
23 permits not more than one error in 10 million ballot  
24 positions, or, in the testing context, not more than one  
25 error in 500,000 ballot positions. And clearly, the

1 deletion of all of the votes, incorrect entries on many,  
2 many, ballot positions in a relatively small county like  
3 Humboldt County greatly exceeded that limit.

4           And now I would like to move on to briefly discuss  
5 the very brief staff report that was prepared after the  
6 Secretary's report was submitted to the Elections  
7 Assistance Commission. The staff report simply summarizes  
8 and relies upon the findings in the report submitted to  
9 the EAC.

10           And again, those key points are the deck zero  
11 software error and the deletion of tallied ballots that it  
12 caused; No. 2, the failure of the audit logs to record  
13 important events; No. 3, the presence of the impermissible  
14 clear buttons on audit logs; and No. 4, the creation of  
15 inaccurate date and time stamps on audit log entries.

16           The staff report then summarizes applicable  
17 federal standards and repeats the finding of the report to  
18 the EAC, that had any of these software errors or audit  
19 log deficiencies been discovered and reported by the  
20 federal lab that tested the GEMS 1.18.19 software, it  
21 would have required failure. That is, the denial of  
22 federal qualification or approval of that version of the  
23 software.

24           The report also notes that the federal lab in this  
25 case did not apparently discover, and certainly did not

1 report, any such flaws, and that in the testing that was  
2 conducted by the California Secretary of State's office,  
3 the software error and the audit log problems also went  
4 undetected.

5 The final point in the staff report simply lays  
6 out the applicable law and the authority that it gives the  
7 Secretary of State in circumstances such as these. And I  
8 will read just the key passages from California Elections  
9 Code section 19222.

10 It states that "after review of the voting system,  
11 if it is determined to be defective, obsolete, or  
12 otherwise unacceptable, the Secretary of State has the  
13 right to withdraw his or her approval for the use of that  
14 system." And it also provides that the very minimum time  
15 period that must pass between the withdrawal of approval  
16 and the effective date of that approval is six months.

17 So the conclusion of the report is not a  
18 recommendation, but just a summary of the authority which  
19 the Secretary has in this situation and a reminder that  
20 should the Secretary of State decide to withdraw approval  
21 for Premier Voting Systems using this the version of GEMS,  
22 the effect of that decision would not come for at least  
23 six months.

24 Do you have any questions?

25 MODERATOR BRETSCHNEIDER: Thank you, Mr. Finley.

1           Now Premier will have an opportunity to provide  
2 any comments it would like to make on the reports and we  
3 have here today Justin Bales, who's the general manager of  
4 the western area, Premier.

5           You may begin.

6           MR. BALES: Thank you.

7           Madam Secretary, thank you for the opportunity to  
8 offer Premier's perspective on the important issues under  
9 discussion today. My name is Justin Bales. I am Premier  
10 Election Solutions' Service General Manager for the  
11 Western States including California.

12           At the outset, and as we have communicated to your  
13 office in discussions prior to this hearing, Premier  
14 supports your proposed withdrawal of approval of GEMS  
15 Version 1.18.19 and offers no objection to this decision.

16           We have been working with the three California  
17 jurisdictions that would be impacted by such a withdrawal  
18 to facilitate an upgrade to GEMS version 1.18.24, which is  
19 in use by 16 other jurisdictions in California and which  
20 mitigates the deck zero issue that arose in the Humboldt  
21 election -- county last November. In addition, and as we  
22 have also Communicated to your office and to our  
23 customers, we have implemented a plan to execute this  
24 software upgrade, and the hardware upgrade that must  
25 accompany it, for the affected jurisdictions.

1           It is our understanding that Santa Barbara County  
2 and San Luis Obispo County will proceed with the upgrade,  
3 while Humboldt County will not, and instead, will  
4 transition to another election solutions provider.

5           On behalf of Premier, let me assure you that the  
6 events that occurred in Humboldt last November, in which  
7 the tabulated deck of 197 optical scan ballots was  
8 inadvertently deleted from the GEMS totals, leading to the  
9 county's certification of an inaccurate tally for that  
10 election, does trouble us greatly.

11           An accurate vote count is our paramount objective,  
12 and even a single occurrence of a miscount is cause for us  
13 to scrutinize our efforts with an eye towards what we  
14 should have done better to prevent it.

15           I would respectfully suggest that all stakeholders  
16 and participants in the process have a similar obligation.  
17 In the words of a Colorado county election official, as  
18 she wrote recently in a "Denver Post" opinion column last  
19 week, "Election integrity comes down to a system of  
20 people, process and technology. All three components need  
21 to be considered when evaluating a voting system, whether  
22 it is electronic or paper based.

23           In a moment, I'll address the lessons that we have  
24 learned in Premier as we go forward. But first, since some  
25 of the accounts of our actions in this matter have not

1 been completely or entirely accurate, let me address a few  
2 key points, please:

3           The software issue in question, in which the AVOS  
4 tallied results from deck zero can, under certain  
5 circumstances, be inadvertently deleted in GEMS, only  
6 impacts jurisdictions that are both running GEMS versions  
7 earlier than 1.18.24 and utilize central count server to  
8 tabulate OS ballots in their configuration.

9           Only three Premier counties nationwide fit that  
10 description, which are Humboldt, Santa Barbara, and San  
11 Luis Obispo. To our knowledge, this issue applies to no  
12 other jurisdictions.

13           When this issue was first identified by Premier  
14 customer service personnel in October 2004, Premier  
15 communicated these findings, and a simple procedural  
16 workaround to mitigate this issue, via email to all  
17 California counties then affected. It has been suggested,  
18 inaccurately, that the email was the sum total of  
19 Premier's communication to customers according to this  
20 matter. In fact, this topic was discussed regularly and  
21 repeatedly with affected customers on conference calls, at  
22 conferences, and in one-on-one conversations between our  
23 Premier associates and election administrators. We regret  
24 that your office was not fully apprised of this issue, but  
25 to suggest that this issue was somehow "secret" or

1 "hidden," because the current Secretary of State's Office  
2 was unaware of it, is simply not true.

3 Information about the workaround was repeatedly  
4 conveyed to those directly affected -- the county election  
5 administrators running this software, who, after all, are  
6 those responsible for tabulating results. In fact, media  
7 accounts have confirmed that the administrators in  
8 affected counties, including the previous administrator in  
9 Humboldt, were quite familiar with the issue and the  
10 Procedural workaround and had applied it in elections  
11 since 2004.

12 When this matter arose five years ago, there was  
13 no mechanism, procedure, or mandate for reporting issues  
14 of this nature to the California Secretary of State's  
15 Office. Premier adhered to the reporting protocols that  
16 existed at that current time.

17 Beginning two years ago, Premier instituted, at  
18 its own initiative, a Product Advisory Notice, or PAN, as  
19 it's referred to, process to identify issues when they  
20 occur and offer guidance to customers on potential impacts  
21 and mitigating strategies. Our PANs document and  
22 memorialize these issues in a formal way that did not  
23 exist five years ago. As you know, they are distributed  
24 not only to county and municipal jurisdictions we serve,  
25 but to your office and to other state election officials

1 in Premier jurisdictions as well.

2 GEMS version 1.18.24 does correct this issue, and  
3 is in use by 16 of the 19 California counties we serve.  
4 After 1.18.24 was released and certified, we repeatedly  
5 encouraged all of our California customers to upgrade to  
6 this enhanced GEMS version. The three counties who chose  
7 not to upgrade sought and received permission from your  
8 predecessor to continue to operate 1.18.19.

9 Prior to the event last November, the three  
10 effected counties, including Humboldt, have, since 2004,  
11 conducted their elections smoothly and accurately with no  
12 issues arising from a deleted deck zero, because they  
13 employed the procedural workaround specified by Premier to  
14 mitigate the potential issue.

15 In Humboldt, a change in election administration  
16 occurred prior to the 2008 election, And, apparently,  
17 there was no hand-off within the elections office of this  
18 procedure from the previous administrator to the current  
19 one. A careful, thorough, and accurate reconciliation and  
20 canvass process is essential to ensuring an accurate  
21 election result. No matter what technology is used, or  
22 indeed, even if no technology is used at all, as in a  
23 hand-counted election, reconciling the number of ballots  
24 issued with the number of ballots tabulated is a critical,  
25 core function of validating any election result.

1           In the case of the November 2008 Humboldt  
2 election, this critical process failed, and the 197-ballot  
3 disparity was only identified later by the citizens'  
4 transparency project.

5           As to the work of the transparency project, we  
6 commend their efforts and their contribution to ensuring  
7 an accurate tally in this election. In the elections  
8 arena, voter confidence is the coin of the realm, so we  
9 applaud initiatives to review the accuracy of the vote  
10 count. Indeed, in jurisdictions across the country,  
11 post-election manual audits, parallel monitoring, and hand  
12 recounts have proven useful in validating the accuracy of  
13 countless elections using Premier equipment. But we would  
14 also suggest that whether the voting system is provided by  
15 us, by another manufacturer, or even if the platform  
16 involves no technology at all, the existence of a  
17 transparency project should not supplement the rigorous  
18 efforts of election administrators and of system  
19 manufacturers to assure accuracy in the count the first  
20 time, every time.

21           While the work of the transparency project is to  
22 be commended, their identifying a discrepancy should  
23 always be a cause for concern and self-assessment, not  
24 celebration.

25           Our objective, and that of every election

1 administrator we serve, should be to assure that even the  
2 most exhaustive post-election scrutiny finds no  
3 discrepancies at all.

4 Now, as to lessons learned and what process  
5 improvements we, Premier, take away from this incident.

6 First, with the wisdom of hindsight, of course, we  
7 wish the Product Advisory Notice process had been  
8 implemented and in place when this issue first arose five  
9 years ago. While, in 2004, our less formal communications  
10 to directly affected customers seemed adequate at the  
11 time, the PAN process creates a formal document to  
12 memorialize issues and, we hope, assure that, in addition  
13 to the institutional memory, there is a document trail to  
14 assure there is continuity of knowledge even when  
15 personnel changes in a jurisdiction, or within a Secretary  
16 of State's office.

17 We believe it is important that relevant state  
18 election authorities, including your office, receive our  
19 PANs, and this would have afforded your office with  
20 visibility to this issue from the beginning of your  
21 administration.

22 Second, we could have been more aggressive in  
23 urging all jurisdictions to upgrade to GEMS version  
24 1.18.24, which mitigates the deck zero issue, and enlisted  
25 the Secretary of State in that effort. Our customers and

1 our support team became comfortable with the effectiveness  
2 of the procedural workaround and, frankly, did not  
3 sufficiently anticipate what could occur if a personnel  
4 transition within a jurisdiction did not include a  
5 hand-off of this process and procedure.

6 So Madam Secretary and panel, thank you again for  
7 this opportunity to address this matter, and we look  
8 forward to working with you and your staff to continue to  
9 strengthen and improve the elections process in the  
10 California jurisdictions we serve.

11 MODERATOR BRETSCHNEIDER: Are there questions from  
12 the panelists? Mr. Reynolds?

13 DEPUTY SECRETARY OF STATE FOR

14 HAVA ACTIVITIES REYNOLDS: I didn't hear any  
15 comments with respect to the audit log issue that was  
16 raised in the staff report. Did you -- did I miss  
17 something?

18 MR. BALES: No. There wasn't anything in the  
19 statement, but I can address that.

20 The audit log issue, as Mr. Finley did point out,  
21 was changed in a subsequent version of the GEMS a few  
22 weeks later. And the reason that that was in there was, a  
23 few counties, in building GEMS databases, used the GEMS  
24 database as a template for creating subsequent elections.  
25 And in doing so, as they make that template, they bring

1 the template over from a previous one to a new one. And  
2 when they do that, the contents are the same, and so the  
3 clear button was initially put in for that so that you  
4 could clear the audit log and have your template for your  
5 new election.

6 Now, again, with the benefit of hindsight, we saw  
7 that as definitely not the best avenue to do, and that's  
8 why it was changed at the time. It was in there with no  
9 malicious intent, but to actually assist in a couple  
10 counties that had requested that.

11 Now the better procedure that we have for them is  
12 to create -- if you want to use a template for GEMS, if  
13 you don't want to create it every election, is to create  
14 that template off a fresh copy, prior to any elections or  
15 previous election results in that, thus mitigating the  
16 field for the clear button for the audit logs.

17 Hopefully that answers your question.

18 DEPUTY SECRETARY OF STATE FOR

19 HAVA ACTIVITIES REYNOLDS: There's also a  
20 reference to incorrect date and time stamp.

21 MR. BALES: Yes, and that also is related to the  
22 deck zero issue. And the way that the computer  
23 programming, without getting too technical, is that deck  
24 zero just was never meant to be a counter, an actual live  
25 batch counting mechanism. And in doing that, the internal

1 mechanisms of GEMS actually, you could say, get confused  
2 in a sense, and that's why you could delete a subsequent  
3 deck, and it inadvertently points back to that deck zero,  
4 which, after the fact, when it's corrected, they corrected  
5 that miscommunication internally in the program code.

6           But in doing that, since deck zero is one that's  
7 technically -- it gets confused and not supposed to be  
8 there, that's where those audit log entries and dates,  
9 times, come confusing, because the program thinks it  
10 should be this deck, the program reports it as deck zero,  
11 and so the log entries get a little off on the date/time.

12           If the procedure was followed to where the deck  
13 zero was deleted, and then you move forward, there would  
14 be no discrepancy on it as far as the date/time stamp, and  
15 that's what happened also in this case is, essentially,  
16 that deck zero was still up to a certain point in the data  
17 base that give different date/time stamps.

18           DEPUTY SECRETARY OF STATE FOR

19           HAVA ACTIVITIES REYNOLDS: Just to be clear, the  
20 failure to log certain system events, you -- I think you  
21 mentioned that in subsequent versions of this, these  
22 things had been corrected.

23           MR. BALES: No. Not yet. We are doing that.  
24 Because the deleted deletion of a deck is something  
25 that -- it has been brought to your attention, obviously,

1 as a high priority item now. And the code that's been in  
2 GEMS all the way up until this point has been what it is.  
3 We never, again, intended for any malicious intent or not  
4 to log certain activities.

5 It was just not in the initial programming, but  
6 now we're taking a serious look at that and putting that,  
7 as soon as we can, into the next version.

8 MODERATOR BRETSCHNEIDER: Are there further  
9 questions from the panel?

10 Thank you, Mr. Bales.

11 MR. BALES: Thank you.

12 MODERATOR BRETSCHNEIDER: Now we'll open the  
13 hearing up for public comment, and I would like to remind  
14 anyone who wants to speak and has not yet filled out a  
15 speaker card to do so. Those cards are at the back of the  
16 auditorium.

17 I will announce the order of the speakers two or  
18 three people in advance, so please be prepared to speak  
19 when the person in front of you concludes their remarks.

20 So that we can accommodate everybody who wishes to  
21 speak, I would like to encourage everyone not to be  
22 repetitive. If someone has already made the comments you  
23 were intending to make, you may simply want to give your  
24 name and associate yourself with those remarks. That will  
25 help ensure that people with no ideas and comments have

1 the opportunity to address the panel.

2           While speakers are more than welcome to pose  
3 questions that they hope the Secretary will consider  
4 before reaching a decision, neither the panel nor the  
5 presenters today will be permitted to respond to questions  
6 posed during the public comment period. I want to remind  
7 everyone that any comments you make here today or any  
8 comments you submit in writing are a part of the public  
9 record and will be disclosed to anyone who makes a Public  
10 Records Act request.

11           Once more, this is a public hearing, not a debate,  
12 and I want to remind and encourage everyone to please be  
13 respectful of everyone's time, opinions, and points of  
14 view.

15           And with that, let's begin the public comment  
16 portion of the program.

17           First we'll here from Gail Work from San Mateo  
18 County Democratic Party; and after, that Brent Turner; and  
19 then Alan Dechert. And we'll try and keep the comments  
20 during this period to two minutes each. Thank you.

21           MS. WORK: Thank you. Gail Work. I'm with the  
22 San Mateo County Democratic Party. I'm the chair of the  
23 Election Integrity Committee there. I'm also the founder  
24 of Grassroots for Bowen.

25           Before I start I would like to thank Secretary

1 Bowen and her staff for their courage and hard work to  
2 improve election integrity in our state. I also wish to  
3 thank the election officials in Humboldt County for  
4 opening up the election process and allowing the  
5 transparency project to do their excellent work. This is  
6 a kind of transparency we need across the state.

7           And finally, a word of gratitude and thanks for  
8 Dave Berman and others with the transparency project for  
9 the hundreds of hours of time given in pursuit of an  
10 accurate vote count. This work is groundbreaking and  
11 should be replicated across the country.

12           I'm here to address elections security, the  
13 security of the vote, and it appears that the Diebold  
14 clear button does not consider security at all.  
15 Specifically, I will speak to the need for improved  
16 transparency, the need for observer access and protection,  
17 and the current lack of enforcement of the election law.

18           In response to the Diebold comments, I suggest  
19 that we don't want more unreliable propriety software, and  
20 we certainly don't want version 1.18.24. I believe that  
21 the quality of this product has proven to be highly  
22 questionable and the voters are sick and tired of this  
23 kind of abuse of the vote count.

24           For many years, voters have been uneasy trusting  
25 their vote to voting machines run on secret proprietary

1 software by companies that are controlled by wealthy  
2 partisan owners. Because lines of programming code are so  
3 easy to hide, malicious code or faulty code is very hard,  
4 if not impossible, to find. These private vendors have  
5 far too much control and influence over our elections, and  
6 this needs to be addressed head on, to prevent abuse of  
7 our democratic system.

8 The fact that the transparency project was able to  
9 do such an excellent job of documenting the faulty vote  
10 count in Humboldt county gives us reason to look more  
11 closely at all of the proprietary systems in California.  
12 There are serious security problems documented in all of  
13 these voting machines. It's time to decertify these  
14 systems.

15 MODERATOR BRETSCHEIDER: If you could wrap up  
16 your comments.

17 MS. WORK: I would like to encourage the Secretary  
18 in particular to protect observer access rights so that  
19 citizens are able to be inside the elections office and  
20 see and hear what's going on.

21 In Santa Clara County, on November 4th, the  
22 Democratic party had five credentialed observers who were  
23 barred from access to see what was going on. These kinds  
24 of things are happening across all the counties, and it's  
25 just -- it's just fortunate that we had the citizens group

1 in Humboldt, that was able to document the Humboldt  
2 situation. We need this kind of vigilance across the  
3 state.

4 MODERATOR BRETSCHEIDER: Thank you very much.  
5 Brent Turner.

6 MR. TURNER: Thank you, members of the panel.

7 I have a written statement that I'm going to turn  
8 into the San Francisco Board of Supervisors today. I  
9 would like to submit that as part of the record.

10 I have a few brief comments to make. My name is  
11 Brent Turner. I'm the administrator for Election Reform  
12 Activists for Obama. I'm also a member of Black Box  
13 Voting. I do pro bono work for the Open Voting Consortium  
14 and many other groups that are on point on this particular  
15 issue.

16 I feel like this hearing is another step, yet a  
17 tad embarrassing is redundant because we've had the  
18 Secretary of State's top-to-bottom review at our disposal  
19 for so long, which concluded, through the best minds we  
20 have available on the subject, that these propriety code  
21 systems are not appropriate for use, and it was at that  
22 moment for the Secretary initially decertified these  
23 systems.

24 I am also growing tired of attending these  
25 hearings, as it is very wearing on the activists. In the

1 activist community, we've had interesting groups that take  
2 our focus away from the true resolution to this issue. I  
3 appreciate the fact that some people, I think, in the past  
4 have been for strict hand counting. I think they are good  
5 hearted people, but, unfortunately, they have taken our  
6 eyes off the ball. This solution has been made available  
7 to the state by the Open Voting Consortium. It has to do  
8 with open source code ballot systems that have been  
9 demonstrated.

10 I feel like we need to expedite this process and  
11 move quickly towards a solution to reclaim our systems  
12 from the broken federal certification process and that the  
13 Secretary of State has the power to do that at this time.  
14 So I am urging her to expedite this, to get past any  
15 personality issues that may exist within the activist  
16 communities, and try to bring quick revolve to this issue.

17 I have mentioned to you for some time that the  
18 certification process is currently broken. This is per  
19 Roy Saltman, who I think has a good amount to do with the  
20 invention and the creation of these systems.

21 We need to applaud the people in Humboldt County  
22 that did this, but recognize the fact that we already knew  
23 that the machines were deficient and that this merely  
24 creates a second count and is actually bad for voter  
25 confidence. We need to get the open source systems on the

1 front end of the count, not merely validating what we  
2 already knew.

3 Thank you very much.

4 MODERATOR BRETSCHEIDER: Thank you very much.

5 We'll have Alan Dechert next, and after that,  
6 Richard Tamm, followed by Paul Allen.

7 MR. DECHERT: I'm Alan Dechert, President of the  
8 Open Voting Consortium. I want to endorse the views of  
9 Gail Work and Brent Turner on the need for transparency.  
10 I believe the problems, the software sloppiness that we  
11 see these systems would not stand the light of day if  
12 we -- if we allowed the programmers of the world to work  
13 on this code, that it was truly open source. That's where  
14 we need to go. That's what Secretary Bowen -- she made  
15 these comments in her campaign in 2006. We really need to  
16 get going on this.

17 I have proposed that -- and another thing that  
18 comes, out as Brent Turner pointed out, these systems got  
19 through the federal system and this is, you know -- they  
20 are not really equipped to do the kind of line-by-line  
21 examination of this code. We really -- I have proposed  
22 that the Secretary set up an exemplary California  
23 certification process and that we opt out of the federal  
24 process. The state of New York has opted out. The state  
25 of Florida has opted out. And recently, Lowell Finley

1 shared with us that it's now expected that it's going to  
2 cost \$3 million to get certified, federally certified.  
3 And this is very difficult to justify for an organization  
4 providing free open source software.

5 And certainly, there's no just -- there's no  
6 incentive for Diebold or Sequoia or ES&S to come out on  
7 their own and spend \$3 million on software they are going  
8 to give away to the public.

9 So there needs to be an alternative approach to  
10 this, and I hope the Secretary will reconsider her  
11 opposition to this idea. I'm not sure why she's so  
12 adamantly opposed to that concept.

13 Thank you very much.

14 MODERATOR BRETSCHEIDER: Thank you.

15 Richard Tamm from the Voting Rights Task Force.

16 MR. TAMM: Good morning, and thank you for your  
17 work. I would like to thank the Secretary of State's  
18 Office and Debra Bowen for all the good work.

19 And I also second everything that's been said  
20 before. I have been a programmer for over 30 years, a  
21 computer programmer. And I'm very aware of the dangers of  
22 these voting machines, because through electronic voting  
23 systems, you can steal elections wholesale rather than  
24 retail. Wholesale meaning, with a few lines of code, you  
25 can switch hundreds of thousands of votes, whereas retail,

1 you have to, you know, stuff the ballot box, ballot by  
2 ballot. It's much more difficult that way. With these  
3 voting machines, it makes it so easy for massive changes  
4 of votes.

5 So you could say, well, Diebold made some  
6 mistakes. You know, they had sloppy coding, and they were  
7 embarrassed about admitting it, so they kind of hid it.

8 It's more serious than that. They have a very bad  
9 record of doing strange things. In fact, they were sued  
10 and decertified by the past Secretary of State Shelley  
11 because of software patches that were uncertified.

12 Well, mistakes like this, like the zero software  
13 bug, that they knew for years, are the kinds of things  
14 that encourage them to put in patches. And the  
15 last-minute patches, they don't have time for  
16 certification.

17 They did a last-minute patch in Georgia in 2002,  
18 when they first put Diebold machines in the state. They  
19 didn't have any paper trail. The then president of the  
20 company himself, Bob Urosevich came out and secretly  
21 installed the patch -- secretly, with his own people --  
22 installed the patch in only two very heavily democratic  
23 counties, strangely -- DeKalb and Fulton. Supposedly it  
24 was to fix the clock, the computer clock. It didn't fix  
25 the clock, but apparently it did fix the election, because

1 both the very popular incumbent democratic senator and  
2 governor, Max Cleland and Roy Barnes, who were ahead a  
3 week before the election, by 5 and 11 percent, lost the  
4 election by 7 and 5 percent. In one week, an amazing  
5 shift of 12 and 16 percent. Possibly this uncertified  
6 patch had something to do with it, but we'll never know  
7 because there was no audit trail and no paper records.

8 We need something less sloppy than these kind of  
9 voting machines, and less dangerous. They are much too  
10 dangerous for wholesale election theft.

11 And I applaud the group, the volunteer group, that  
12 discovered this, and we need more things like that. I do  
13 feel we have a problem for the registrar of voters. How  
14 did they have an easy election? I have been thinking --

15 MODERATOR BRETSCHNEIDER: Wrap up your comments  
16 please.

17 MR. TAMM: I have been thinking for years, we  
18 really should have something like jury duty for elections,  
19 where we have Republicans and Democrats watch each other  
20 and hand count the ballots so that it's in public, it's in  
21 view, it can be watched by anyone in the public, and it  
22 would be out in the open and we wouldn't need these secret  
23 machines.

24 Thank you.

25 MODERATOR BRETSCHNEIDER: Thank you.

1           Next we'll have Paul Allen, and after that, Judy  
2 Bertelsen and Kim Alexander.

3           MR. ALLEN: Hi. My name is Paul Allen with the  
4 Voting Rights Task Force. It's a committee of the  
5 Wellstone Democratic Renewal Club.

6           I will try to be brief. The Diebold  
7 representative here say they have ongoing problems with  
8 the audit logs. All this just -- I just would say that I  
9 would like to see the State move towards open source  
10 software in these systems, and I would like to see more  
11 access for citizen groups, like the Humboldt transparency  
12 project, which was only allowed to audit the system with  
13 the permission of the registrar.

14           I would like to see statewide access for this. I  
15 know in my county of Alameda County, I want to look at the  
16 manual tally that's required and there's really not a  
17 meaningful access there. The registrar is very, very  
18 cordial down there and very accommodating, but the fact  
19 is, you can't really see what the workers are doing close  
20 up. And I just think there needs to be a lot more  
21 transparency in the process.

22           Thank you very much.

23           MODERATOR BRETSCHEIDER: Thank you.

24           Judy Bertelsen.

25           MS. BERTELSEN: I'm Judy Bertelsen. I'm a voter

1 in Alameda County and a participant in the Voting Rights  
2 Task Force.

3 I'm concerned that Diebold has required an  
4 upgrade, and that means the counties were expected to pay  
5 for correction of faulty technology provided to them by  
6 Diebold. Diebold should have simply corrected this and  
7 rushed to give corrected software to the counties, to whom  
8 they had sold such a sloppy and inaccurate and incompetent  
9 product.

10 Tonight -- today, we heard the Diebold Premier  
11 person talk about, "without getting too technical." And  
12 he didn't literally wave his hands, but it was hand waving  
13 and smoke and mirrors. And this kind of thing has been  
14 done over and over. And the registrars have been -- have  
15 learned, have been encouraged, to have this sort of  
16 relationship where they become dependent on the vendors  
17 and relate to them as if they were technical experts  
18 rather than salespeople.

19 This leaves them open to this kind of faulty  
20 technology that in this particular instance has been shown  
21 to be inadequate and improper. And now there is scurrying  
22 to correct this particular error. But we don't know what  
23 other kinds of errors might lurk. And we, again, are left  
24 open to the possibility that this error, which happened  
25 inadvertently in Humboldt, could be used by a malicious

1 party who happens to truly understand it.

2 We've heard, we've seen, the e-mails that clearly  
3 don't explain in detail to the counties exactly what's  
4 going on. They just say do this step by step. Don't ask  
5 us why; just do it and everything will be okay.

6 We all know that those kinds of instructions are  
7 prone to confusion and inaccurate following because they  
8 make no sense. Most of us human beings aren't good at  
9 following nonsense instructions, and that's what these  
10 were. And they depended on absolutely perfect following  
11 of instructions that really don't make any sense to the  
12 person who has to chair them out.

13 MODERATOR BRETSCHEIDER: If you could wrap up  
14 your comments.

15 MS. BERTELSEN: Okay. How much do I have? 30  
16 seconds? Okay.

17 Essentially, we need independent audits of these  
18 election processes. That's what Humboldt County came up  
19 with, and I am so impressed with what happened at Humboldt  
20 County, both because of their exemplary registrar of  
21 voters, who was willing to put part of her precious budget  
22 into purchasing an off-the-shelf scanner and using it and  
23 working with volunteer experts.

24 She and they proved proof of concept. This can be  
25 done right now today. We don't need to say, "Oh, this is

1 terrible budget time. We can't do anything." We can.  
2 They did, and we should do it more.

3 Thank you.

4 MODERATOR BRETSCHEIDER: Thank you.

5 Kim Alexander from the California Voter  
6 Foundation, and after that, we'll have Kevin Collins and  
7 Tom Pinto.

8 MS. ALEXANDER: Good morning. I'm Kim Alexander  
9 with the California Voter Foundation. I just want to  
10 affiliate myself with Judy Bertelsen's comments at the  
11 end, about the work of volunteers in Humboldt and  
12 Registrar of Voters Carolyn Crnich.

13 It seems to me that the Secretary of State -- I'm  
14 Kim Alexander with the California Voter Foundation. I  
15 can't remember if I said that or not.

16 It seems to me that the Secretary of State's  
17 report actually minimizes the scope of the potential  
18 damage of this latest security problem that's been  
19 identified. The report suggests that the problem with the  
20 audit logs is limited to this one version, and as we just  
21 learned this morning, this failure of the Premier voting  
22 system audit logs, to keep track of every single action on  
23 the system, is a failure of all of the versions of the  
24 GEMS operating systems that are in use in California and  
25 presumably around the country. This is a huge problem.

1 Because up until this point, everyone working on elections  
2 security -- registrars, vendors, and voting activists  
3 alike -- assumed that that audit log was a faithful  
4 representation of every action that was taken on this  
5 system, and we now know that if you clear a deck of  
6 ballots, that there's no record kept in that audit log.

7 So I would suggest that the Secretary of State  
8 broaden the scope of its investigation and verify that  
9 this is, in fact, happening with later versions of GEMS  
10 and to bring that issue out into the light even more than  
11 Secretary of State Bowen has already done through her EAC  
12 report.

13 Secondly, it seems inappropriate that any voting  
14 system be used in California that is only qualified to the  
15 1990 federal voting systems standards, and that is the  
16 case with the system in question here. It's 2008. Those  
17 standards were written nearly two decades ago, and we know  
18 that the security articulated in those standards are not  
19 sufficient to meet today's needs.

20 The third point I want to mention is that this  
21 feels a lot like a deja vu. A lot of us were here back in  
22 2004 dealing with this same inventory and other known  
23 security problems. Back then, it was widespread use of  
24 uncertified software and equipment, and this year, the  
25 problem is unsafe use of certified software.

1           Well, it appears that Diebold/Premier did not  
2 break a specific state law this time around. The  
3 company's repeated lack of action or concern to address a  
4 known security problem is deeply troubling. And short of  
5 decertifying the vendor entirely, which may not be  
6 practical to do at this time, the Secretary of State ought  
7 to consider specific terms of use for this vendor to place  
8 a burden on them, to repeatedly, loudly, and routinely  
9 notify the state and its client counties when a problem is  
10 known to exist.

11           There's a bigger problem here -- if I could just  
12 have a few more moments -- that there's no incentive in  
13 place for vendors to deliver up-to-date, high quality  
14 products. And our voting systems, whether they are  
15 paper-based or electronic balloting, are software driven,  
16 and we need to have a certification process that is robust  
17 and also designed to facilitate routine software upgrades.  
18 That's the way the rest of the technology world works.  
19 And for some reason, in voting software, we're stuck using  
20 systems that are up to standards that were written nearly  
21 20 years ago.

22           This episode is also an example of why the manual  
23 tally is important and why you must compare the final  
24 results in the manual tally to the paper ballots and not  
25 the semifinal results or the results that are produced

1 from the cartridges of the scan machines.

2 MODERATOR BRETSCHNEIDER: If you could wrap up  
3 your comments.

4 MS. ALEXANDER: Yes. And it also shows why the  
5 1 percent tally is not sufficient and why extra measures,  
6 such as the 10 percent post election manual tally  
7 requirements, recently imposed through regulations by the  
8 Secretary of State are welcome reform.

9 Thank you.

10 MODERATOR BRETSCHNEIDER: Thank you.

11 Kevin Collins with the Humboldt Election  
12 Transparency Project.

13 MR. COLLINS: Madam Chair, I want to first thank  
14 Carolyn Crnich, who I think is probably not only the  
15 forefront in California as far as election officials but  
16 also Lowell Finley and the Secretary of State's Office for  
17 the good work that they have done.

18 I think it's to the question of 1.18.19. It's a  
19 done deal; the Diebold Premier is not contesting. But it  
20 does beg the question of what happened from 1995, when we  
21 bought the system in Humboldt County, to 2004, when the  
22 e-mail went out? How many deck zeros were deleted? How  
23 many election results were changed throughout the state  
24 and nationally?

25 It also begs the questions, as others have said,

1 this is a system certified federally and by the state.  
2 What other systems also have unknown flaws? And I think  
3 it's, as others have said, it's the nature of the  
4 certification process that's totally broken.

5 I think that the transparency project does offer a  
6 light at the end of a long tunnel here, for activists. It  
7 is a project that is both simple, viable, powerful,  
8 inexpensive. As a matter of fact, the report was wrong.  
9 It did not cost us \$35,000 for the scanner. It cost  
10 closer to \$25,000 for the entire system -- 20,000 for the  
11 scanner, about 4,000 for the maintenance contract, and a  
12 thousand or two for the hard drive, which prices were  
13 down -- we originally priced it a year before that, a  
14 different model, but a similar make that was 42,000 and it  
15 came down about 15,000 in a year. It's a cheap process to  
16 institute.

17 It allows for a hundred percent audit count. It's  
18 totally independent of the equipment that any  
19 manufacturer, that uses optical scan, produces, so that  
20 any of the many hacks, that were mentioned earlier,  
21 whether they are sleepovers or malicious code introduced,  
22 would not happen with the oversight of the transparency  
23 project, because the only thing common between our  
24 transparency project and the Diebold or Premier equipment  
25 was the ballots themselves.

1           It also -- we were lucky, and we were looking for  
2           and we found an open source programmer, Mitch Trachtenberg  
3           who developed a program then who allowed us to count and  
4           audit the counts. And we welcome others.

5           But I think this is an eminently exportable  
6           technology. It's scalable to other counties. It's  
7           inexpensive. And I think we do have to expand audit  
8           counts.

9           I disagreed with one of the other open source  
10          speakers. I don't think this decreases people's  
11          confidence in the elections, but, rather, I think it -- at  
12          least in Humboldt County, it's met with a round of  
13          approval and of confidence building.

14          And I think it's just common sense that if you are  
15          going to count thousands -- 64,000 cases of ballots with  
16          20 ballots slots, that to double count is a smart thing to  
17          do.

18          I was doing my taxes last night. I use an Excel  
19          spreadsheet and a Quicken report form. If you have a  
20          discrepancy, you go back and you find it. If they both  
21          match, you are okay. And that's especially what we're  
22          looking at here.

23          MODERATOR BRETSCHEIDER: Could you wrap up your  
24          comments?

25          MR. COLLINS: Well, by the way, it did say three

1 minutes at the --

2 MODERATOR BRETSCHNEIDER: I apologize. We had  
3 more speakers sign up than we thought.

4 MR. COLLINS: I think the issues have been  
5 covered. I want to once again thank the Secretary of  
6 State in their diligence of unraveling the web of logs and  
7 nonexistent logs, and hopefully we'll move to make  
8 California -- basically we can set the goal -- the gold  
9 standard here. I think we have a Secretary of State with  
10 the willingness and a direction to go.

11 Thank you.

12 MODERATOR BRETSCHNEIDER: Thank you.

13 Tom Pinto also with Humboldt County Election  
14 Transparency Project. And after that, our last two folks  
15 who have signed up to speak under public comment are Judy  
16 Alter and Carolyn Crnich.

17 MR. PINTO: Good morning. Thank you.

18 I would like to like to incorporate Kevin  
19 Collins's comments as part of mine. I would like to thank  
20 Carolyn Crnich for initiating the Humboldt County Election  
21 Transparency Project and for the excellent follow-up by  
22 Secretary of State Debra Bowen.

23 What I have learned from this is that we need to  
24 conduct 100 percent audits throughout the state of  
25 California. This 1 percent audit per county just does not

1 work.

2 Even if we don't discover, you know, software  
3 bugs, there's going to be other little mistakes that we'll  
4 find from, like, poll workers -- not closing -- sealing  
5 boxes properly or things like that, that need to be done.

6 The first time we did this in June of 2008, we  
7 discovered absentee ballots that had been brought to the  
8 precinct and sealed in the boxes, and hadn't been counted.  
9 But because we had conducted the Humboldt County Election  
10 Transparency Project, we were able to say, "What are these  
11 ballots doing here?" showed them to Registrar Crnich and  
12 said, "Oh, look, these need to be counted." And they got  
13 counted, and that was before certification.

14 So by doing these kind of citizen audits, we can  
15 correct problems before certification. And that's  
16 something I think that we should pursue.

17 Also, just to reiterate what Kevin said, when you  
18 are doing your taxes, or you are doing something important  
19 you need to go back and count it twice, and that is  
20 something that we -- I hope that we do. Thank you.

21 MODERATOR BRETSCHEIDER: Thank you.

22 Judy Alter with project -- Protect California  
23 Ballots.

24 MS. ALTER: Thank you for this hearing. Thank the  
25 Humboldt people. The quick thank yous, I agree with, and

1 with Gail Work.

2 In L.A., where I monitor mainly now, our observers  
3 had not yet been able to check and review all the election  
4 machinery and programming, which is part of Election Code  
5 15004.

6 We have been pursuing this since 2005, with our  
7 technical observers and then -- and reporting on it. We  
8 have no way to know if the tabulating program accurately  
9 adds the precinct totals correctly, because we haven't had  
10 access, either to a logic inaccuracy test that is not  
11 included, or the precinct results.

12 We have asked for the audit logs and the backup  
13 files, whatever it is, the backup, so that we could  
14 actually try adding up the totals, not even checking the  
15 ballots. And we have not yet been able to do that. We've  
16 asked for monitor to have the tabulator screen, so we can  
17 video it, so we could, again, add up the totals, and we  
18 have not been able to get that.

19 This unsatisfied need to check the addition of the  
20 precinct totals must be understood in the context of the  
21 mandatory 1 percent manual tally results just addressed by  
22 our Humboldt ally here. This 1 percent tally in L.A., in  
23 California is, as you know, the only audit we have. And  
24 unlike -- and you know that the 1 percent manual tally  
25 didn't catch what the Humboldt transparency project did.

1           In L.A., I have the results of the 1 percent with  
2 me from November. We -- they -- we actually got to  
3 randomly select the precincts. Bravo. There are 51  
4 precincts, and all -- none of the precincts -- none, of  
5 the precincts -- matched the hand count. Now, that's all  
6 the precincts, all of the contests. There were 23  
7 contests.

8           Twenty-five percent of the absentee, the  
9 vote-by-mail, matched; 75 did not. And they were -- they  
10 add ballots as well as subtract ballots. And for Hilda  
11 Solis, they missed 47 ballots. She ran unopposed in the  
12 one precinct we were able to -- that was part of it.

13           L.A. County and all the other counties need a full  
14 and thorough method of doublechecking the accuracy of the  
15 count. I'm agreeing totally. We have to have a way of  
16 doing it.

17           We request -- this request explains what we in  
18 election justice mean by transparency. On computers, we  
19 do not have public counting of our votes -- of our  
20 ballots. And a democratic election, we must count ballots  
21 publicly. Further --

22           MODERATOR BRETSCHEIDER: Excuse me. Please wrap  
23 up your comments.

24           MS. ALTER: -- election officials need to be held  
25 compatible when they do not follow election code, such as

1 allowing observers to check and review, etc., or supplying  
2 citizens with the backup files. We just -- we need them  
3 to follow the laws and allow us to -- put into the place  
4 the checks and balances that are built in, not only to  
5 California's constitution but our American Constitution.

6 MODERATOR BRETSCHEIDER: Thank you very much.

7 Our last speaker under public comment is Carolyn  
8 Crnich, Registrar of Voters for Humboldt County.

9 MS. CRNICH: Thank you, Madam Chair. My name is  
10 Carolyn Crnich, and I'm the Registrar of Voters for  
11 Humboldt County.

12 There is only one comment -- two, actually, that  
13 needed correction. Kevin made one. Our scanner cost  
14 something closer to \$25,000 than \$35,000.

15 But Mr. Bales, I'm offended by your implication  
16 that I didn't do any audit. If you will look at, I  
17 believe, page 6, it describes -- of the report, it  
18 describes the number of checks that we did on those decks  
19 to verify that they were there before our final election  
20 total. And if you are saying that your system needs to be  
21 checked every damn time we turn it on, I agree with you.

22 So Humboldt County has chosen, instead of moving  
23 forward -- to forward, in quotes, to the version 1.18.24,  
24 to move to a new system. We will, however, be forced to  
25 use the version that is hopefully going to be decertified

1 today, or withdrawn from certification.

2 For our May election, we will, however, be  
3 imposing over that the transparency project. It was my  
4 hope when first talking to Kevin Collins about what could  
5 we do in Humboldt County to make our elections better,  
6 more transparent, that a better audit process would be a  
7 part of it. And I commend Secretary Bowen for her efforts  
8 to make those processes better.

9 Of course, it's more work, but the amount of work,  
10 I think, is reflective of the quality of the product here.  
11 And we're willing to go that extra mile in Humboldt  
12 County.

13 To the first speaker, in Humboldt County, we have  
14 an Election Advisory Committee which meets monthly, of  
15 which Mr. Berman is a part; and sort of a subcommittee of  
16 that is the Election Transparency Committee, not  
17 necessarily the same people. And Mr. Berman is not a part  
18 of that.

19 Hand counters get to see the ballots that they  
20 count. That means that each group of four people is going  
21 to be able to see every vote on those ballots that they  
22 are charged with counting. With our project, every person  
23 gets to see every single vote, not just the ones that they  
24 were charged with counting.

25 I think this will improve our system which makes

1 candidates or committees pay for recounts, because they  
2 will have the opportunity, for free, to download images of  
3 those ballots from the internet, examine themselves, that  
4 if they feel that our count is not accurate, they are most  
5 welcome to call for a recount and pay for that. But need  
6 an opportunity to examine them and know going in that it  
7 may produce the same results that the certified election  
8 did.

9 So thank you.

10 MODERATOR BRETSCHNEIDER: Thank you.

11 MS. CRNICH: And thank you, Secretary Bowen.

12 MODERATOR BRETSCHNEIDER: We've now finished our  
13 agenda for today, and I would like to thank the presenters  
14 and the panelists and the audience for participating in  
15 the hearing.

16 As I mentioned earlier, anyone who wishes to  
17 submit written testimony can do so by sending a hard copy  
18 to the Secretary of State or by e-mailing an electronic  
19 copy to [votingsystems@sos.ca.gov](mailto:votingsystems@sos.ca.gov).

20 Thank you very much for your attention. This  
21 hearing is now adjourned.

22 (The Secretary of State public hearing was  
23 concluded at 11:24 a.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Secretary of State public hearing was reported in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of March, 2009.

KATHRYN S. SWANK, CSR  
Certified Shorthand Reporter  
License No. 13061