



Susan Bysiewicz  
SECRETARY OF THE STATE  
CONNECTICUT

July 21, 2005

Mr. Ralph Morelli  
11 Fairview Drive  
Wethersfield, CT 06109

Dear Mr. Morelli:

This letter is in response to your most recent correspondence dated June 20, 2005 regarding your pursuit to include optical scan voting systems within the current Request for Proposal ("RFP") process. More specifically, you state, "Yet, after careful review of the RFP and its supporting documents, including the Statutes and Voting Regulations, the only conclusion that one can draw is that the RFP is inherently misleading and biased in favor of DRE machines and against marksense / optical scan systems." We believe that your statement and interpretation are incorrect.

As you are aware, the Help America Vote Act of 2002 ("HAVA") is the most important civil rights law passed since the Voting Rights Act of 1965. HAVA Section 301 requires that all voting systems used for a federal election after January 1, 2006: (1) permit the voter to verify the votes selected prior to casting and counting the ballot, (2) permit the voter to change the ballot or correct any error prior to casting and counting the ballot, (3) notify the voter of any "over vote", (4) produce a permanent paper record with a manual audit capacity "for such system", and (5) be accessible for individuals with disabilities including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

Although each voting machine used after January 1, 2006 must meet these requirements, a state may comply with the fifth requirement set forth above (the requirement for access by person's with disabilities) by placing one accessible voting machine in each polling place in the state. **It is this requirement and this requirement only that the RFP referenced in your letter is intended to address.** Therefore, your assumption that optical scan voting equipment would be cheaper for the State of Connecticut is misguided.

This office is aware of no other requirement within HAVA that mandates the State of Connecticut to replace all lever voting systems. Your letter appears to advocate for and in some instances elude to the fact that the State of Connecticut must replace "all" lever voting systems and that the current RFP is or should somehow be altered or modified to require such replacement. The current RFP is not designed to "replace" existing voting machines. It is designed to **add** one additional, fully accessible, machine to each polling

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place in the State of Connecticut. In fact, within the implementing language set forth in HAVA Section 301, Congress stated that the term voting system includes any lever voting system. Because the access requirement for persons with disabilities can be met by adding only one fully accessible voting machine per polling place, the current lever voting machines can still be used if they meet the remaining requirements. Currently, this Office is aware of no opinion issued by either the United States Department of Justice or the United States Elections Assistance Commission that would suggest or require a contrary interpretation.

In addition, contrary to your assertions, the current RFP does not exclude any specific technology. As stated earlier, the purpose of the RFP is to purchase seven hundred seventy one (771) fully accessible voting systems for use on or after January 1, 2006. The purpose is not to replace all voting systems currently in use in the State of Connecticut. As such, it is clear that an optical scan voting system without additional features for use by persons with disabilities does not meet the accessibility requirements set forth in HAVA. Therefore, for an optical scan voting machine to be considered by the State of Connecticut as fulfilling the requirements of HAVA, such machine would need, at the very least, additional accessibility features. Even with such additional features, individuals with mobility problems would not be able to handle the ballot in a sufficient manner to allow them to place the ballot into the additional ballot reader.

In your letter, you question the definition used by the State of Connecticut within the RFP for DRE voting technology. You refer to Connecticut Regulations Section 9-241-2 as the definition used in the Appendix of the RFP. While we appreciate your review of the relevant statutory and regulatory sections, we feel that we have made the point abundantly clear to any interested voting machine vendor that no specific voting technology had been excluded from the current RFP. In fact, as you correctly point out, we stated this several times during the "vendor" conference held in anticipation of accepting final proposals.

While we believe that it is laudable that you feel a certain piece of equipment is worthy of examination, we must adhere to the specific requirements found in the Connecticut General Statutes regarding the procurement process. As you are aware, and members of your organization agree, no vendor with the technology for which you advocate submitted a timely proposal to the State of Connecticut in response to the current RFP. As such, the technology cannot be examined or included as part of the current RFP process.

Because the current RFP seeks only to allow the State of Connecticut to purchase voting systems that will comply with the accessibility requirements of HAVA and not to replace all voting machines, any optical scan equipment submitted pursuant to the RFP would

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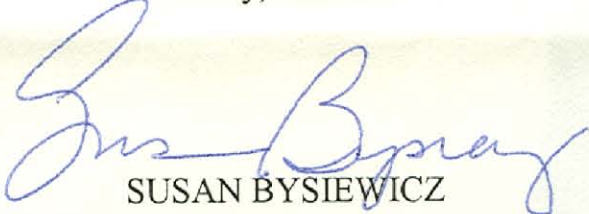
need an accessibility function as part of the voting system. As you are aware, optical scan voting systems have been available for use in the State of Connecticut since 2001. However, because these machines are not fully accessible, they cannot be included in an award pursuant to the RFP. However, towns are currently free to purchase optical scan equipment for use instead of the current lever voting systems and we are aware of only three towns that use optical scan equipment for the entire election. There are slightly more that use the equipment to count absentee ballots.

The State of Connecticut has a very lengthy and detailed purchasing process as outlined in Connecticut General Statutes and Regulations. The State Department of Administrative Services administers this process. In addition, HAVA Section 301 sets a congressionally mandated deadline for compliance with such section at January 1, 2006. Moreover, the United States Department of Justice has stated:

With respect to the deadline under Section 301(a)(3), the Department has also answered this question at a number of conferences. Congress has set the date for compliance as January 1, 2006, and the Attorney General does not have the legal authority to extend this deadline.

As the Chief Election Official for the State of Connecticut, I must ensure that the January 1, 2006 deadline established by Congress is met. Issuing a new or revised RFP at this late juncture would potentially place the State of Connecticut in a position of violating federal law and face enforcement action by the United States Department of Justice, which would not be in the best interest of the State of Connecticut. While I appreciate your comments regarding the State of Connecticut's RFP, it is my duty as the Chief Elections Official to ensure Connecticut's compliance with all applicable state and federal laws.

Sincerely,



SUSAN BYSIEWICZ  
Secretary of the State

Sincerely,



LINDA J. YELMINI  
Commissioner  
Department of Administrative Services