FEDERAL ELECTION COMMISSION

November 21, 2003

Ms. Penelope Bonsall, Director
Office of Election Administration
Federal Election Commission
800 N. Capitol Street, NW, Suite 600
Washington, D.C. 20001

Dear Ms. Bonsall,

Computer scientists from throughout the country have raised the prospect that the testing and certification process for voting equipment is inadequate to uncover unintentional software glitches, which may cause a system to incorrectly record electronic ballots cast by voters, or, worse yet, purposeful manipulation by software programmers to alter the results of elections. To date, the focus of those who suggest an immediate remedy is to provide voters with a "voter-verified paper trail."

I convened the Ad Hoc Touch Screen Task Force earlier this year composed of computer experts, members of the public, and representatives of the disabled community and election officials to investigate this issue. The product of the Task Force is a report that makes a series of recommendations for further action, while recognizing the absence of an immediate comprehensive solution (see enclosures).

The Task Force members fully acknowledge the need not to interrupt the timing of elections and the importance of meeting federal and state laws requiring full independent and confidential access to the ballot box by all eligible voters, including those with physical limitations or language barriers. As such, I am directing that as of July 1, 2005 all local jurisdictions in California purchasing new DRE voting systems may only purchase state certified DRE voting systems that contain a VVPAT feature which is fully accessible and allows every voter—including disabled voters and those speaking English as a second language—to vote privately and independently. Jurisdictions using DRE systems prior to that date that do not have a VVPAT feature, will have until **July 1, 2006** to be replaced or modified to incorporate an accessible VVPAT feature, if they do not already contain one.

In addition, all DREs will also need to incorporate electronic verification in order to assure that the information provided for verification to disabled voters accurately reflects what is recorded by the machine and what is printed on the VVPAT paper record. The timeline for implementation is the same as that for the implementation of an accessible VVPAT.

In the interim, I am implementing additional security measures aimed at ensuring detection of any anomalies in accurately reflecting the will of the voters.

Section 271 of the Help America Vote Act of 2002 (HAVA) provides $20 million in funding for research on voting technology improvements. Grants made pursuant to Section 271 are intended to improve the "quality, reliability, accuracy, accessibility, affordability and security of voting equipment…" There is an immediate need that should be considered the top priority for this funding—providing for the development of systems with an accessible voter verified paper audit trail and systems that utilize open-source electronic verification to guarantee the accuracy of the non-visual information provided for verification to disabled voters.

The research and development grant funding specified in Section 271 is perfectly suited for this endeavor. I am hopeful that this will be considered the Commission's top priority—there is no more appropriate or deserving issue in the context of HAVA.

In addition, I strongly urge the FEC Office of Election Administration, the soon to be formed Election Assistance Commission (EAC), and the National Institute of Standards and Technology (NIST) to review the recommendations made by the Task Force as to federal qualification standards and testing.

Among the Task Force recommendations are to:

1. More specifically define system security and integrity requirements at the Federal level to assure a clean operating environment both during the development process and during the operational phases while running an election, with no possibility of undetected intrusion at each point.

2. Increase transparency of the Federal testing process by incorporating citizen observation and participation and increasing public disclosure throughout the entire qualification process.

3. Institute periodic review and testing, instead of one-time testing, so that the Federal testing and qualification process allows for continuous improvement and advancement.

4. Require all systems previously certified under the 1990 FEC Voting System Standards to be retested under the 2002 FEC Voting System Standards and any future standards that are developed

5. Provide the National Institute of Standards and Technology (NIST), or another appropriate federal entity, to conduct ongoing oversight of the ITAs. Currently there is insufficient ongoing oversight of the ITAs to ensure that they are utilizing adequate quality control and maintaining the highest levels of scrutiny in testing election systems.

6. Create a national database (either by NIST or the EAC) to track and document problems found in election systems, similar to Federal Aviation Administration incident reports, in order to keep local jurisdictions and the public informed.

7. Provide funds to enable NIST to conduct this ITA oversight and to increase the technical security of systems.

8. Eliminate the blanket exemption for review of Commercial Off-The-Shelf (COTS) code because, while it is readily available for purchase to the public, it is not audited at all.

I have enclosed a complete copy of the Task Force report and my Position Paper. I urge you, the members and staff of the FEC and the EAC, and the staff of NIST, to consider these recommendations in order to ensure greater security and confidence in our voting systems.

Please feel free to contact me in the future with any other concerns you may have.

Sincerely,

KEVIN SHELLEY
Secretary of State

cc: Arden L. Bement, Jr., Director, National Institute of Standards and Technology
        Dr. Susan Zevin, National Institute of Standards and Technology
        Rep. Robert Ney
        Rep. Steny Hoyer
        Sen. Mitch McConnell
        Sen. Christopher Dodd