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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**JENNIFER RAE GUNTER, an Oregon Elector; and
CHRISTINA LYNN MILCAREK, an Oregon Elector;
and CHELSEA ANNE WEBER, an Oregon Elector**

Case No.: **3:22-CV-1252-MO**

Plaintiff(s),

**PLAINTIFFS RESPONSE IN
OPPOSITION TO MOTION TO
DISMISS**

v.

**SHEMIA FAGAN, in her individual capacity
and as Secretary of State for the State of
Oregon**

Defendant(s)

**UNITED STATES DISTRICT COURT
FOR DISTRICT OF OREGON
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PLAINTIFFS RESPONSE IN OPPOSITION TO MOTION TO DISMISS

LR 7-2 CERTIFICATION The undersigned hereby certifies that this Brief in Response of Motion to Dismiss complies with the applicable word count limitation because it contains 5,196 words including headings, footnotes, and quotations, but excluding the caption, and signature block.

Introduction

1. The Secretary of States Oath of Office affirms her main purpose is to protect and maintain our natural and individual rights. By way of obfuscation, under the color of law, the SOS has failed to follow contractual law based upon its own policy guidelines and issuing

certificates of approval for systems by Voter System Test Labs (VSTL) with fraudulent signatures and expiration dates.

2. The United States Supreme Court has found that “the right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise’ Bush v.Gore, 531 U.S.98.,104-5 (2000). One part of electors exercising their right to vote is transparency in counting the votes and the security of the protections of their voice to be cast and lawfully tabulated.

3. The Secretary of State (SOS) claims that Plaintiff’s First Amended Complaint (FAC) lists generalized grievances and should be dismissed for 3 reasons (lack of standing, failure to state a claim, court lacks jurisdiction).

Response to - Lack of Standing

4. Plaintiffs have a legal cognizable interest in securing their First Amendment Rights and have been injured by the SOS allowing the voting systems in this state to be used when they were not tested by an EAC Accredited VSTL thus allowing for potential election interference by foreign actors, anomalies, and vote dilution. Plaintiffs are further injured economically by the policies of those that may have been elected illegally which has translated to a crime crisis, border crisis, inflation crisis, increased fuel and food prices, dramatic cost of living increases, and elected/selected officials have given billions to other countries without the people’s consent of their tax dollars. The United States is an embarrassment on the world stage, were at a point where nuclear war is a true and present danger.

5. Instead, we have been the beneficiaries of insufficient oversight, invalid contracts, mismanagement, and gross negligence. This has affected our entire state and renders the outcome that is to be assured by these systems of accountability, to be NULL and VOID.

6. Voting is meaningless unless the votes are fairly counted, and the winner is determined by the majority of the legally cast votes (Affirming injunction against a candidate taking office after an election in which fraud may have changed the outcome, based on violation of the right to vote when the “possibility is left open that some other candidate actually received more votes than the declared winner, which would mean that each of the votes cast for this candidate was ignored”) “‘and even the entire state,’ suffer irreparable injury when an ‘improperly seated . . . representative’” of the people exercises the powers of his office and when ‘constitutional freedoms’ are lost.” See *Marks v. Stinson*, 19 F.3d 873, 878 (3d Cir. 1994).

7. Personal injury is the failure of care by the SOS subjecting all Oregonians to a mass fraudulent election, dilution of their voice, in which we have no way of knowing how the election results would have turned out if done lawfully. Not following the protocols set in place by the EAC, the SOS has subjected the plaintiffs to installed officials with self-interests. Elections have consequences, none as great as having an unlawful winner in place that fails to represent the people.

8. Voters constitute a protected class as 1) the whole, general population of citizens do not vote, and 2) the protection of a Republican form of government relies on the expression of the peoples’ vote. First, Fourteenth, and Fifteenth amend. U.S. CONST., and Dec. of Ind.. See *Dep’t of Commerce v. U.S. House of Reps.*, 525 U.S. 316, 317, 331–32, 119 S.Ct. 765, 142 L.Ed.2d 797 (2002) (recognizing that voter’s “expected loss of a Representative to the United States Congress undoubtedly satisfies the injury-in-fact requirement of Article III standing” because voters have an “‘interest in maintaining the effectiveness of their votes,’” and “[w]ith one fewer Representative, [a state’s] residents’ votes will be diluted” (quoting *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962))).

9. The assertion of the Defendants that Plaintiffs lack standing to bring their claims is incorrect. The only assertion by Defendants is injury in fact. Injury in fact "... is based not on the number of people affected — a grievance is not generalized merely because it is suffered by large numbers of people. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 91 (3d ed. 2006). As the Supreme Court has noted, "[t]o deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody." *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 686-88, 93 S.Ct. 2405, 37 L.Ed.2d 254 (1973). Thus, "where a harm is concrete, though widely shared, the Court has found injury in fact." *EEC v. Akins*, 524 U.S. 11, 24, 118 S.Ct. 1777, 141 L.Ed.2d 10 (1998) (citation omitted). *Andrade v. Naacp of Austin*, 345 S.W.3d 1, 7-8 (Tex. 2011).

10. The actual and imminent injury will occur *again* during the 2022 Elections through the utilization of electronic voting equipment and systems that the Defendants acknowledge will be used because it allows elections to be decided without regard to the votes actually cast, thereby nullifying the right to vote and have one's vote counted without being debased, diluted, or destroyed. Opaque voting and counting methods performed by machines running uninspected, black boxes with computer codes is a primary cause of mistrust of election results and the basis for claims of election fraud, foreign tampering, and suppressing free speech representation when voting.

11. The Court told *Andrade* Plaintiffs, "we have held that the 'purity of the ballot box' provision requires only that the Legislature pass laws as necessary to deter fraud and protect ballot purity: 'This constitutional provision is addressed to the sound discretion of the Legislature.'" *Ibid.* (emphasis in original) (quoting *Wood v. State ex rel. Lee*, 126 S.W.2d 4, 9

(Tex. 1939)). *Id.* Pg. 4. Plaintiffs concur that the Constitution both grants power to states to regulate elections and forbids states when regulating elections from infringing upon their citizens “constitutional rights”, and Federal courts have recognized their intervention authority since at least the 1960s. E.g. *Gomillion v. Lightfoot*, 364 U.S. 339, 347 (1960) "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.")

12. Plaintiffs may have ill pleaded their statement of harm in the FAC but nonetheless the evidence constitutes acknowledgment and the courts full attention for complete redress of injuries. The facts remain, that uncertified machines were used and were not in compliance with the procedural requirements of the program established by the EAC’s VSTL Accreditation Program Manual which are required to meet the statutory requirements set forth by HAVA. The SOS failed in the first step of her approval process of using systems only examined by a fully accredited VSTL. This step being missed severely put every Oregon voter at risk and in turn the nation. (52 U.S.C. Subtitle II, Ch. 209: Election Administration Improvement¹ - Subpart3-technical guidelines development committee-Part B-Testing, Certification, Decertification and Recertification of voting system hardware and software §20971 (a)(2) **Optional use by States** “At the option of a State, the state may provide for the testing, certification, decertification, or recertification of its voting system hardware and software by the **laboratories accredited by the commission** under this section.”

¹ <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title52-chapter209&saved=%7CZ3JhbnVsZWlkOIVTQy1wcmVsaW0tdGI0bGU1Mi1jaGFwdGVyMjA5LXN1YmNoYXB0ZXlyLXBhcnRE%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim>

13. Due to Constitutional violations 28 U.S.C. §§ 1331, 1343, this action seeks to protect civil rights under the First and Fourteenth Amendment to the United States Constitution. Here, because jurisdiction exists pursuant to 28 U.S.C. § 1331, there is no concern...to circumvent normal requirements of federal jurisdiction. *Coffman v. Breeze Corp.*, 323 U.S. 316 (1945). “The Court cited with approval the Ninth Circuit's decision in *Life Ins. Co. of North Am. v. Reichardt*, 591 F.2d 499, 505 (9th Cir. 1979), which held that “[v]iolations of state conferred rights and privileges are sufficient to constitute a deprivation of ‘equal protection of the laws.’” *Traggis v. St. Barbara's Greek Orthodox Church*, 851 F.2d 584, 589 (2d Cir. 1988).

14. For the consideration of federal jurisdiction, “there is guidance enough in the nation that due process is implicated where the entire election process — including as part thereof the state's administrative and judicial corrective process — fails on its face to afford fundamental fairness... In cases falling within such confines, we think a federal judge need not be timid, but may and should do what common sense and justice require.” *Griffin v. Burns*, 570 F.2d 1065 (1st Cir. 1978). Due process, “[r]epresenting a profound attitude of fairness between man and man, and more particularly between individual and government,” *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 163, 72 S.Ct. 624, 643, 95 L.Ed. 817 (1951) (Frankfurter, J., concurring), is implicated in such a situation.

15. Officials violating the law in regard to the preservation of a government of the people, by the people, and for the people are consequentially in violation of the U.S. Constitution. Thus, one of the most basic requirements of a 42 U.S.C. § 1983 claim is that defendant personally cause — either by directing or knowing of and acquiescing in — the deprivation of a Plaintiffs’ constitutional rights. See *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988).

16. Plaintiffs have standing under; *Lujan v. Defenders of Wildlife*, U.S. 112 s. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992) and *Elmore v. McCammon* (1986) 640 F Supp. 905: “.... The right to file a lawsuit pro se as one of the most important rights under the Constitution and laws.” “Allegations such as those asserted by the petitioner, however in artfully pleaded, are sufficient”, “which we hold to less stringent standards than formal pleading drafted by a lawyer.”

Response to-Failure to State a Claim

17. Failure to state a claim is the most standard and overly abused argument in case replies. It's very unfortunate that our country has come to such general reaching topics when harm has been inflicted and clear evidence that needs addressing is presented. The SOS breached her duty of care to the Plaintiffs by not following the laws she took an Oath to uphold. The SOS, in her role as Chief Election Officer², owes a duty of care to Plaintiff's and all Oregonians to ensure elections laws are followed and “shall diligently seek out **any** evidence of violation of **any** election law³” to ensure our votes and voices are secure.

18. Plaintiffs believe they stated their claim of harm in the FAC and this reply to MTD. Damage to their first amendment right being violated and other constitutional protections.

19. *Jenkins v. McKeithen*, 395 U.S. 411,421 (1959); *Picking v. Pennsylvania R. Co.* 151 Fed 2nd; *Pucket v Cox*, 456 2nd 233 “Pro se pleadings are to be considered without regard to technicality: pro se litigants’ pleadings are not to be held to the same standards of perfection as lawyers. “The plaintiffs’ civil rights pleadings were 150 pages and escribed by a federal judge as “inept”. Nevertheless, it was held “Where a plaintiff pleads pro se in a suit for protection of civil

² https://oregon.public.law/statutes/ors_246.110

³ https://oregon.public.law/statutes/ors_246.046

rights, the Court should endeavor to construe Plaintiffs Pleading without regard to technicalities.”

20. Additionally, Defense insists Plaintiff’s “misunderstands the statutory structure that governs the accreditation of voting systems test labs.” Has the SOS actually read the laws and manuals that govern our elections? The Plaintiff’s who are Oregon electors have read HAVA and the VSTL Program manual.

21. According to the EAC’s own Website: “In order to meet its statutory requirements under HAVA §15371(b), the EAC has developed the EAC’s Voting System Test Laboratory Accreditation Program. **The procedural requirements of the program are established in the proposed information collection, the EAC Voting System Test Laboratory Accreditation Program Manual. Although participation in the program is voluntary, adherence to the program’s procedural requirements is mandatory for participants.** The procedural requirements of this Manual will supersede any prior laboratory accreditation requirements issued by the EAC. This manual shall be read in conjunction with the EAC’s **Voting System Testing and Certification Program Manual** (OMB 3265-0019).”⁴

Response to-Lack of Jurisdiction

22. As noted on the EAC Website and cited above, HAVA is a congressionally passed act, a Federal Voting Assistance Program, and although the **program is voluntary, adherence to the program’s procedural requirements is mandatory for participants. Oregon voluntarily participates so the requirements are MANDATORY.**

⁴ <https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl>

23. Plaintiffs bring this action under 42 U.S.C. § 1983 to challenge government officers' violations of the United States Constitution and to seek prospective relief.

24. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this action seeks to protect civil rights under the Fourteenth Amendment to the United States Constitution.

25. This Court has personal jurisdiction over each Defendant because each Defendant is located in the State of Oregon.

Response to - Elections in Oregon

26. Defense states that the SOS is Oregon's chief election officer that includes oversight responsibility, including the certification of vote tally machines. Plaintiffs have not claimed that the secretary of state directly **conducts** elections, but the secretary of state **in fact does** distribute the information and approves choices of certified election machines. The SOS approves the machines and software, that must be in federal compliance under the HAVA Act and EAC guidelines which in turn renders it usable or unusable at the Oregon State and county level. The SOS's negligence, breach of duty and care have failed Oregonians and Plaintiffs.

27. As counsel states that Oregon officials employ multiple procedures to ensure election results are reliable. The first step of security assurance is to include **only** equipment tested by an accredited VSTL so that the SOS can certify the vendor and voting systems used to count/tally ballots. Defense clearly misses the mark on the first step to ensure election results are secure and safe, which is OAR 165-007-0350 implied under federal standard. Plaintiffs wonder if defense is implying that the specific Federal rule does not apply to Oregon, which further puts into question why all these years Oregon has wasted Plaintiffs tax dollars by utilizing the Federal rule of the VSTL to voluntarily participate to receive funding from HAVA. It seems the SOS is implying

we just skip over the federal details when it's convenient and the ball has been dropped. Rules for thee, not for me. Plaintiffs believe as commoners they would not be afforded such luxuries in law compliance. If revocation were the **only** manner in which accreditation would cease, the rest of the regulations would be invalid.

Supportive Evidence of Claim

28. Plaintiffs enter supporting evidence of this reply to MTD and support of FAC (Exhibit S) Georgia's election complaint surrounding the VSTL accreditation topic and purported VSTL certificate fraud. Rules have been disregarded and shadowed by private interest and self-preservation. Americans across this Country and Oregon believe it's clearly self-preservation of official's active participation in malfeasance.

29. The simple fact of this matter is the SOS could produce the VSTL timely reaccreditation application, approvals and audits through their very own diligence in trust and care. Did their offices submit FOIAs to find what was missing from the EAC site or would we assume it was blind trust to all the components that were missing prior to the 2020 election? The purported EAC administrative error statement was issued a full year later (2021) to the alleged administrative error. What were the SOS checks and balances then to verify validity of VSTL accreditation in 2020 and 2022? If she did not validate that her predecessor did their due diligence in confirming accreditation and that all paperwork was in order, or what was missing from the EAC records, then how would election machines and software ever have been verified to be lawful for use? This clear issue has been disregarded and Oregonians deemed unintelligent. Pleas brushed under the rug, ignored, all for their sake of self-preservation across this nation.

30. Even Mr. Lovato agrees with the rules of a two-year maximum accreditation. Did the SOS verify the VSTL accreditations with the EAC that in-fact they submitted a timely

application package in the 30-60 day window prior to their expiration as required by law?

It is still in question if the VSTL's actually remained in good standing based on his statement if it was not verified by the SOS that their application package was actually submitted.



U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

FROM: Jerome Lovato, Voting System Testing and Certification Director
SUBJECT: SLI Compliance EAC VSTL Accreditation
DATE: 1/27/2021

SLI Compliance, a division of Gaming Laboratories International, LLC (SLI) has completed all requirements to remain in good standing with the EAC's Testing and Certification program per section 3.8 of the Voting System Test Laboratory Manual, version 2.0:

Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending. VSTLs in good standing shall also retain their accreditation should circumstances leave the EAC without a quorum to conduct the vote required under Section 3.5.5.

Due to the outstanding circumstances posed by COVID-19, the renewal process for EAC laboratories has been delayed for an extended period. While this process continues, SLI retains its EAC VSTL accreditation.

The WHO Declared COVID-19 a Pandemic on 3/19/20 as noted in the FAC Page 23, 47(b).

Plaintiff's response to - Defense MTD based on Fed. R. Civ. P. 12(b)(1) Standard and 12(b)(6) Standard.

31. The jurisdictional counterpart of 42 U.S.C. § 1983 is 28 U.S.C. § 1343(a)(3), which affords district courts original jurisdiction of any civil action. In determining whether subject-matter jurisdiction is established when a FED. R. CIV. P. Rule 12(b)(1) motion to dismiss is brought, courts may consider if "The jurisdictional question is intertwined with the merits of the case if subject matter jurisdiction is dependent on the same statute which provides the substantive claim in the case." *Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995).

"Jurisdictional attacks intertwined with the merits of a claim are equivalent to any other

intertwined attack, “thereby making resolution of the jurisdictional issue on a 12(b)(1) motion improper.” *Montez v. Dep’t of Navy*, 392 F.3d 147, 150 (5th Cir. 2004); (see *Kerns v. U.S.* 585 F.3d 187 (4th Cir. 2009), noting that, when a jurisdictional issue is intertwined with facts related to the merits, “trial court should then afford the plaintiff the procedural safeguards – such as discovery – that would apply were the plaintiff facing a direct attack on the merits”).

32. “The existence of subject-matter jurisdiction is a question of law that this court reviews de novo.” *ABF Freight Sys., Inc. v. Int’l Bhd. of Teamsters*, 645 F.3d 954, 958 (8th Cir. 2011). In a motion to dismiss under Rule 12(b)(1), “the court restricts itself to the face of the pleadings, and the non-moving party receives the same protections as it would defending against a motion brought under Rule 12(b)(6).” “A Rule 12(b)(6) motion is appropriate when a plaintiff has not exhausted administrative remedies. However, because the Court concludes that plaintiff has exhausted administrative remedies, it has subject matter jurisdiction over the claim and considers defendants’ motion to dismiss under Rule 12(b)(6).” *Turton v. Sharp Steel Rule Die, Inc.*, CIVIL ACTION No. 01-2017, at *1 n.1 (E.D. Pa. July 19, 2001).

33. “[O]n a Rule 12(b)(6) motion ‘The facts alleged in a complaint are to be taken as true.’” *Hoffman v. Preston*, 26 F.4th 1059, 1061 (9th Cir. 2022). The facts alleged must be “construed in the light most favorable to the nonmoving party.” *Hamm v. Equifax Info. Servs. LLC*, No. CV-17-03821-PHX-JJT, 2018 U.S. Dist. LEXIS 123505, at *3-4 (D. Ariz. July 24, 2018). “In considering a motion to dismiss under Rule 12(b)(6), a court must take all well pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. See *Jenkins v. McKeithen*, 395 U.S. 411, 421, 89 S.Ct. 1843, 1849, 23 L.Ed.2d 404 (1969).” *Turton v. Sharp Steel Rule Die, Inc.*, CIVIL ACTION No. 01-2017, at *1 (E.D. Pa. July 19, 2001).

Plaintiff’s Objection Response to Judicial Notice

34. Under Fed R. Evid. 201 (b) KINDS OF FACTS THAT MAY BE JUDICIALLY NOTICED. The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. This request falls short in meeting the measurements.

35. Defense alleges that a “**purpose clause**” is a fact when it is a simple statement of intent that appears at the beginning of a part or sub part either as a standalone section or as a part of another section. Revocation in the VSTL program manual is a standalone section (section 5). The purpose of the section is to not to imply accreditation be infinite, only how there is protocol and how it is to be carried out. A section just can’t be rolled into another section for incorporation. Each is a standalone section and has procedures in place for that action⁵.

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⁵ https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf

36. Further the SOS asks the court to take judicial notice of a purported legal position not widely known and circulated. This is not an action that the court should take for many reasons. It is not only negligent but irresponsible in actions of self-preservation by the SOS. **For these reasons the judicial notice should be denied.**

- a. This purported legal opinion is new and not widely known or circulated.
- b. An opinion position is being asked to represent as fact and bypass the procedure manuals and rules that the VSTL are to follow from the EAC. Are the manuals and rules not a legal position in entirety? The EAC is charged with creating rules and guideline of procedure, not to broadly state opinions and inject as fact.
- c. Opinion's change with each held seat position or new commission and legal counsel, it would be an unstable stance to take as many cases across this country have not had these glaring issues fully heard, litigated and viewed, nor have FOIA and record requests been fulfilled. It is putting the cart before the horse in a reach for damage control. A trial, investigation, witness testimony and fully heard argument is rightfully due on these complaints that plague our nation and state.
- d. The 2021 web page alteration on the EAC website vs. the long-standing manual and guidelines known for voluntary state participation since 2005 is not a logical measurement.

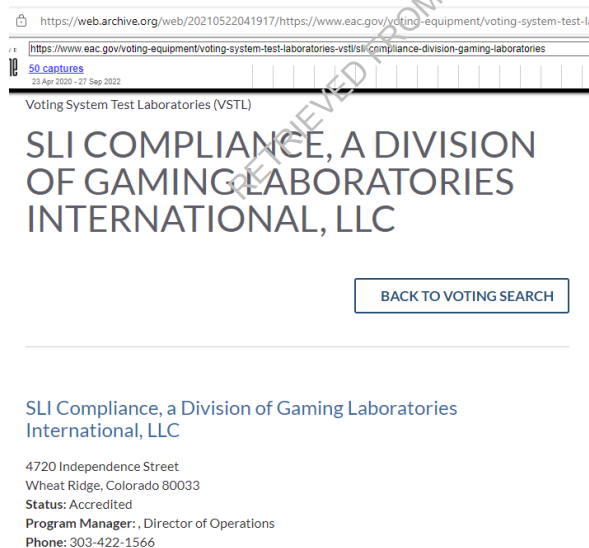
37. The revocation claim is indeed new in the last year for both VSTL's (which defense uses in reference to facts) raises extreme validity questions, given the statement was posted well after the November 2020 election, even long after 2017. If this is **common** standard, why has it been missing from the EAC main page for over 5 years?

38. Comparison of the websites are vastly different inciting more mistrust of the SOS's judgement. Please see discrepancies in the following archived web links as they do not show the same information.

a. SLI web page as claimed by counsel in MTD⁶



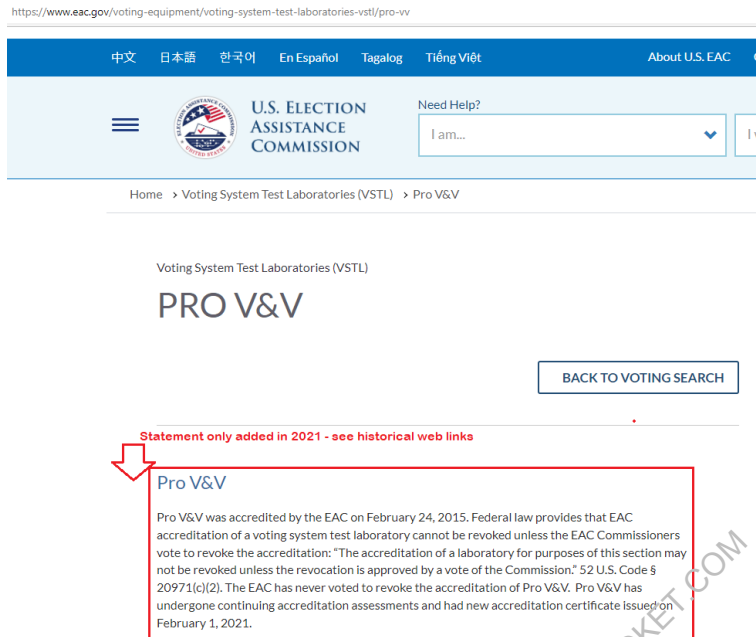
b. SLI Web page as of 5/22/2021 – no such statement about revocation.⁷



⁶ <https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl/sli-compliance-division-gaming-laboratories>

⁷ <https://web.archive.org/web/20210522041917/https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl/sli-compliance-division-gaming-laboratories>

c. Similarly, Defense offered the current web page for Pro V&V⁸



d. Pro V&V webpage as of 1/28/2021⁹



⁸ <https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl/pro-vv>

⁹ <https://archive.ph/KECoh>

39. How did these laboratories actually obtain a certificate of accreditation? It is **not** simply a matter of requesting or issuing a certificate. It is a contractual process whereby certain parameters must be in place in order to be in a relationship to do business. There are laws set forth by the EAC in the VSTL manual, the accreditation is “*subject to*” receipt of information and EAC review and approval of materials.

40. Pro V&V and SLI Compliance were the laboratories that administered the testing for election certifications in Oregon, however their accreditation expired. The labs had **no** authority to be testing any critical infrastructure, and the laboratories were to be thoroughly vetted every two years. Not just because it’s a good idea, but because it’s the law. It would be a violation of the public trust if all government contractors with access to critical infrastructure are able to do as they pleased.

41. The Ninth Circuit weighs in on the proper use of Judicial Notice and Incorporation by Reference¹⁰ as noted below:

- a. “While easy to recite, these doctrines have proved difficult to properly employ, a phenomenon the Ninth Circuit commented on at length in *Khoja v. Orexigan Therapeutics, Inc.* In *Khoja*, the panel expressed its concern over the seeming “exploit[ation] [of] these procedures improperly to defeat what would otherwise constitute adequately stated claims at the pleading stage.” Writing for the court, Justice A. Wallace Tashima acknowledged that “judicial notice and incorporation-by-reference do have roles to play at the pleading stage,” but noted that “overuse and improper application of judicial notice and the incorporation-by-reference doctrine,

¹⁰ <https://www.americanbar.org/groups/litigation/committees/securities/practice/2018/ninth-circuit-proper-use-of-judicial-notice/>

however, can lead to unintended and harmful results.” Specifically, the court observed that “the unscrupulous use of extrinsic documents to resolve competing theories against the complaint risks premature dismissals of plausible claims that may turn out to be valid after discovery.”

42. Defense claims the State is barred by the 11th amendment, under this pretense defense inserts that any federal offense done to its citizens Federal rights can never be heard in federal court. The Amendment proposed by Congress and ratified by the states was directed specifically toward overturning the result in *Chisholm* and preventing suits against states by citizens of other states or by citizens or subjects of foreign jurisdictions. It did **not**, as other possible versions of the Amendment would have done, altogether bar suits against states in the federal courts (Fletcher, *supra*, at 1058-63; Goebel, *supra*, at 736). That is, it barred suits against states based on the status of the party plaintiff and did not address the instance of suits based on the nature of the subject matter.¹¹

- a. As written, the Eleventh Amendment appears to prevent federal courts from hearing any suit by an out-of-state or foreign citizen against a state, **but does not prevent federal courts from hearing suits by citizens against their own states.**
- b. Perhaps most significantly, Congress may – in some instances – override the immunity established by the 11th Amendment. Most often, this has meant that Congress can act within its authority to legislate under the enforcement provision of the 14th Amendment, and abrogate state sovereign immunity in states relating to that enforcement. For example, in *Fitzpatrick v. Bitzer* (1976), the Court examined a Congressional act giving individuals the power to sue states in federal court over

¹¹ <https://caselaw.findlaw.com/us-supreme-court/2/419.html>

violations of Title VII of the Civil Rights Act (which prohibits discrimination). Title VII was passed pursuant to the Equal Protection Clause of the 14th Amendment. The 14th Amendment, the Court held, was specifically passed to constrain state authority – to prevent them from being able to discriminate and to give the federal government the power to act toward that goal. The Court ruled that the 14th Amendment overrode the 11th Amendment, and the lawsuit provision of Title VII was therefore constitutional.

43. Furthermore, the other significant issue that has harmed plaintiffs first amendment right in Oregon that the SOS oversees is vote by mail. Under 52 U.S. Code 21081- Voting systems standards (a) (1) (A) (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error);

44. Voters are not provided the opportunity to correct a ballot before the ballot is counted. If the ballot has error or been filled out incorrectly the ballot is then corrected by election workers, a stranger, who assumes or interjects their opinion of the voters intended voice. If a ballot is mailed ahead of time and some issues arises changing the voters mind on whom they originally voted for, it's far too late to make that correction after the ballot is relinquished to the mail carrier. Voters in 2022 do not follow their ballot all the way from, filling it out, to the time its counted on a mechanical tabulator, there is no process that lets a voter “guard the ballot and their voice” all the way to the time of counting/tally. It is unattended by the lawful voter as soon as its mailed or dropped off at the ballot drop box leaving no chance to correct or change candidates at the last minute before counting/tally.

45. Further, Plaintiffs submit supportive evidence (Exhibit T). Plaintiffs addressed the SOS dereliction of duty to all 36 Oregon County Commissioners and Clerks of their grievances and advised them of their participation in using unlawful uncertified machines in the wake of the missing VSTL accreditations that harmed their voice and diluted their vote from each county. Plaintiffs pleaded for protection to ensure the safety of their first amendment rights.

46. The recent arrest of Eugene Yu CEO of Konnech Corporation for stealing poll worker data and storing it in the people's Republic of China shows how vulnerable our election processes are – see multiple articles on this topic^{12 13 14}.

47. To Plaintiffs knowledge and belief, the courts cannot accept a citizen does not have a remedy in a voting act. See recent Supreme Court decision in Delaware (C.A. No. 2022-0641-NAC & C.A. No. 2022-0644-NAC).

CONCLUSION/PRAYER

If ballots that represent our First Amendment rights are counted on a fraudulent tabulation machine, with even the mere smallest risk of being altered or harmed by unlawful actions and equipment usage is not sufficient standing, then we have strayed far away from our Country's founding, culture and protections surrounding our right to free speech with proper representation and have fallen into the abyss of self-interest and preservation.

The Plaintiffs recognize the failures of the EAC administration and their actions against this nation, however, **this complaint** is against our own SOS that was to ensure our safety and the protocols set forth were followed, and checked, on every level, and in every step of the SOS

¹² <https://toresays.com/2022/10/05/op-ed-chinese-company-konnech-funded-by-dod/>

¹³ <https://kanekoa.substack.com/p/the-curious-case-of-jinhua-konnech>

¹⁴ <https://www.thegatewaypundit.com/2022/10/huge-truethethevote-right-election-company-konnech-ceo-eugene-yu-arrested-los-angeles-theft-personal-data/>

official duties of care and trust. Even when entering her new position, blind trust should have NEVER happened.

For the foregoing reasons, Defendants' Motion should be denied. If the Court grants the motion in whole or in part, Plaintiffs should be given leave to amend the Complaint.

Respectfully submitted this 14th Day of October 2022.

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September 12, 2022

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RE: OFFICIAL COMPLAINT

Board Members:

We are submitting this official complaint regarding the circumstances surrounding the official certification of Georgia's electronic voting system by the Elections Assistance Commission (hereinafter "EAC"). Our investigation has uncovered evidence which calls in to question, not only the validity of Georgia's voting system certification, but the accreditation of the Voting System Testing Laboratory, and the credibility of the EAC itself.

While the actions and deficiencies of the EAC are beyond the purview of this board, Georgia law required the purchase of an EAC certified electronic voting system.¹

When the Georgia State legislature passed such a requirement, they did so with the implicit expectation that such an EAC certified voting system would meet standards in accordance with federal law.

Unfortunately, that certification is but an empty shell as the EAC's outdated voting system guidelines, requirements, rules, and methods of measuring compliance as promulgated by federal law have been effectively ignored, circumvented, and dismissed. The EAC has failed to maintain oversight and accreditation of the Voting System Testing Labs as required by the Help America Vote Act (HAVA).² Efforts to conceal this fact have only magnified the damage, perpetuated a fraud upon the American people, and prevented correction or

¹ Ga. Code § 21-2-300 ("(3) The state shall furnish a uniform system of electronic ballot markers and ballot scanners for use in each county as soon as possible. Such equipment shall be certified by the United States Election Assistance Commission prior to purchase, lease, or acquisition.")

² [Help America Vote Act | U.S. Election Assistance Commission](#)

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remedy. Specifically:

1. Pro V&V's EAC Voting System Testing Lab Accreditation expired in 2017.
2. EAC officials have falsely misrepresented the accreditation status of Pro V&V and have gone to extraordinary lengths to conceal the fact that Pro V&V's accreditation was expired for an extended period of time.
 - A. Records and analysis strongly suggest that the EAC fabricated documents on behalf of Pro V&V then posted those documents on the EAC website. Seemingly this was done in an effort to make it appear as though the required documents had been timely submitted.
 - B. Following the 2020 General Election, the EAC falsely claimed that the reason Pro V&V's accreditation certificate(s) had not been issued was because of:
 1. Delays caused by COVID-19
 2. Administrative Error
 3. Accreditation wasn't Revoked
3. Georgia's current voting system was not certified in accordance with the Help America Vote Act. The voting system Georgia purchased was not tested by an EAC accredited Voting System Testing Lab as required thereby rendering the EAC certification invalid based upon the established requirements.

BACKGROUND

The issues presented in this complaint are governed by the rules and regulations of the Election Assistance Commission (EAC). The EAC's authority is derived from the Help America Vote Act (HAVA) which was passed by the U.S. Congress in 2002.³ HAVA requires that the EAC provide for the accreditation and revocation of accreditation of independent, non-federal laboratories qualified to test voting systems to Federal standards.⁴ The EAC is also charged with establishing those Federal Standards.⁵

³ HAVA is codified at 52 U.S.C. 20901 to 21145

⁴ Help America Vote Act (HAVA) of 2002 ([42 U.S.C. 15371\(b\)](#)) requires that the EAC provide for the accreditation and revocation of accreditation of independent, non-federal laboratories qualified to test voting systems to Federal standards.

⁵ Section 311 of the Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to periodically adopt standards for voting systems in the form of Voluntary Voting System Guidelines

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From the EAC's website:

HAVA creates new mandatory minimum standards for states to follow in several key areas of election administration. The law provides funding to help states meet these new standards, replace voting systems and improve election administration. HAVA also established the Election Assistance Commission (EAC) to assist the states regarding HAVA compliance and to distribute HAVA funds to the states. EAC is also charged with creating voting system guidelines and operating the federal government's first voting system certification program.

The EAC is responsible for creating voting system testing guidelines which are standards and rules that voting machines must comply with to be certified. The EAC accredits third-party companies to test whether voting systems meet the requirements of the voting system guidelines. These companies are called Voting System Testing Labs (VSTLs). Although this complaint centers on the accreditation of one VSTL, it's important to understand the following facts:

1. **Every** voting machine certified by the EAC used in the United States today has not been tested beyond a 2005 standard (Pre-iPhone).⁶
2. Voting system certification does not include testing for penetration, intrusion or system manipulation (doesn't test if the machines can be used to cheat).⁷
3. The Voting System Testing Labs (VSTLs) responsible for testing the voting systems for the EAC are not paid by the EAC but by the voting system manufacturers (Dominion, ES&S, Hart); therefore, an inherent conflict of interest exists.⁸
4. The VSTLs are not qualified nor are they accredited by the EAC to perform any type of forensic audits of the voting systems like those they were paid to perform in many locales following the 2020 general election (Maricopa, Georgia, Michigan, etc.).⁹
5. There are only 2 VSTLs currently recognized by the EAC; Pro V&V and SLI Compliance.¹⁰

1. PRO V&V'S ACCREDITATION EXPIRED IN 2017

⁶ [Certified Voting Systems | U.S. Election Assistance Commission \(eac.gov\)](https://www.eac.gov/certified-voting-systems)

⁷ [Voluntary Voting System Guidelines | U.S. Election Assistance Commission \(eac.gov\)](https://www.eac.gov/voluntary-voting-system-guidelines)

⁸ [Frequently Asked Questions | U.S. Election Assistance Commission \(eac.gov\)](https://www.eac.gov/frequently-asked-questions)

⁹ [Chain of Custody Best Practices \(eac.gov\)](https://www.eac.gov/chain-of-custody-best-practices)

¹⁰ [Voting System Test Laboratories \(VSTL\) | U.S. Election Assistance Commission \(eac.gov\)](https://www.eac.gov/voting-system-test-laboratories)

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The VSTL Program Manual¹¹ explicitly states:

3.8. Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending.

The fact is that Pro V&V was not in good standing. The first Certificate of Accreditation issued to Pro V&V is below:



The Certificate of Accreditation clearly delineates the beginning date of February 24, 2015 and is “Effective Through” February 24, 2017. There are simply no submissions by Pro V&V as required to renew their accreditation (save those filed in 2015) until after the 2020 general election. The fact is that Pro V&V’s accreditation expired on February 24, 2017. Even so, Pro V&V continued as though they remained accredited. It was during this time when Pro V&V tested Dominion’s Democracy Suite 5.5A(G), which was subsequently and erroneously certified by the EAC.

2. EAC FALSELY MISREPRESENTED PRO V&V’S ACCREDITATION

¹¹ VSTL Program Manual, Version 1, effective July 2008, and Version 2, effective May 2015, approved by vote of the EAC Commission

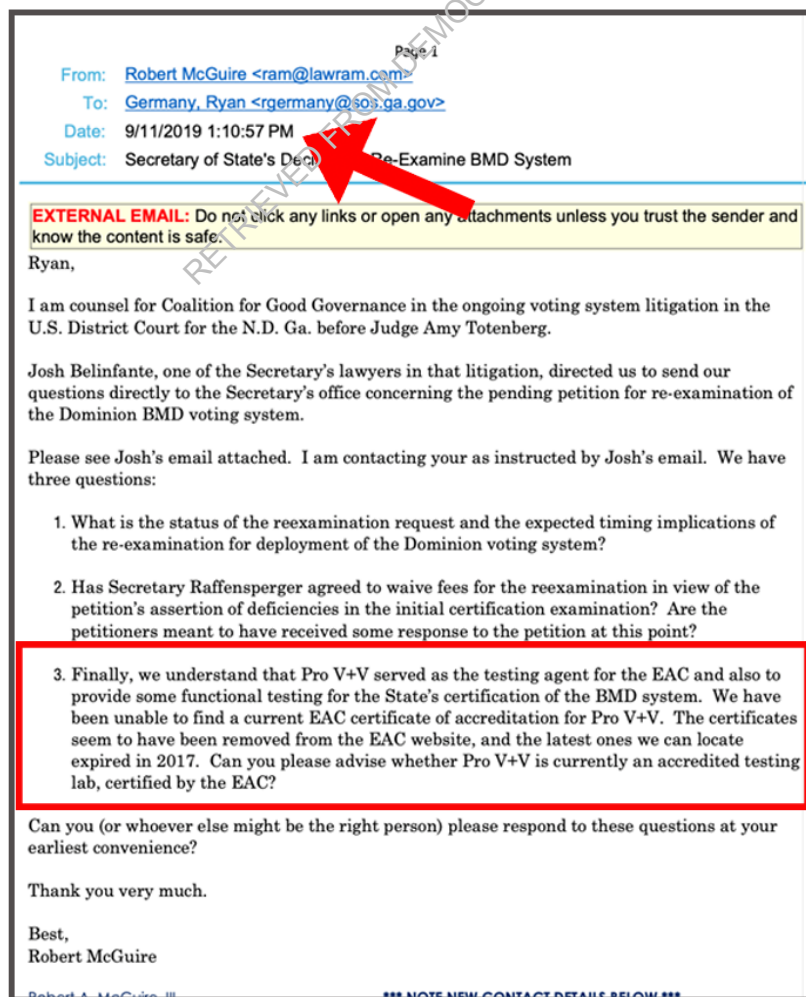
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Through a series of fraudulent acts and extraordinary statements, the EAC has engaged in a practice of subterfuge and deceit to conceal the fact that Pro V&V was not an accredited laboratory for an extended period of time.

A. FABRICATION OF DOCUMENTS

On September 11, 2019, an attorney representing the Coalition for Good Governance in a pending federal lawsuit (Curling v. Raffensperger) sent an email to Ryan Germany, General Counsel for the Georgia Secretary of State. The email inquired about the accreditation status of Pro V&V who had tested Georgia's Dominion Democracy Suite 5.5A(G) voting system that the EAC had subsequently certified. Specifically, the email states in part:

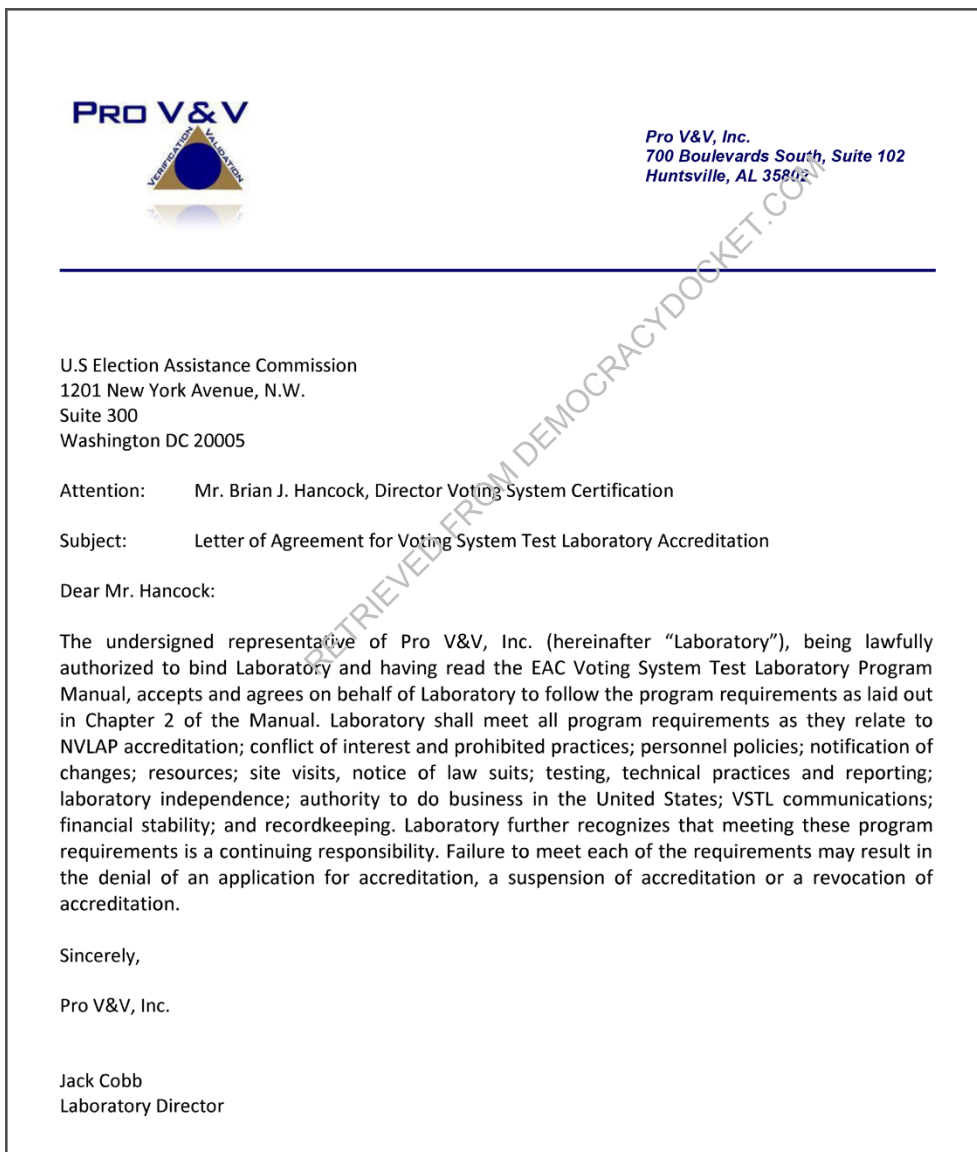
"3. Finally, we understand that Pro V+V served as the testing agent for the EAC and also to provide some functional testing for the State's certification of the BMD system. We have been unable to find a current EAC certificate of accreditation for Pro V+V. The certificates seem to have been removed from the EAC website, and the latest ones we can locate expired in 2017. Can you please advise whether Pro V+V is an accredited testing lab, certified by the EAC?"



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As Mr. McGuire states in the email above, the EAC website showed only one certificate of accreditation for Pro V&V which was issued in February of 2015 and expired in February of 2017.

A review of Pro V&V's records posted on the EAC's website revealed a document which was not posted until *after* the inquiry noted above. Complainants downloaded the document with the filename "Pro V&V Letter of Agreement.pdf" which is posted below (An electronic copy is also attached for your independent review):



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Pro V&V's "Letter of Agreement" was addressed to Mr. Brian J. Hancock, the former Director of Voting System Certification for the EAC. Interestingly, there is no date nor signature which the rules adopted by the EAC specifically require:

***Submission of Documents.** Any documents submitted pursuant to the requirements of this Manual shall be submitted:*

with a proper signature when required by this Manual. Documents that require an authorized signature may be signed with an electronic representation or image of the signature of an authorized management representative.

3.4.2. Letter of Agreement. The applicant laboratory must submit a signed letter of agreement as part of its application. To that end, applicant laboratories are required to submit a Letter of Application requesting accreditation. The letter shall be addressed to the Testing and Certification Program Director and attach (in either hard copy or on CD/DVD) (1) all required information and documentation; (2) a signed letter of agreement; and (3) a signed certification of conditions and practices.

Due to the suspect circumstances surrounding the document, we decided to view the file's metadata. This shows the document posted on the EAC's website was created six (6) days after the email seeking the status of Pro V&V's accreditation.

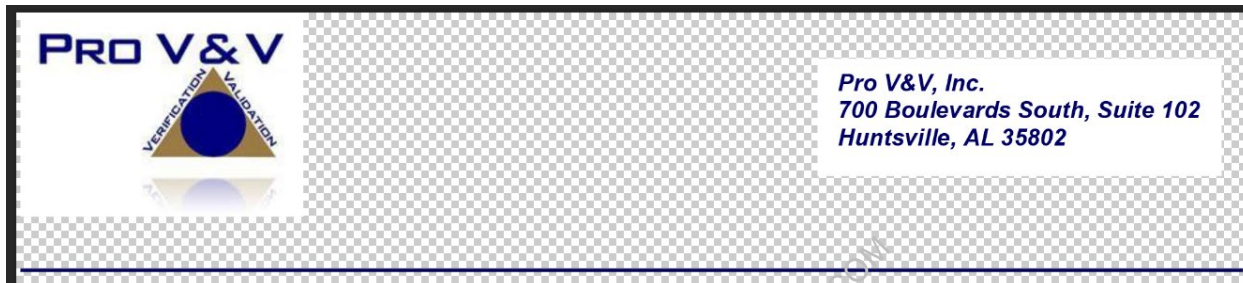


What's more, the Letter of Agreement that Mr. Lovato seemingly created on September 17, 2019, was addressed to Mr. Brian J. Hancock. The problem is that Mr. Hancock had retired in February of 2019, or nearly seven months before the letter was created.

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Additionally, the file's metadata shows that the document was not authored by Jack Cobb of Pro V&V, but by the EAC's own Testing and Certification Director, Jerome Lovato. Perhaps there's a good explanation, or at least a plausible one; however, there are other problems. When the document was opened in Photoshop, it revealed that the letterhead was not one image as one would expect, but images that had been cut and pasted:

Document Header from the Letter of Agreement added by Jerome Lovato as shown in Adobe Photoshop:



Document Header from the 2020 Letter of Agreement as shown in Adobe Photoshop using the same process:



If the Letter of Agreement was in-fact created by Pro V&V, they didn't include their phone number, email, and misspelled their own address on their "letterhead":



Also, the EAC's address changed from that of the letter (1201 New York Ave, DC) to 1335 East West Highway, MD on October 22, 2013, or before the date to which the letter was attributed.

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No matter the provenance of the Letter of Agreement, without a date or signature it fails to meet any acceptable standard. The same is acknowledged by the fact that the document was not publicly posted as required until 6 days after the email cited above inquiring about Pro V&V's accreditation status. Lastly, the EAC never issued a Certificate of Accreditation for 2017 when Pro V&V's 2015 accreditation expired.

B. EAC MISREPRESENTED STATUS OF PRO V&V

After the 2020 General election the EAC went so far as to surreptitiously cover-up the fact that Pro V&V was not accredited and had not been for years. Pro V&V was granted EAC accreditation as a Voting Systems Testing Laboratory (VSTL) on February 24, 2015 and was effective through February 24, 2017. From the Voting System Test Laboratory Program Manual, Version 2.0

3.8 Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending. VSTLs in good standing shall also retain their accreditation should circumstances leave the EAC without a quorum to conduct the vote required under Section 3.5.5.

There is no record whatsoever of Pro V&V renewing their accreditation in 2017, despite the requirement that all associated documents *shall* be posted on the EAC's website:

3.6.2. Post Information on Web Site. The Program Director shall make information pertaining to each accredited laboratory available to the public on EAC's Web site. This information shall include (but is not limited to):

- 3.6.2.1. NIST's Recommendation Letter;*
- 3.6.2.2. The VSTL's Letter of Agreement;*
- 3.6.2.3. The VSTL's Certification of Conditions and Practices;*
- 3.6.2.4. The Commissioner's Decision on Accreditation; and 3.6.2.5. The Certificate of Accreditation.*

There is also no record of Pro V&V renewing their accreditation in 2019. It isn't until after the 2020 general election that Pro V&V's accreditation is renewed.

1. PANDEMIC EXCUSE

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On January 27, 2021, Jerome Lovato of the EAC issued the following memo attempting to use the pandemic somehow as cause for Pro V&V's "questionable" accreditation status:



U.S. ELECTION ASSISTANCE COMMISSION
 633 3rd St. NW, Suite 200
 Washington, DC 20001

FROM: Jerome Lovato, Voting System Testing and Certification Director
SUBJECT: Pro V&V EAC VSTL Accreditation
DATE: 1/27/2021

Pro V&V has completed all requirements to remain in good standing with the EAC's Testing and Certification program per section 3.8 of the Voting System Test Laboratory Manual, version 2.0:

Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending. VSTLs in good standing shall also retain their accreditation should circumstances leave the EAC without a quorum to conduct the vote required under Section 3.5.5.

Due to the outstanding circumstances posed by COVID-19, the renewal process for EAC laboratories has been delayed for an extended period. While this process continues, Pro V&V retains its EAC VSTL accreditation.

Lovato states:

Pro V&V has completed all requirements to remain in good standing with the EAC's Testing and Certification program per section 3.8 of the Voting System Test Laboratory Manual, version 2.0:

The statement above is false by any metric. Lovato would have us believe that Pro V&V's accreditation was somehow current despite the required submissions and Certificates of Accreditation missing from the EAC's website (The EAC is required to post the documents). Then Lovato claims that the pandemic is the cause of any accreditation deficiency:

Due to the outstanding circumstances posed by COVID-19, the renewal process for EAC laboratories has been delayed for an extended period. While this process continues, Pro V&V retains its EAC VSTL accreditation.

Interestingly, Lovato specifically names Pro V&V and doesn't mention the other VSTL, SLI

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Compliance. Furthermore, the EAC's pandemic excuse is refuted simply by referencing a calendar. Pro V&V's accreditation expired in February of 2017, three years before the pandemic. Even if we were to accept the cryptic, undated and unsigned Letter of Agreement of questionable origin and attribute it to 2017, the accreditation would have expired in 2019, a year before COVID-19 was deemed a national emergency.

2. CLERICAL ERROR EXCUSE

The pandemic excuse is not retroactive to a time before the pandemic, a fact which was evidently brought to the attention of the EAC and what precipitated the release of the next memo (attached hereto as "Exhibit C") which states:

Due to administrative error during 2017-2019, the EAC did not issue an updated certificate to Pro V&V causing confusion with some people concerning their good standing status. Even though the EAC failed to reissue the certificate, Pro V&V's audit was completed in 2018 and again in early 2021 as the scheduled audit of Pro V&V in 2020 was postponed due to COVID-19 travel restrictions. Despite the challenges outlined above, throughout this period, Pro V&V and SLI Compliance remained in good standing with the requirements of our program and retained their accreditation. In addition, the EAC has placed appropriate procedures and qualified staff to oversee this aspect of the program ensuring the continued quality monitoring of the Testing and Certification program is robust and in place.

Again, even if we were to accept the highly suspect Letter of Agreement and attribute it to 2017, along with the EAC's explanation of administrative error in failing to issue a Certificate of Accreditation in 2017, the accreditation would have expired in February of 2019 without exception (3.8. *Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years*). The EAC conveniently ignores the irrefutable fact that Pro V&V is lacking **two** Certificates for Accreditation- one for 2017 and another for 2019. Also missing from the record and the EAC's website are Pro V&V's filings for accreditation renewal for both 2017 and 2019.

3. REVOCATION EXCUSE

In the same memo cited above, Mr. Lovato disingenuously attempts to address the concerns of *expiration* with the prospect of *revocation*. From the memo:

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The VSTL accreditation does not get revoked unless the commission votes to revoke accreditation; and by that same token, EAC generated certificates or lack thereof do not determine the validity of a VSTL's accreditation status.

Pro V&V was accredited by the EAC on February 24, 2015, and SLI Compliance was accredited by the EAC on February 28, 2007. Federal law provides that EAC accreditation of a voting system test laboratory cannot be revoked unless the EAC Commissioners vote to revoke the accreditation: "The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission." 52 U.S. Code § 20971(c)(2). The EAC has never voted to revoke the accreditation of Pro V&V. Pro V&V has undergone continuing accreditation assessments and had new accreditation certificate issued on February 1, 2021.

The EAC raises the matter of revocation and that such action requires a "vote of the Commission". It goes on to say "*The EAC has never voted to revoke the accreditation of Pro V&V*". The EAC is conflating the matters of *revocation* with that of *expiration*. Suggesting that simply because the Commission has never voted to revoke Pro V&V's accreditation, then it remains active by default. The prospect defies logic. The term "Expired" is defined as:

Expired- *cease to be valid after a fixed period of time.*

The term "Revocation" is defined as:

Revoked- *put an end to the validity or operation of.*

Expiration is automatic, as in when the term is up. Revocation requires an affirmative act to end something. Like a driver's license can be expired or revoked, the two are different and have different causes and meanings. A driver's license can be expired and therefore invalid without being revoked. Mr. Lovato's assertion is analogous to claiming that your expired driver's license is valid simply because it's not revoked. This rationale is ludicrous. Furthermore, to accept such a prospect would require ignoring the clearly defined prescription of time "...not to exceed two years."

The bright lines of the rules regarding accreditation renewal and expiration are clear; therefore, this is an effort of either deception or ignorance. Considering that Mr. Lovato cites the plain language detailing expiration in his January 21, 2021 memo (above), the possibility of ignorance is removed.

Also removed is a page from the EAC's website with the heading, "Labs with Expired Accreditation" that can be found archived here:

[Voting System Test Laboratories \(VSTL\) - Voting Equipment | US Election Assistance Commission \(archive.org\)](https://www.eac.gov/voting-system-test-laboratories-vstl-voting-equipment-us-election-assistance-commission/archive.org)

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The fact that the category, “Labs with Expired Accreditation” existed on the EAC’s website is damning to Lovato’s assertion as it establishes the EAC’s own acknowledgement that VSTL accreditations do expire *without* revocation. The removal of the page suggests that the EAC realized the same and acted to conceal that which would lift the thin veil of plausible deniability.

What’s more, we know from the email to the Georgia Secretary of State’s general counsel that the Secretary of State and the EAC were both made aware of Pro V&V’s long-expired accreditation over a year before the 2020 general election. Instead of properly addressing the deficiency at the time, the EAC presumably elected to create a fraudulent record on behalf of Pro V&V. Regardless, they knowingly chose to fraudulently misrepresent Pro V&V’s accreditation status and attempted to cover-up the facts with a litany of excuses that just don’t hold water.

3. GEORGIA’S VOTING SYSTEM WAS NEVER PROPERLY CERTIFIED

Pro V&V performed the testing on Georgia’s Dominion Democracy Suite 5.5A(G) system and submitted the final report to the EAC on August 7, 2019. Because Pro V&V’s VSTL accreditation expired in February of 2017 (or February of 2019 if we accept the EAC’s flawed excuses) and system certification requires testing by an EAC accredited VSTL, the EAC certification of Georgia’s voting system is not valid.

SUMMARY

As we mark the EAC’s 20th year, we must acknowledge that the EAC has failed to develop and maintain voting system testing guidelines, failed to oversee the accreditation of testing labs, and failed to test our country’s voting systems to a remotely reasonable standard. The fact is that EAC has miserably failed to perform not only its core mission, but all missions for its entire existence.

The actions of the EAC as detailed herein extend far beyond mere *failure*. The EAC has fabricated a fraudulent record for Pro V&V and has repeatedly, knowingly, and intentionally misrepresented the expired accreditation status of a Voting Systems Testing Laboratory to the American people. The EAC’s deceptive practices have fostered a false sense of security and materially violated their responsibilities under the HAVA in both letter and spirit of the law.

The inherit standard of any established institution or industry does not exist with voting systems in the United States. There is no benchmark, no independent method of testing, no oversight, and therefore there is no alternative but for the States to perform their own due

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diligence in testing our voting systems.

Wherefore, the Georgia State Election Board must immediately suspend use of the Dominion voting systems until a thorough, review by a panel of independent experts can be performed.

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OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN

SECRETARY OF STATE

CHERYL MYERS

DEPUTY SECRETARY OF STATE



ELECTIONS DIVISION

BRENDA BAYES

INTERIM DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

The table below shows the vote tally machine systems in use by each of Oregon's 36 county elections offices. Each of the vendors (ES&S, Clear Ballot, and HART) have been certified for use by the Secretary of State, Elections Division, in accordance with the law and applicable Oregon Administrative Rules.

	County	ES&S	Clear Ballot	HART
1	BAKER	X		
2	BENTON	X		
3	CLACKAMAS			X
4	CLATSOP	X		
5	COLUMBIA	X		
6	COOS		X	
7	CROOK		X	
8	CURRY		X	
9	DESCHUTES		X	
10	DOUGLAS		X	
11	GILLIAM	X		
12	GRANT	X		
13	HARNEY		X	
14	HOOD RIVER		X	
15	JACKSON		X	
16	JEFFERSON	X		
17	JOSEPHINE		X	
18	KLAMATH		X	
19	LAKE	X		
20	LANE		X	
21	LINCOLN	X		
22	LINN		X	

	County	ES&S	Clear Ballot	HART
23	MALHEUR	X		
24	MARION			X
25	MORROW	X		
26	MULTNOMAH		X	
27	POLK	X		
28	SHERMAN	X		
29	TILLAMOOK	X		
30	UMATILLA	X		
31	UNION	X		
32	WALLOWA	X		
33	WASCO		X	
34	WASHINGTON		X	
35	WHEELER	X		
36	YAMHILL			X

Contact List

The following list of officials have been sufficiently notified but failed to act.

Ms. Stefanie Kirby - Baker County Clerk, Mr. Bruce Nichols - Baker County Commissioner, Mr. Bill Harvey - Baker County Commissioner, Mr. Mark E. Bennett - Baker County Commissioner, Mr. James Morales - Benton County Clerk, Ms. Nancy Wyse - Benton County Commissioner, Mr. Pat Malone - Benton County Commissioner, Xanthippe Augerot - Benton County Commissioner, Ms. Sherry Hall - Clackamas County Clerk, Ms. Tootie Smith - Clackamas County Commissioner, Ms. Sonya Fischer - Clackamas County Commissioner, Mr. Paul Savas - Clackamas County Commissioner, Ms. Martha Schrader - Clackamas County Commissioner, Mr. Mark Shull - Clackamas County Commissioner, Ms. Tracie Krevanko - Clatsop County Clerk, Mr. Mark Kujala - Clatsop County Commissioner, Ms. Lianne Thompson - Clatsop County Commissioner, Mr. John Toyooka - Clatsop County Commissioner, Ms. Pamela Wev - Clatsop County Commissioner, Ms. Courtney Bangs - Clatsop County Commissioner, Ms. Debbie Klug - Columbia County Clerk, Mr. Casey Garrett - Columbia County Commissioner, Mr. Henry Heimuller - Columbia County Commissioner, Ms. Margaret Magruder - Columbia County Commissioner, Ms. Dede Murphy - Coos County Clerk, Mr. Bob Main - Coos County Commissioner, Mr. John Sweet - Coos County Commissioner, Ms. Melissa Cribbins - Coos County Commissioner, Ms. Cheryl Seely - Crook County Clerk, Mr. Brian Barney - Crook County Commissioner, Mr. Jerry Brummer - Crook County Commissioner, Mr. Seth Crawford - Crook County Judge, Ms. Renee Kolen - Curry County Clerk, Mr. Court Boice - Curry County Commissioner, Mr. Christopher Paasch - Curry County Commissioner, Mr. John Herzog - Curry County Commissioner, Mr. Steve Dennison - Deschutes County Clerk, Ms. Patty Adair - Deschutes County Commissioner, Mr. Phil Chang - Deschutes County Commissioner, Mr. Tony

DeBone - Deschutes County Commissioner, Mr. Tim Scott - Director of Elections, Mr. Dan Loomis - Douglas County Clerk, Mr. Tom Kress - Douglas County Commissioner, Mr. Chris Boice - Douglas County Commissioner, Mr. Tim Freeman - Douglas County Commissioner, Ms. Ellen Wagenaar - Gilliam County Clerk, Mr. Pat Shannon - Gilliam County Commissioner, Ms. Sherrie Wilkins - Gilliam County Commissioner, Ms. Elizabeth Farrar Campbell - Gilliam County Judge, Ms. Brenda J. Perry - Grant County Clerk, Mr. Jim Hamsher - Grant County Commissioner, Mr. Sam Palmer - Grant County Commissioner, Mr. Scott Myers - Grant County Judge, Mr. Dag Robinson - Harney County Clerk, Ms. Kristen Shelman - Harney County Commissioner, Ms. Patty Dorroh - Harney County Commissioner, Mr. Pete Runnels - Harney County Judge, Mr. Brian Beebe - Hood River County Clerk, Mr. Mike Oates - Hood River County Commissioner, Ms. Karen Joplin - Hood River County Commissioner, Mr. Arthur Babitz - Hood River County Commissioner, Mr. Bob Benton - Hood River County Commissioner, Les Perkins - Hood River County Commissioner, Ms. Christine Walker - Jackson County Clerk, Mr. Rick Dyer - Jackson County Commissioner, Mr. Dave Dotterer - Jackson County Commissioner, Ms. Colleen Roberts - Jackson County Commissioner, Ms. Kate Zemke - Jefferson County Clerk, Ms. Mae Huston - Jefferson County Commissioner, Mr. Wayne Fording - Jefferson County Commissioner, Mr. Kelly Simmerlink - Jefferson County Commissioner, Ms. Rhiannon Henkels - Josephine County Clerk, Mr. Dan DeYoung - Josephine County Commissioner, Mr. Herman Baertschiger Jr. - Josephine County Commissioner, Mr. Darin Fowler - Josephine County Commissioner, Ms. Rochelle Long - Klamath County Clerk, Ms. Kelly Minty - Klamath County Commissioner, Mr. Derrick DeGroot - Klamath County Commissioner, Mr. David Henslee - Klamath County Commissioner, Ms. Stacie Geaney - Lake County Clerk, Mr. Barry Shullanberger - Lake County Commissioner, Mr. James Williams -

Lake County Commissioner, Mr. Mark Albertson - Lake County Commissioner, Ms. Dena Dawson - Lane County Clerk, Mr. Joe Berney - Lane County Commissioner, Mr. Jay Bozievich - Lane County Commissioner, Ms. Heather Buch - Lane County Commissioner, Mr. Pat Farr - Lane County Commissioner, Ms. Laurie Trieger - Lane County Commissioner, Ms. Dana Jenkins - Lincoln County Clerk, Ms. Claire Hall - Lincoln County Commissioner, Mr. Doug Hunt - Lincoln County Commissioner, Ms. Kaety Jacobson - Lincoln County Commissioner, Mr. Steve Druckenmiller - Linn County Clerk, Mr. Roger Nyquist - Linn County Commissioner, Ms. Sherrie Sprenger - Linn County Commissioner, Mr. Will Tucker - Linn County Commissioner, Ms. Gayle Trotter - Malheur County Clerk, Mr. Ron Jacobs - Malheur County Commissioner, Mr. Don Hodge - Malheur County Commissioner, Mr. Don Joyce - Malheur County Judge, Mr. Bill Burgess - Marion County Clerk, Mr. Kevin Cameron - Marion County Commissioner, Ms. Danielle Bethell - Marion County Commissioner, Mr. Colm Willis - Marion County Commissioner, Ms. Bobbi Childers - Morrow County Clerk, Mr. Don Russell - Morrow County Commissioner, Mr. Jim Doherty - Morrow County Commissioner, Ms. Melissa Lindsay - Morrow County Commissioner, Ms. Deborah Kafoury - Multnomah County Commissioner, Ms. Susheela Jayapal - Multnomah County Commissioner, Ms. Sharon Meieran - Multnomah County Commissioner, Ms. Lori Stegmann - Multnomah County Commissioner, Ms. Jessica Vega Pederson - Multnomah County Commissioner, Ms. Valerie Unger - Polk County Clerk, Mr. Craig Pope - Polk County Commissioner, Mr. Lyle Mordhorst - Polk County Commissioner, Mr. Jeremy Gordon - Polk County Commissioner, Ms. Kristi Weis - Sherman County Clerk, Ms. Joan Bird - Sherman County Commissioner, Mr. Justin Miller - Sherman County Commissioner, Mr. Joe Dabulskis - Sherman County Judge, Ms. Tassi O'Neil - Tillamook County Clerk, Ms. Mary Faith Bell - Tillamook County Commissioner, Ms. Erin Skaar - Tillamook County

Commissioner, Mr. David Yamamoto - Tillamook County Commissioner, Mr. Dan Lonai - Umatilla County Clerk, Mr. George Murdock - Umatilla County Commissioner, Mr. John Shafer - Umatilla County Commissioner, Mr. Dan Dorran - Umatilla County Commissioner, Ms. Robin Church - Union County Clerk, Mr. Paul Anderes - Union County Commissioner, Ms. Donna Beverage - Union County Commissioner, Mr. Matt Scarfo - Union County Commissioner, Ms. Sandy Lathrop - Wallowa County Clerk, Mr. Todd Nash - Wallowa County Commissioner, Ms. Susan Roberts - Wallowa County Commissioner, Mr. John Hillock - Wallowa County Commissioner, Ms. Lisa Gambee - Wasco County Clerk, Ms. Kathy Schwartz - Wasco County Commissioner, Mr. Steve Kramer - Wasco County Commissioner, Mr. Scott Hege - Wasco County Commissioner, Mr. Dan Forester - Washington Co. Elections Manager, Ms. Kathryn Harrington - Washington County Commissioner, Ms. Nafisa Fai - Washington County Commissioner, Mr. Roy Rogers - Washington County Commissioner, Ms. Pam Treece - Washington County Commissioner, Mr. Jerry Willey - Washington County Commissioner, Ms. Brenda Snow - Wheeler County Clerk, Mr. Clinton Dyer - Wheeler County Commissioner, Mr. Rick Shaffer - Wheeler County Commissioner, Mr. N. Linn Morley - Wheeler County Judge, Ms. Keri Hinton - Yamhill County Clerk, Ms. Lindsay Berschauer - Yamhill County Commissioner, Ms. Mary Starrett - Yamhill County Commissioner, Mr. Casey Kulla - Yamhill County Commissioner, Ms. Shemia Fagan - Oregon Secretary of State, and Mr. Eric Blaine - Crook County Counsel.

September 13, 2022

Enclosed you will find information for clear ballot in visual context for your records, please retain.

- **Clear ballot makes up 15 of our 36 counties**
- **ES & S makes up 18 of the 36 counties**
- **Hart only 3 counties out of the 36**

The machines and software used in each county **affects** their surrounding counties and vice versa.

We are addressing the most intimate part of our county's election practices.

The results of our research have been so overwhelmingly glaring, that **3 ordinary Oregon Women** have filed a federal lawsuit against our SOS pro se, to protect our rights for fair, equal, and transparent elections, in which we have been underserved.

One should ask themselves, what would cause this action? I assure you it's certainly not media misinformation as most County Official's like to cite, but **our own** unwavering extensive research.

We have been met with many roadblocks for public records, unprofessional replies and letters from our elected officials and a **severe cognitive dissonance** in the information surrounding the issue at hand when they're presented.

This is not about a candidate, and 100% about participating in unlawful election practices that do not protect voters. **ORS 246.046** Secretary of State and county clerks to seek out evidence of violations.

Have you sought out the concerns that have been presented? The public that employs you certainly has.

We have made this visual as simple as possible to support you in your expected efforts and **fiduciary diligence**. All Oregonians have vested personal interest in each office of trust surrounding our official's.

Further expect you to thoroughly investigate the election processes under federal standards and the Help America Vote Act (HAVA) of 2002 with your County Law Counsel **on each of these demonstrated details that your county has overlooked or unknowingly participated in.**

The information presented is gathered from Oregon law, HAVA Act and the EAC, which sets the standard for using election machines and software in our State of Oregon and across our Country.

Please research, learn, and know the rules that affect our entire state and **your job**.

With the upmost diligence, we are striving for lawful and fair elections for all.

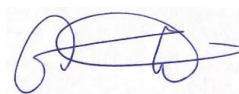
This includes **YOU**, you're a voter too!



Jennifer Gunter
Wasco County



Christina Milcarek
Marion County



Chelsea Weber
Clackamas County

The Help America Vote Act (HAVA) of 2002 was passed by the United States Congress to make sweeping reforms to the nation's voting process. HAVA addresses improvements to voting systems and voter access that were identified following the 2000 election. [Read the Help America Vote Act of 2002](#)

<https://www.congress.gov/107/plaws/publ252/PLAW-107publ252.pdf>

HAVA creates new **mandatory minimum standards** for states to follow in several key areas of election administration. The law provides funding to help states meet these new standards, replace voting systems and improve election administration. HAVA also established the Election Assistance Commission (EAC) to assist the states regarding HAVA **compliance** and to distribute HAVA funds to the states. EAC is also charged with creating voting system guidelines and operating the federal government's first voting system certification program.

Voting System Test Laboratory Program Manual, Version 2.0

3.6.1. Certificate of Accreditation. A Certificate of Accreditation shall be issued to each laboratory accredited by vote of the Commissioners. The certificate shall be signed by the Chair of the Commission and state:

3.6.1.1. The name of the VSTL;

3.6.1.2. The scope of accreditation, by stating the Federal standard or standards to which the VSTL is competent to test;

 3.6.1.3. The effective date of the certification, which shall not exceed a period of two (2) years; and

3.6.1.4. The technical standards to which the laboratory was accredited.

3.6.2. Post Information on Web Site. The Program Director shall make information pertaining to each accredited laboratory available to the public on EAC's Web site. This information shall include (but is not limited to):

3.6.2.1. NIST's Recommendation Letter;

3.6.2.2. The VSTL's Letter of Agreement;

3.6.2.3. The VSTL's Certification of Conditions and Practices;

3.6.2.4. The Commissioner's Decision on Accreditation; and

3.6.2.5. The Certificate of Accreditation.

https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf

3.6.1 “**shall**” be signed by the Chair of the Commission.

3.6.1.3 “**shall**” **not** exceed a Period of two years (this means it is not a blanketed or indefinite certification length of time).

“**shall**” is an imperative command, indicating that certain actions are mandatory, and not permissive. This contrasts with the word “may,” which is generally used to indicate a permissive provision, ordinarily implying some degree of discretion.



The last available EAC accreditation prior to 2021 for VSTL Pro V&V was signed on 2/24/2015 and was **only** effective through February 24, 2017. It was also signed by the Acting Executive Director and **not** by the EAC Chair as **required** per VSTL Program Manual ver. 2.0 effective May 31, 2015, Sec 3.6.1

<https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl/pro-vv>



United States Election Assistance Commission

Certificate of Accreditation

Pro V&V, Inc.
Huntsville, Alabama

is recognized by the U.S. Election Assistance Commission for the testing of voting systems to the 2005 and 2015 Voluntary Voting Systems Guidelines (VVSG 1.0 & 1.1) under the criteria set forth in the EAC Voting System Testing and Certification Program and Laboratory Accreditation Program. Pro V&V is also recognized as having successfully completed assessments by the National Voluntary Laboratory Accreditation Program for conformance to the requirements of ISO/IEC 17025 and the criteria set forth in NIST Handbooks 150 and 150-22.

Accreditation not to exceed 2 years per the rules

Original Accreditation Issued on: 2/24/2015

Accreditation remains effective until revoked by a vote of the EAC pursuant to 52 U.S.C. § 20971(c)(2).

Mona Harrington

Date: 2/1/21

Mona Harrington,
 Executive Director, U.S. Election Assistance Commission

EAC Lab Code: 1501

Not signed by the EAC Chair per the rules

(2) Approval by Commission required for revocation

The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission.

You cannot “revoke an accreditation that expired or lapsed.

This action defies the common sense of rule. How can you revoke an accreditation not in existence?

That would be the same idea as the DMV revoking an “expired license”.

https://www.eac.gov/sites/default/files/voting_system_test_lab/files/Pro%20V%26V%20Accreditation%20Certificate.pdf

[52 U.S. Code § 20971 - Certification and testing of voting systems | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

Pro V&V









Pro V&V was accredited by the EAC on February 24, 2015. Federal law provides that EAC accreditation of a voting system test laboratory cannot be revoked unless the EAC Commissioners vote to revoke the accreditation: "The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission." 52 U.S. Code § 20971(c)(2). The EAC has never voted to revoke the accreditation of Pro V&V. Pro V&V has undergone continuing accreditation assessments and had new accreditation certificate issued on February 1, 2021.

6705 Odyssey Dr NW Suite C,
Huntsville, Alabama 35806
Status: Accredited
Program Manager: President
Phone: 256-713-1111
Lab Contact: Jack Cobb

Revocation and lapse/expiration in accreditation are not the same thing. There is no documentation that Pro V&V was accredited between 2017 & 2021

Related Documents

2015 Certificate expired in 2017 per the Document and Program Rules. No further Accreditation Certificate was issued until 2021 leaving a gap in accreditation between 2017 & 2021

- 7/22/21 - VSTL Certificates and Accreditation 
- 3/10/21 - Pro V&V Letter of Agreement 
- 3/10/21 - Pro V&V Certification of Conditions and Practices 
- 2/1/2021 - Pro V&V Certificate of Accreditation 
- 01/27/2021 - Pro V&V Accreditation Renewal Memo 
- 02/24/2015 - Certificate of Accreditation 
- 08/02/2015 - Pro V&V Letter of Agreement 
- 08/02/2012 - NIST Recommendation Letter - Pro V&V 
- 08/02/2012 - Pro V&V Certification of Conditions and Practices 

According to the rules, the EAC is also **required** to "Post Information on the Website" per section 3.6.2. None of these documents are listed for this time frame nor can any supporting documents of accreditation be obtained through Public Record Request or FOIA's.

However, the Secretary of State noted on their Certificate of Approval in February of 2020 that Pro V&V is an EAC Accredited tester, even though their accreditation purportedly expired February 2017, yet still claiming all is good for the 2022 elections.

Do we feel blind trust is the answer when our voice through voting is at stake?

<https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl/pro-vv>

The EAC website also lists this memo between the accreditation certificates which is dated AFTER the election and they stated that COVID caused a delay in the renewal process.



U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

FROM: Jerome Lovato, Voting System Testing and Certification Director

SUBJECT: Pro V&V EAC VSTL Accreditation

DATE: 1/27/2021



EAC Letter Dated AFTER the 2020 Elections even though Pro V&V Accreditation Expired in 2017

Pro V&V has completed all requirements to remain in good standing with the EAC's Testing and Certification program per section 3.8 of the Voting System Test Laboratory Manual, version 2.0:

Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending. VSTLs in good standing shall also retain their accreditation should circumstances leave the EAC without a quorum to conduct the vote required under Section 3.5.5.



Due to the outstanding circumstances posed by COVID-19, the renewal process for EAC laboratories has been delayed for an extended period. While this process continues, Pro V&V retains its EAC VSTL accreditation.

https://www.eac.gov/sites/default/files/voting_system_test_lab/files/Pro_VandV_Accreditation_Renewal_delay_memo012721.pdf

The accreditation expired in 2017 and the WHO did NOT declare a Pandemic until March of 2020. There was not a Pandemic in 2017, 2018, or 2019.



► [Acta Biomed.](#) 2020 Mar 19;91(1):157-160. doi: 10.23750/abm.v91i1.9397.

WHO Declares COVID-19 a Pandemic

<https://pubmed.ncbi.nlm.nih.gov/32191675/>

The Secretary of State authorized Election Systems & Software (ES&S), EVS 6.1.1.0 Voting System to be used in the November 2020 Election – NO Accreditation can be found from the SOS or the EAC proving they were authorized to test this version. The SOS office mentions they submitted a federal test lab report but this report is NOT listed on the SOS Website.

OFFICE OF THE SECRETARY OF STATE

BEV CLARNO
SECRETARY OF STATE



ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

CERTIFICATE OF APPROVAL

Election Systems & Software EVS 6.1.1.0 Voting System

Election Systems and Software has made upgrades to their EVS Voting System. Specifically they have submitted EVS version 6.1.1.0 consisting solely of ElectionWare 6.0.1.0, along with their federal test lab report. The test reports document that the systems meet all of the Oregon requirements and are conformant with the federal Voluntary Voting System Guidelines (VVSG), Version 1.0 (2005). Election Systems and Software has requested approval of this change for use in Oregon elections.

The Secretary of State partnered with Benton, Washington, Marion, Linn, Yamhill, Clackamas and Multnomah counties. After reviewing the certification application and test lab reports we have determined that the upgraded system complies with the statutory requirements of Oregon Revised Statutes 246.550 and 246.560, specifically ORS 246.550(4) and Oregon Administrative Rule 165-007-0350.

Accordingly, the ES&S EVS 6.1.1.0 Voting System is certified for sale, lease or use in all elections in Oregon. The system must be used in compliance with the provisions of applicable Oregon statutes and all Secretary of State, Election Division rules and directives.

Dated this 7th day of August 2020.

Stephen N. Trout
Director of Elections

<https://sos.oregon.gov/elections/Documents/vote-systems/ESS-EVS-6-1-1-0-Certification.pdf>

According to OAR 165-007-0350, All voting systems used in Oregon **must** be certified by the EAC or by a federally accredited voting system test laboratory (VSTL)

https://oregon.public.law/rules/oar_165-007-0350

Oregon Secretary of State, Elections Division

Rule 165-007-0350

Oregon Voting System Certification

- (1) All voting systems submitted for certification pursuant to [ORS 246.550 \(Examination and approval of equipment by Secretary of State\)](#) must be certified by the Elections Assistance Commission (EAC) or be examined by a federally accredited voting systems testing laboratory (VSTL).

According to the EAC Website, Pro V&V evaluated Version 6.1.1.0 in June of 2020 and was issued a Certificate of Conformance from the EAC in July of 2020. Given VSTL Pro V&V did not have an active accreditation per the rules, they were not legally authorized to test and approve the equipment for Oregon elections.



6705 Odyssey Drive
Suite C
Huntsville, AL 35806
Phone (256)713-1111
Fax (256)713-1112

Test Report for EAC VVSG 1.0 Certification Testing
Election Systems & Software (ES&S)
Voting System (EVS) 6.1.1.0

EAC Project Number: ESSEVS6110

Version: 01

Date: 06/23/2020

https://www.eac.gov/sites/default/files/voting_system/files/ESS%20EVS6110%20Test%20Report-01.pdf

This document states that Pro V&V was accredited – again, no certificate of accreditation can be found for 2020 which is a violation of a congressionally passed act.

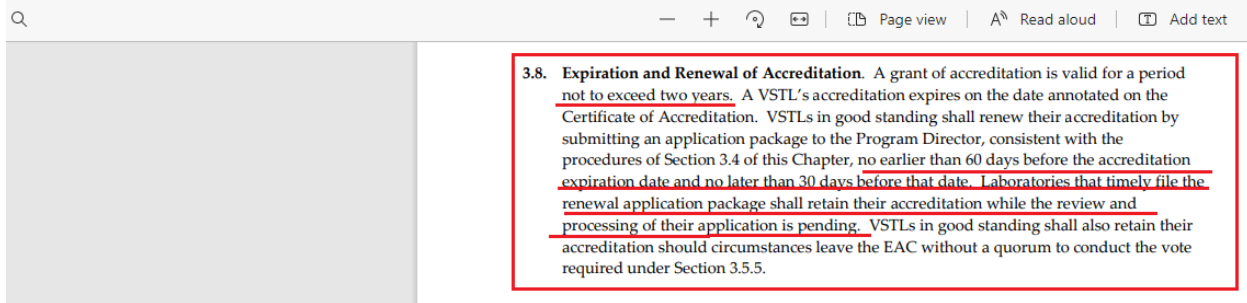
	<p>United States Election Assistance Commission</p> <p>Certificate of Conformance</p> <p>ES&S EVS 6.1.1.0</p>	
<p>The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the <u>Voluntary Voting System Guidelines Version 1.0 (VVS 1.0)</u>. Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the <u>EAC Voting System Testing and Certification Program Manual</u> and the conclusions of the testing laboratory in the test report are consistent with the evidence adduced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.</p>		
<p>Product Name: <u>EVS</u></p> <p>Model or Version: <u>6.1.1.0</u></p> <p>Name of VSTL: <u>Pro V&V</u></p> <p>EAC Certification Number: <u>ESSEVS6110</u></p> <p>Date Issued: <u>July 27, 2020</u> </p>		
		<p> Executive Director</p> <p>Scope of Certification Attached</p>

https://www.eac.gov/sites/default/files/voting_system/files/ES%26S%20EVS6110%20Certificate%20and%20Scope%20of%20Conformance%2007-27-2020.pdf.pdf

Circling back to the EAC Rules, the accreditation is valid for a period **NOT TO EXCEED** two years and they were required to file a renewal application package between 30-60 days prior to February 24, 2017. Given the lack of documentation on the EAC website and documentation requested from the EAC and SOS, we cannot find that Pro V&V was accredited to test EVS 6.1.1.0 and ultimately approved by the SOS for use in the 2020 Elections.

https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf

https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf



By utilizing voting machines tested by a VSTL with improper EAC accreditation at the time of certification and with the potential for the Trapdoor mechanism as described in Terpesehore Maras Affidavit that was filed in Case #2:20-cv-01771-PP in the 2nd Judicial District of the Denver District Court in Denver, Colorado, Oregonians voices are silenced.

<https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.9.13.pdf>

Oregon has deprived its voters of secure, fair and equal voting. This Oversight denies all voters of their constitutional right to vote fairly with equal representation. Oregonians have vested personal interest in the offices of their elected officials. How elected public servants perform their fiduciary duties is imperative, so Oregonians are not underserved or marginalized.

PRO V&V Accreditation was good through 2017, again a 5-year glaring gap.

Another glaring issue has been found by two other gentlemen in Georgia with the same findings but even more alarming information that the EAC may have falsified Pro V&V documents. **Therefore, please review Attachment 1.**

Additionally, ES&S authorizes the use of Commercial Off The Shelf Software (COTS) and equipment which is an attractive point of attack for bad or foreign actors and can be hacked with a device no larger than a piece of rice.

Bloomberg
US Edition

• Live Now Markets Technology Politics Wealth Pursuits Opinion **Businessweek** Equality Gre

Businessweek | Feature

The Big Hack: How China Used a Tiny Chip to Infiltrate U.S. Companies

The attack by Chinese spies reached almost 30 U.S. companies, including Amazon and Apple, by compromising America's technology supply chain, according to extensive interviews with government and corporate sources.

 **CYBERSECURITY & INFRASTRUCTURE SECURITY AGENCY**

Alerts and Tips Resources

[Build Security In](#) > [Legacy Systems](#) > [Security Considerations in Managing COTS Software](#)

Per CISA:

- COTS Software Presents an Attractive Point of Attack
- It Is Difficult to Verify the Security of COTS Products
- <https://www.cisa.gov/uscrt/bsi/articles/best-practices/legacy-systems/security-considerations-in-managing-cots-software>

Also, to quote our own Oregon AG's office based on OREGON SECRETARY OF STATE'S REPLY IN SUPPORT OF THE MOTION TO INTERVENE in Case No. 22CV07782, page 2:

21 physical access to the system is sufficient (at 5–6). To take just that last example, the National
 22 Academy of Sciences' authoritative report on election security squarely rejects Mr. Sippel's
 23 claim that cybersecurity is unnecessary for a system that is not connected to the internet. See
 24 National Academies of Sciences, Engineering, and Medicine, *Securing the Vote: Protecting*
 25 *American Democracy* (2018), at 90, <https://nap.nationalacademies.org/read/25120/chapter/7#90>

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Page 2 - OREGON SECRETARY OF STATE'S REPLY IN SUPPORT OF THE MOTION TO
 INTERVENE
 BM2/sv3/415408899

Department of Justice
 100 SW Market Street
 Portland, OR 97201
 (971) 673-1880 / Fax: (971) 673-5000

1 ("Even when systems are not directly connected to networks, they are vulnerable to attack
 2 through physical or wireless access.").

Oregon Laws:

ORS 246.046

- "The Secretary of State **and each county clerk shall diligently seek out any evidence of violation of any election law.** [Formerly 260.325]"
- https://oregon.public.law/statutes/ors_246.046

ORS 246.530

- "A governing body **may** adopt, purchase or otherwise procure, and provide for the use of, any voting machine or vote tally system approved by the Secretary of State in all or a portion of the precincts."
 - https://oregon.public.law/statutes/ors_246.530
 - This Law does **not** say "SHALL", it says "May" leaving the decision up to the Governing Body.
 - There is no law stating machines must be used, none.
 - This was a County Clerks choice whether machines will or will not be used.

A workable Solution:

- The County Clerk is **required** to **diligently** seek out election violations –
 - Non accreditation is a violation of the EAC Program and violates Federal Standards as set forth in the HAVA Act of 2002
- Put the Scanners, printers, and Tally Machines in a corner and immediately implement a Bi-Partisan Counting Board for the November 2022 Election
- This is the **ONLY** way to preserve the integrity of Oregon elections

- ORS 254.485 - Section 1
 - Section 1 – “Ballots may be tallied by a vote tally system **or by a counting board.**”
 - Section 3 – “A counting board shall audibly announce the tally as it proceeds. The board shall use only pen and ink to tally.”
 - example section 3- this means when it’s time to tally/count votes a person announces the vote cast, while another tally’s and repeats back what was stated to ensure proper counting, each station has checks and balances as the tally proceeds.

If your county moves forward with using unaccredited machines this is a CLEAR violation of your oaths of office. We are depending on you and your fiduciary duties to ensure our elections don’t underserve or under privilege Oregonians.

PLEASE, get with your County law counsel ASAP and review this information to inquire what the next step is for your county to ensure lawful procedure of reporting any evidence of any election law violation!

THIS IS EVIDENCE. We do not consent to unlawful machine use.

RETRIEVED FROM DEMOCRACYDOCKET.COM

The Help America Vote Act (HAVA) of 2002 was passed by the United States Congress to make sweeping reforms to the nation's voting process. HAVA addresses improvements to voting systems and voter access that were identified following the 2000 election. [Read the Help America Vote Act of 2002](#)

<https://www.congress.gov/107/plaws/publ252/PLAW-107publ252.pdf>


HAVA creates new **mandatory minimum standards** for states to follow in several key areas of election administration. The law provides funding to help states meet these new standards, replace voting systems and improve election administration. HAVA also established the Election Assistance Commission (EAC) to assist the states regarding HAVA **compliance** and to distribute HAVA funds to the states. EAC is also charged with creating voting system guidelines and operating the federal government's first voting system certification program.

Voting System Test Laboratory Program Manual, Version 2.0

3.6.1. Certificate of Accreditation. A Certificate of Accreditation shall be issued to each laboratory accredited by vote of the Commissioners. The certificate shall be signed by the Chair of the Commission and state:

3.6.1.1. The name of the VSTL;

3.6.1.2. The scope of accreditation by stating the Federal standard or standards to which the VSTL is competent to test;

 3.6.1.3. The effective date of the certification, which shall not exceed a period of two (2) years; and

3.6.1.4. The technical standards to which the laboratory was accredited.

3.6.2. Post Information on Web Site. The Program Director shall make information pertaining to each accredited laboratory available to the public on EAC's Web site. This information shall include (but is not limited to):

3.6.2.1. NIST's Recommendation Letter;

3.6.2.2. The VSTL's Letter of Agreement;

3.6.2.3. The VSTL's Certification of Conditions and Practices;

3.6.2.4. The Commissioner's Decision on Accreditation; and

3.6.2.5. The Certificate of Accreditation.

https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf

3.6.1 “**shall**” be signed by the Chair of the Commission.

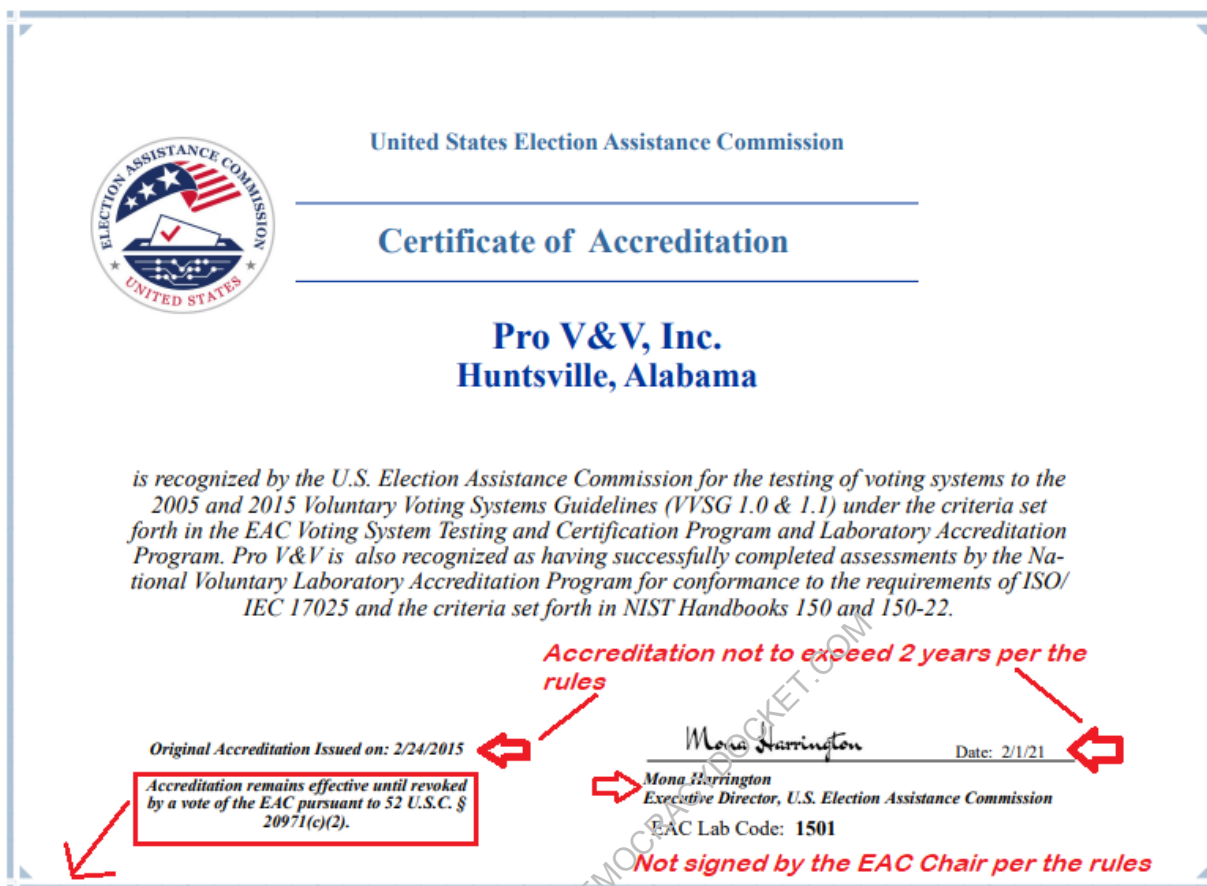
3.6.1.3 “**shall**” **not** exceed a Period of two years (this means it is not a blanketed or indefinite certification length of time)

“shall” is an imperative command, indicating that certain actions are mandatory, and not permissive. This contrasts with the word “may,” which is generally used to indicate a permissive provision, ordinarily implying some degree of discretion.



The last available EAC accreditation prior to 2021 for VSTL Pro V&V was signed on 2/24/2015 and was **only** effective through February 24, 2017. It was also signed by the Acting Executive Director and **not** by the EAC Chair as **required** per VSTL Program Manual ver. 2.0 effective May 31, 2015, Sec 3.6.1

<https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl/pro-vv>



(2) Approval by Commission required for revocation

The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission.

You cannot “revoke an accreditation that expired or lapsed.

This action defies the common sense of rule. How can you revoke an accreditation not in existence?

That would be the same idea as the DMV revoking an “expired license”.

https://www.eac.gov/sites/default/files/voting_system_test_lab/files/Pro%20V%26V%20Accreditation%20Certificate.pdf

[52 U.S. Code § 20971 - Certification and testing of voting systems | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

Pro V&V







Pro V&V was accredited by the EAC on February 24, 2015. Federal law provides that EAC accreditation of a voting system test laboratory cannot be revoked unless the EAC Commissioners vote to revoke the accreditation: "The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission." 52 U.S. Code § 20971(c)(2). The EAC has never voted to revoke the accreditation of Pro V&V. Pro V&V has undergone continuing accreditation assessments and had new accreditation certificate issued on February 1, 2021.

6705 Odyssey Dr NW Suite C,
Huntsville, Alabama 35806
Status: Accredited
Program Manager: President
Phone: 256-713-1111
Lab Contact: Jack Cobb

Revocation and lapse/expiration in accreditation are not the same thing. There is no documentation that Pro V&V was accredited between 2017 & 2021

Related Documents

2015 Certificate expired in 2017 per the Document and Program Rules. No further Accreditation Certificate was issued until 2021 leaving a gap in accreditation between 2017 & 2021

- 7/22/21 - VSTL Certificates and Accreditation 
- 3/10/21 - Pro V&V Letter of Agreement 
- 3/10/21 - Pro V&V Certification of Conditions and Practices 
- 2/1/2021 - Pro V&V Certificate of Accreditation 
- 01/27/2021 - Pro V&V Accreditation Renewal Memo 
- 02/24/2015 - Certificate of Accreditation 
- 08/02/2015 - Pro V&V Letter of Agreement 
- 08/02/2012 - NIST Recommendation Letter - Pro V&V 
- 08/02/2012 - Pro V&V Certification of Conditions and Practices 

According to the rules, the EAC is also **required** to "Post Information on the Website" per section 3.6.2. None of these documents are listed for this time frame nor can any supporting documents of accreditation be obtained through Public Record Request or FOIA's.

However, the Secretary of State noted on their Certificate of Approval in February of 2020 that Pro V&V is an EAC Accredited tester, even though their accreditation purportedly expired February 2017, yet still claiming all is good for the 2022 elections.

Is blind trust the answer when our voice through voting is at stake?

<https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl/pro-vv>

The EAC website also lists this memo between the accreditation certificates which is dated AFTER the election and they stated that COVID caused a delay in the renewal process.



U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

FROM: Jerome Lovato, Voting System Testing and Certification Director

SUBJECT: Pro V&V EAC VSTL Accreditation

DATE: 1/27/2021



EAC Letter Dated AFTER the 2020 Elections even though Pro V&V Accreditation Expired in 2017

Pro V&V has completed all requirements to remain in good standing with the EAC's Testing and Certification program per section 3.8 of the Voting System Test Laboratory Manual, version 2.0:

Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending. VSTLs in good standing shall also retain their accreditation should circumstances leave the EAC without a quorum to conduct the vote required under Section 3.5.5.



Due to the outstanding circumstances posed by COVID-19, the renewal process for EAC laboratories has been delayed for an extended period. While this process continues, Pro V&V retains its EAC VSTL accreditation.

https://www.eac.gov/sites/default/files/voting_system_test_lab/files/Pro_VandV_Accreditation_Renewal_delay_memo012721.pdf

The accreditation expired in 2017 and the WHO did NOT declare a Pandemic until March of 2020. There was not a Pandemic in 2017, 2018, or 2019.



> Acta Biomed. 2020 Mar 19;91(1):157-160. doi: 10.23750/abm.v91i1.9397.

WHO Declares COVID-19 a Pandemic

<https://pubmed.ncbi.nlm.nih.gov/32191675/>

The Secretary of State authorized Clear Ballot Group, Clear Vote Voting System in February of 2020 – NO Accreditation can be found from the SOS or the EAC.

OFFICE OF THE SECRETARY OF STATE

BEV CLARNO
SECRETARY OF STATE



ELECTIONS DIVISION

STEPHEN N. TROUT
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722

(503) 986-1518

CERTIFICATE OF APPROVAL

Clear Ballot Group

Clear Vote Voting System (Clear Count 2.1 and Clear Design 2.1)

Clear Ballot has made upgrades to their ClearVote Voting System. Specifically they have submitted ClearCount version 2.1 and ClearDesign version 2.1 along with their test lab report by EAC Certified tester Pro V&V. The test report documents that the systems meet all of the Oregon requirements and are conformant with the federal Voluntary Voting System Guidelines (VVG), Version 1.0 (2005). Clear Ballot has requested approval of this change for use in Oregon elections.

The Secretary of State partnered with Benton, Washington, Linn, Yamhill, Marion and Multnomah counties and Pro V&V. We have determined that the upgraded system complies with the statutory requirements of Oregon Revised Statutes 246.550 and 246.560, specifically ORS 246.550(4) and Oregon Administrative Rule 165-007-0350 in that these changes do not impair the accuracy, efficiency, or capacity of the machine or system.

Accordingly, the ClearVote Voting System consisting of ClearCount version 2.1 and ClearDesign version 2.1 is certified for sale, lease or use in all elections in Oregon. The system must be used in compliance with the provisions of applicable Oregon statutes and all Secretary of State, Election Division rules and directives.

Dated this 18 day of February 2020.

A handwritten signature in black ink, appearing to be "S. Trout".

Stephen N. Trout

Exhibit D

<https://sos.oregon.gov/elections/Documents/vote-systems/Clear-Ballot-2-1-Certification.pdf>

According to OAR 165-007-0350, All voting systems used in Oregon **must** be certified by the EAC or by a federally accredited voting system test laboratory (VSTL)

https://oregon.public.law/rules/oar_165-007-0350

Oregon Secretary of State, Elections Division

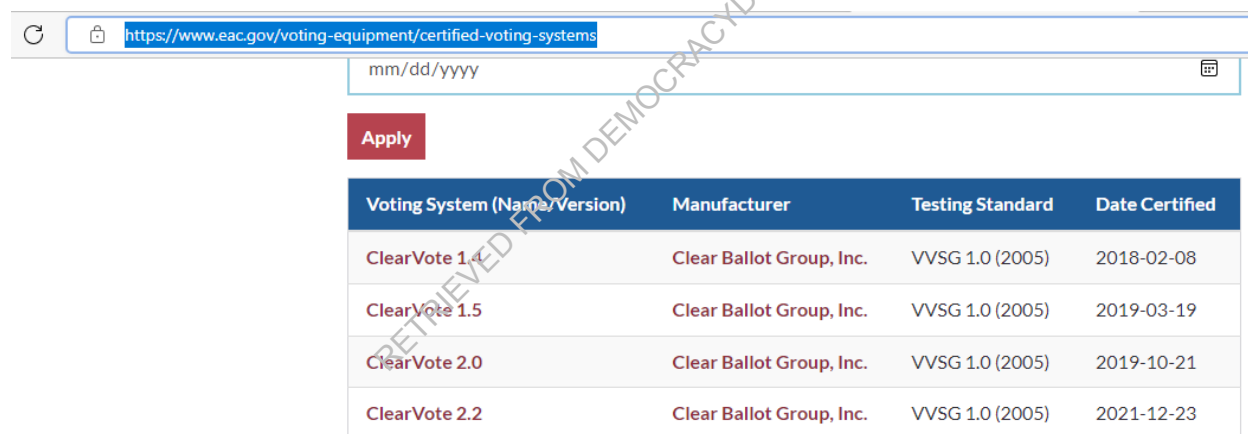
Rule 165-007-0350

Oregon Voting System Certification

- (1) All voting systems submitted for certification pursuant to [ORS 246.550 \(Examination and approval of equipment by Secretary of State\)](#) must be certified by the Elections Assistance Commission (EAC) or be examined by a federally accredited voting systems testing laboratory (VSTL).

According to the EAC Website, they did **NOT** certify ClearVote 2.1, so it had to be examined by a certified federally accredited voting systems testing laboratory (VSTL). Which leaves many years of a gap with VSTL accreditation for Pro V & V expiring in February of 2017.

<https://www.eac.gov/voting-equipment/certified-voting-systems>

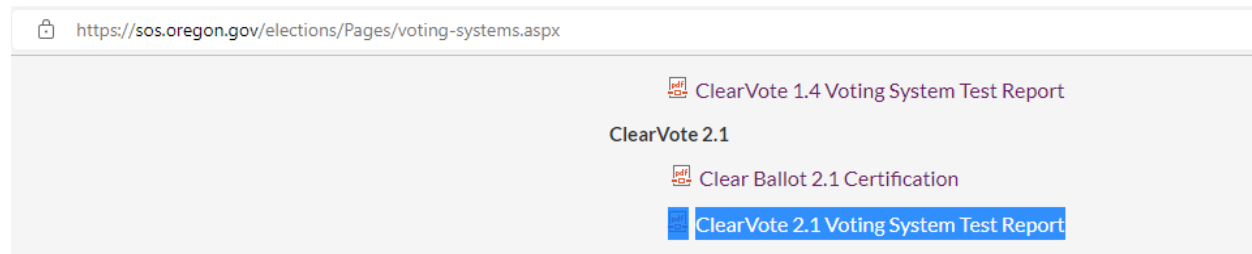


Voting System (Name/Version)	Manufacturer	Testing Standard	Date Certified
ClearVote 1.1	Clear Ballot Group, Inc.	VVSG 1.0 (2005)	2018-02-08
ClearVote 1.5	Clear Ballot Group, Inc.	VVSG 1.0 (2005)	2019-03-19
ClearVote 2.0	Clear Ballot Group, Inc.	VVSG 1.0 (2005)	2019-10-21
ClearVote 2.2	Clear Ballot Group, Inc.	VVSG 1.0 (2005)	2021-12-23

According to the SOS of Oregon Website, ClearVote 2.1 was tested by Pro V & V and approved by the SOS for use in 2020. To this current day, the VSTL lab Pro V&V accreditation has **not** been confirmed between 2017 and 2021.

<https://sos.oregon.gov/elections/Pages/voting-systems.aspx>

The SOS website lists the ClearVote Test Report by Pro V&V which was dated 2/5/20.



<https://sos.oregon.gov/elections/Documents/vote-systems/CBG-ClearVote-2-1-Test%20Report-00-FINAL.pdf>



Test Report for State Certification Testing Clear Ballot Group ClearVote 2.1 Voting System

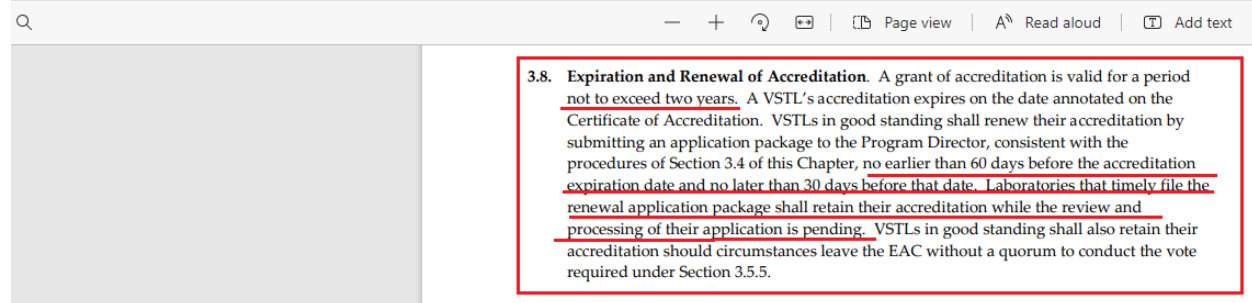
Version: 00 (Initial Release)

Date: 02/05/2020

Circling back to the EAC Rules, the accreditation is valid for a period **NOT TO EXCEED** two years and they were required to file a renewal application package between 30-60 days prior to February 24, 2017. Given the lack of documentation on the EAC website and documentation requested from the EAC and SOS, we cannot find that Pro V&V was accredited to test ClearVote 2.1 in 2020 and ultimately approved by the SOS for use in the 2020 Elections.

https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf

https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf



By utilizing voting machines tested by a VSTL with improper EAC accreditation at the time of certification and with the potential for the Trapdoor mechanism as described in Terpesehore Maras Affidavit that was filed in Case #2:20-cv-01771-PP in the 2nd Judicial District of the Denver District Court in Denver, Colorado, Oregonians voices are silenced.

<https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.9.13.pdf>

Oregon has deprived its voters of secure, fair and equal voting. This Oversight denies all voters of their constitutional right to vote fairly with equal representation. Oregonians have vested personal interest in the offices of their elected officials. How elected public servants perform their fiduciary duties is imperative, so Oregonians are not underserved and marginalized.

	United States Election Assistance Commission	
Certificate of Conformance		
Clear Ballot ClearVote 2.2		
<p>The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the <i>Voluntary Voting System Guidelines Version 1.0 (VVSG 1.0)</i>. Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the EAC <i>Voting System Testing and Certification Program Manual</i> and the conclusions of the testing laboratory in the test report are consistent with the evidence adduced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.</p>		
Product Name: <u>ClearVote</u>		
Model or Version: <u>2.2</u>		
Name of VSTL: <u>Pro V&V</u>		
EAC Certification Number: <u>CBG-CV-22</u>		
Date Issued: <u>December 23, 2021</u>		
		 <i>Mona Harrington</i> Executive Director
		Scope of Certification Attached

https://www.eac.gov/sites/default/files/voting_system/files/CBG%20ClearVote%202.2%20Certificate%20and%20Scope%20of%20Conformance%2012_23_2021.pdf

PROV &V Accreditation was good through 2017, again a 5-year glaring gap.

Another glaring issue has been found by two other gentlemen in Georgia with the same findings but even more alarming information that the EAC may have falsified Pro V&V documents. Therefore, please review **Attachment 1**.

Additionally, Clear Ballot authorizes the use of Commercial Off The Shelf Software (COTS) and equipment which is an attractive point of attack for bad or foreign actors and can be hacked with a device no larger than a piece of rice.

Bloomberg

US Edition ▾

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Businessweek | Feature

The Big Hack: How China Used a Tiny Chip to Infiltrate U.S. Companies

The attack by Chinese spies reached almost 30 U.S. companies, including Amazon and Apple, by compromising America's technology supply chain, according to extensive interviews with government and corporate sources.



**CYBERSECURITY
& INFRASTRUCTURE
SECURITY AGENCY**



Alerts and Tips

Resources

Build Security In > Legacy Systems > Security Considerations in Managing COTS Software

Per CISA:

- COTS Software Presents an Attractive Point of Attack
- It Is Difficult to Verify the Security of COTS Products
- <https://www.cisa.gov/uscert/bsi/articles/best-practices/legacy-systems/security-considerations-in-managing-cots-software>

Also, to quote our own Oregon AG's office based on OREGON SECRETARY OF STATE'S REPLY IN SUPPORT OF THE MOTION TO INTERVENE in Case No. 22CV07782, page 2:

21 physical access to the system is sufficient (at 5–6). To take just that last example, the National
 22 Academy of Sciences' authoritative report on election security squarely rejects Mr. Sippel's
 23 claim that cybersecurity is unnecessary for a system that is not connected to the internet. See
 24 National Academies of Sciences, Engineering, and Medicine, *Securing the Vote: Protecting*
 25 *American Democracy* (2018), at 90, <https://nap.nationalacademies.org/read/25120/chapter/7#90>

26

Page 2 - OREGON SECRETARY OF STATE'S REPLY IN SUPPORT OF THE MOTION TO
 INTERVENE
 BM2/sv3/415408899

Department of Justice
 100 SW Market Street
 Portland, OR 97201
 (971) 673-1880 / Fax: (971) 673-5000

1 ("Even when systems are not directly connected to networks, they are vulnerable to attack
 2 through physical or wireless access.").

Oregon Laws:

ORS 246.046

- "The Secretary of State **and each county clerk shall diligently seek out any evidence of violation of any election law**. [Formerly 260.325]"
- https://oregon.public.law/statutes/ors_246.046

ORS 246.530

- "A governing body **may** adopt, purchase or otherwise procure, and provide for the use of, any voting machine or vote tally system approved by the Secretary of State in all or a portion of the precincts."
 - https://oregon.public.law/statutes/ors_246.530
 - This Law does **not** say "SHALL", it says "May" leaving the decision up to the Governing Body.
 - There is no law stating machines must be used, none.
 - This was a County Clerks choice whether machines will or will not be used.

A workable Solution:

- The County Clerk **is required to diligently** seek out election violations –
 - Non accreditation is a violation of the EAC Program and violates Federal Standards as set forth in the HAVA Act of 2002
- Put the Scanners, printers, and Tally Machines in a corner and immediately implement a Bi-Partisan Counting Board for the November 2022 Election
- This is the **ONLY** way to preserve the integrity of Oregon elections

- ORS 254.485 - Section 1
 - Section 1 – “Ballots may be tallied by a vote tally system **or by a counting board.**”
 - Section 3 – “A counting board shall audibly announce the tally as it proceeds. The board shall use only pen and ink to tally.”
 - example section 3- this means when it’s time to tally/count votes a person announces the vote cast, while another tally’s and repeats back what was stated to ensure proper counting, each station has checks and balances as the tally proceeds.

If your county moves forward with using unaccredited machines this is a CLEAR violation of your oaths of office. We are depending on you and your fiduciary duties to ensure our elections don’t underserve or under privilege Oregonians.

PLEASE, get with your County Law Counsel ASAP and review this information to inquire what the next step is for your county to ensure lawful procedure of reporting any evidence of any election law violation!

THIS IS EVIDENCE. We do not consent to unlawful machine use.

The Help America Vote Act (HAVA) of 2002 was passed by the United States Congress to make sweeping reforms to the nation's voting process. HAVA addresses improvements to voting systems and voter access that were identified following the 2000 election. [Read the Help America Vote Act of 2002](#)

<https://www.congress.gov/107/plaws/publ252/PLAW-107publ252.pdf>

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Voting System Test Laboratory Program Manual, Version 2.0

3.6.1. Certificate of Accreditation. A Certificate of Accreditation shall be issued to each laboratory accredited by vote of the Commissioners. The certificate shall be signed by the Chair of the Commission and state:

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 3.6.1.3. The effective date of the certification, which shall not exceed a period of two (2) years; and

3.6.1.4. The technical standards to which the laboratory was accredited.

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3.6.2.1. NIST's Recommendation Letter;

3.6.2.2. The VSTL's Letter of Agreement;

3.6.2.3. The VSTL's Certification of Conditions and Practices;

3.6.2.4. The Commissioner's Decision on Accreditation; and

3.6.2.5. The Certificate of Accreditation.

https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf

3.6.1 “shall” be signed by the Chair of the Commission.

3.6.1.3 “shall” **not** exceed a Period of two years (this means it is not a blanketed or indefinite certification length of time)

“shall” is an imperative command, indicating that certain actions are mandatory, and not permissive. This contrasts with the word “may,” which is generally used to indicate a permissive provision, ordinarily implying some degree of discretion.

The last available EAC accreditation prior to 2021 for VSTL SLI Compliance was signed on 1/10/2018 but states it was good for 3 years. **The RULES clearly state “shall not exceed a period of 2 years” so this accreditation was set to expire on 1/10/2020.** It was also signed by the Executive Director and **not** by the EAC Chair as **required** per VSTL Program Manual ver. 2.0 effective May 31, 2015, Sec 3.6.1.

https://www.eac.gov/sites/default/files/voting_system_test_lab/files/SLI_Compliance_Certificate_of_Accreditation011018.pdf



The next available Certificate of Accreditation was issued 2/1/2021 which now says 2007 to 2021 and is still not signed by the EAC Chair per Section 3.6.1. Additionally, they've added information about revocation which has nothing to do with a Certificate of Accreditation expiring and the VSTL being required to submit a renewal package for recertification.



United States Election Assistance Commission

Certificate of Accreditation

SLI Compliance
Division of Gaming Laboratories International, LLC
Wheat Ridge, Colorado

is recognized by the U.S. Election Assistance Commission for the testing of voting systems to the 2005 and 2015 Voluntary Voting Systems Guidelines (VVSG 1.0 & 1.1) under the criteria set forth in the EAC Voting System Testing and Certification Program and Laboratory Accreditation Program. SLI Compliance is also recognized as having successfully completed assessments by the National Voluntary Laboratory Accreditation Program for conformance to the requirements of ISO/IEC 17025 and the criteria set forth in NIST Handbooks 150 and 150-22.

Accreditation not to exceed 2 years per Section 3.6.1.3

Original Accreditation Issued on: 2/28/2007

Accreditation remains effective until revoked by a vote of the EAC pursuant to 52 U.S.C. § 20971(c)(2).

Mona Harrington
 Date: 2/1/21

Mona Harrington
 Executive Director, U.S. Election Assistance Commission
 EAC Lab Code: 0701

(2) Approval by Commission required for revocation

The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission.

https://www.eac.gov/sites/default/files/voting_system_test_lab/files/SLI%20Certificate%20of%20Accreditation%202021.pdf

<https://www.law.cornell.edu/uscode/text/52/20971>

As you can see from the EAC Website for SLI Compliance, they only list the two certificates as noted above, then in between, they list a document called “SLI Compliance Accreditation Renewal Memo” which is dated 1/27/2021 (a full year after the 2020 expiration).

<https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl/sli-compliance-division-gaming-laboratories>

SLI Compliance, a Division of Gaming Laboratories International, LLC

SLI Compliance was accredited by the EAC on February 28, 2007. Federal law provides that EAC accreditation of a voting system test laboratory cannot be revoked unless the EAC Commissioners vote to revoke the accreditation: “The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission.” 52 U.S. Code § 20971(c)(2). The EAC has never voted to revoke the accreditation of SLI Compliance. SLI Compliance has undergone continuing accreditation assessments and had a new accreditation certificate issued on February 1, 2021.

4720 Independence Street
Wheat Ridge, Colorado 80033
Status: Accredited
Program Manager: Director of Operations
Phone: 303-422-1566
Lab Contact: Traci Mapps

Revocation and lapse/expiration in accreditation are not the same thing. There is no documentation that SLI Compliance was accredited in 2020 nor applied for re-accreditation.

State Information

Managing Elections

Correspondence

Press Releases

Frequently Asked Questions

Manuals and Forms

Test and Certification

Related Documents

- 7/22/21 VSTL Certificates and Accreditation
- 2/14/21 - SLI Compliance Letter of Agreement
- 2/12/21 - SLI Compliance Certification of Laboratory Conditions and Practices
- 2/1/2021 - SLI Compliance Certificate of Accreditation
- 01/27/2021 - SLI Compliance Accreditation Renewal Memo
- 01/11/18 - SLI Compliance Certificate of Accreditation
- 01/11/2016 Letter on Company Name/Address Change

Both Certificates exceed the 2 year rule

This memo uses COVID-19 as the reason why the renewal process for SLI Compliance was delayed - COVID was not declared a pandemic until March of 2020

Here is the Memo that is dated in 2021, talks about 2 years, talks about the 30-60 day submission process and states COVID-19 is the reason.

So, the EAC is trying to state the Accreditation in 2018 was good for 3 years but they needed to use COVID-19 as the excuse for a delayed renewal process in 2021? Wouldn't this letter imply the original 2018 Accreditation did in fact expire in 2020 if they had to report a delay in renewal?

https://www.eac.gov/sites/default/files/voting_system_test_lab/files/SLI_Compliance_Accreditation_Renewal_delay_memo012721.pdf



U.S. ELECTION ASSISTANCE COMMISSION
633 3rd St. NW, Suite 200
Washington, DC 20001

FROM: Jerome Lovato, Voting System Testing and Certification Director

SUBJECT: SLI Compliance EAC VSTL Accreditation

DATE: 1/27/2021 **Created in 2021 after the fact?**

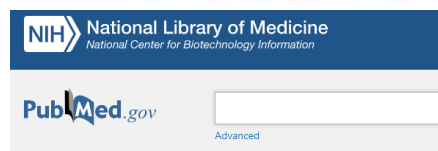
SLI Compliance, a division of Gaming Laboratories International, LLC (SLI) has completed all requirements to remain in good standing with the EAC's Testing and Certification program per section 3.8 of the Voting System Test Laboratory Manual, version 2.0:

30 to 60
days prior
to
expiration
is Nov-
Dec 2019

Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending. VSTLs in good standing shall also retain their accreditation should circumstances leave the EAC without a quorum to conduct the vote required under Section 3.5.5.

Due to the outstanding circumstances posed by COVID-19, the renewal process for EAC laboratories has been delayed for an extended period. While this process continues, SLI retains its EAC VSTL accreditation.

The WHO did NOT declare a Pandemic until Mar 2020



Acta Biomed. 2020 Mar 19;91(1):157-160. doi: 10.23750/abm.v91i1.9397.

WHO Declares COVID-19 a Pandemic

<https://pubmed.ncbi.nlm.nih.gov/32191675/>

The Secretary of State Authorized Hart InterCivic, Verity 2.4 Voting System in June of 2020 for use in the November 2020 Elections. The VSTL is SLI Compliance yet the Secretary of State lists SLI Laboratories in her Certificate of Approval. You can clearly see SLI Laboratories is not the VSTL approved by the EAC nor can we confirm SLI Compliance was accredited in 2020.

If words matter, then the mis-naming the VSTL on her Certificate of Approval MATTERS.

OFFICE OF THE SECRETARY OF STATE

BEV CLARNO
SECRETARY OF STATE



ELECTIONS DIVISION

STEPHEN N. TROUT
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CERTIFICATE OF APPROVAL

Hart InterCivic
Verity 2.4 Voting System

Hart InterCivic has made upgrades to their Verity Voting System. Specifically they have submitted Verity version 2.4 along with their test lab report by EAC Certified tester SLI Laboratories. The test report documents that the system meets all of the Oregon requirements and are conformant with the federal Voluntary Voting System Guidelines (VVSG), Version 1.0 (2005). Hart InterCivic has requested approval of this change for use in Oregon elections.

The Secretary of State partnered with Benton, Washington, Linn, Marion, Yamhill, Clackamas and Multnomah counties. After reviewing the certification application and test lab reports we have determined that the upgraded system complies with the statutory requirements of Oregon Revised Statutes 246.550 and 246.560, specifically ORS 246.550(4) and Oregon Administrative Rule 165-007-0350.

Accordingly, the Hart InterCivic Verity 2.4 Voting System is certified for sale, lease or use in all elections in Oregon. The system must be used in compliance with the provisions of applicable Oregon statutes and all Secretary of State, Election Division rules and directives.

Dated this 15th day of June 2020.

Stephen N. Trout
Director of Elections

<https://sos.oregon.gov/elections/Documents/vote-systems/Hart-Verity-2-4-Certification.pdf>

According to OAR 165-007-0350, All voting systems used in Oregon must be certified by the EAC or by a federally accredited voting system test laboratory (VSTL).

https://oregon.public.law/rules/oar_165-007-0350

Oregon Secretary of State, Elections Division




Rule 165-007-0350

Oregon Voting System Certification

- (1) All voting systems submitted for certification pursuant to [ORS 246.550 \(Examination and approval of equipment by Secretary of State\)](#) must be certified by the Elections Assistance Commission (EAC) or be examined by a federally accredited voting systems testing laboratory (VSTL).

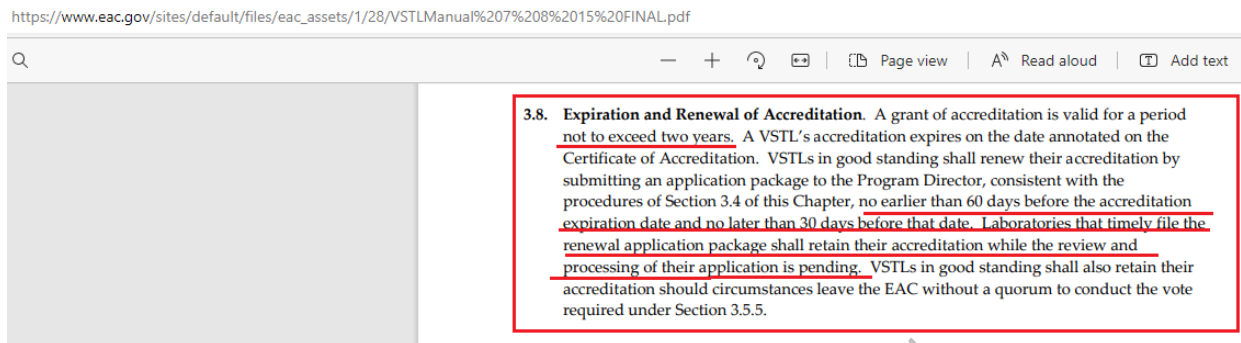
According to the EAC Website for Verity Voting 2.4, this system has been evaluated at an accredited voting system testing laboratory for conformance. This testing was approved on February 21, 2020 after SLI Compliance Accreditation should have expired in January of 2020.

https://www.eac.gov/sites/default/files/voting_system/files/HRT-VERITY-2.4%20Certificate%20and%20Scope%2002-21-2020.pdf

	United States Election Assistance Commission	
Certificate of Conformance		
Hart Verity Voting 2.4		
<p><u>The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the Voluntary Voting System Guidelines Version 1.0 (VVSG 1.0).</u> Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the <i>EAC Voting System Testing and Certification Program Manual</i> and the conclusions of the testing laboratory in the test report are consistent with the evidence adduced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.</p>		
Product Name: Verity Voting		
Model or Version: 2.4		
Name of VSTL: SLI Compliance		
EAC Certification Number: HRT-VERITY-2.4		
Date Issued: February 21, 2020		
		 Acting Executive Director
		Scope of Certification Attached

Circling back to the EAC Rules, the accreditation is valid for a period NOT TO EXCEED two years and they are required to file a renewal application package between 30-60 days prior to January 10, 2020. Given the lack of documentation on the EAC website and documentation requested from the EAC and SOS, we cannot find that SLI Compliance was accredited to test Hart Verity 2.4 in 2020 and ultimately approved by the SOS for use in the 2020 Elections.

https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf



By utilizing voting machines tested by a VSTL with improper EAC accreditation at the time of certification and with the potential for the Trapdoor mechanism as described in Terpesehore Maras Affidavit that was filed in Case #2:20-cv-01771-PP in the 2nd Judicial District of the Denver District Court in Denver, Colorado.

<https://storage.courtlistener.com/recap/gov.uscourts.wied.92717/gov.uscourts.wied.92717.9.13.pdf>

Oregon has deprived its voters of secure, fair and equal voting. This Oversight denies all voters of their constitutional right to vote fairly with equal representation. Oregonians have vested personal interest in the offices of their elected officials. How elected public servants perform their fiduciary duties is imperative, to ensure Oregonians are not underserved or marginalized.

Additionally, Hart Verity 2.4 authorizes the use of Commercial Off The Shelf Software (COTS) and equipment which is an attractive point of attack for bad or foreign actors and can be hacked with a device no larger than a piece of rice.



CYBERSECURITY & INFRASTRUCTURE SECURITY AGENCY

Alerts and Tips Resources

Build Security In > Legacy Systems > Security Considerations in Managing COTS Software

Bloomberg
US Edition

• Live Now Markets Technology Politics Wealth Pursuits Opinion **Businessweek** Equality Geo

Businessweek | Feature

The Big Hack: How China Used a Tiny Chip to Infiltrate U.S. Companies

The attack by Chinese spies reached almost 30 U.S. companies, including Amazon and Apple, by compromising America's technology supply chain, according to extensive interviews with government and corporate sources.

Per CISA:

- COTS Software Presents an Attractive Point of Attack
- It Is Difficult to Verify the Security of COTS Products
- <https://www.cisa.gov/uscert/bsi/articles/best-practices/legacy-systems/security-considerations-in-managing-cots-software>

One more vulnerability we found during our extensive review of Verity 2.4 is that Hart Verity's COTS Software and Firmware lists Microsoft Windows Embedded Standard 7, Service Pack 1 as the platform which can be found in the following Certificate of Conformance on page 5.

https://www.eac.gov/sites/default/files/voting_system/files/HRT-VERITY-2.4%20Certificate%20and%20Scope%2002-21-2020.pdf

COTS Software and Firmware	
Description	Version
Verity Data, Build, Central, Count, Relay, Print, Scan – Paper Ballot Scanner (additional item below), Touch Writer – Electronic BMD Device, Touch Writer Duo – Electronic BMD Device, Controller, Touch – Electronic DRE Device, Touch with Access – Electronic DRE Device	
Microsoft Windows Embedded Standard 7, Service Pack 1	6.1.7601
Microsoft SQL Server 2012 for Embedded Systems License	11.00.2100
McAfee Application Control for Devices (McAfee Solidifier)	8.21.1-143

According to Microsoft, Windows 7 Service Pack 1 ended support on January 14, 2020 and extended support on October 13, 2020. Microsoft cited security vulnerabilities which means during the 2020 General Election, the machines were not even covered by Microsoft.

<https://support.microsoft.com/en-us/topic/october-13-2020-kb4580387-security-only-update-9781ea5e-4fab-9f66-7528-77e9c5649081#:~:text=For%20Windows%20Embedded%20Standard%207%2C%20extended%20support%20ends,on%20the%20screen%20until%20you%20interact%20with%20it.>

Also, to quote our own Oregon AG's office based on OREGON SECRETARY OF STATE'S REPLY IN SUPPORT OF THE MOTION TO INTERVENE in Case No. 22CV07782, page 2:

21 physical access to the system is sufficient (at 5–6). To take just that last example, the National
 22 Academy of Sciences' authoritative report on election security squarely rejects Mr. Sippel's
 23 claim that cybersecurity is unnecessary for a system that is not connected to the internet. See
 24 National Academies of Sciences, Engineering, and Medicine, *Securing the Vote: Protecting*
 25 *American Democracy* (2018), at 90, <https://nap.nationalacademies.org/read/25120/chapter/7#90>

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Page 2 - OREGON SECRETARY OF STATE'S REPLY IN SUPPORT OF THE MOTION TO
 INTERVENE
 BM2/sv3/415408899

Department of Justice
 100 SW Market Street
 Portland, OR 97201
 (971) 673-1880 / Fax: (971) 673-5000

1 ("Even when systems are not directly connected to networks, they are vulnerable to attack
 2 through physical or wireless access.").

Laws:

ORS 246.046

- “The Secretary of State **and each county clerk shall diligently seek out any evidence of violation of any election law.** [Formerly 260.325]”
- https://oregon.public.law/statutes/ors_246.046

ORS 246.530

- “A governing body **may** adopt, purchase or otherwise procure, and provide for the use of, any voting machine or vote tally system approved by the Secretary of State in all or a portion of the precincts.”
 - https://oregon.public.law/statutes/ors_246.530
 - This Law does **not** say “SHALL”, it says “May” leaving the decision up to the Governing Body.
 - There is no law stating machines must be used, none.
 - This was a County Clerks choice whether machines will or will not be used.

A workable Solution:

- The County Clerk **is required** to **diligently** seek out election violations –
 - Non accreditation is a violation of the EAC Program and violates Federal Standards as set forth in the HAVA Act of 2002
- Put the Scanners, printers, and Tally Machines in a corner and immediately implement a Bi-Partisan Counting Board for the November 2022 Election
- This is the **ONLY** way to preserve the integrity of Oregon elections
- ORS 254.485 - Section 1
 - Section 1 – “Ballots may be tallied by a vote tally system **or by a counting board.**”
 - Section 3 – “A counting board shall audibly announce the tally as it proceeds. The board shall use only pen and ink to tally.”
 - example section 3- this means when it’s time to tally/count votes a person announces the vote cast, while another tally’s and repeats back what was stated to ensure proper counting, each station has checks and balances as the tally proceeds.

If your county moves forward with using unaccredited machines this is a **CLEAR** violation of your oaths of office. We are depending on you and your fiduciary duties to ensure our elections don’t underserve or under privilege Oregonians.

PLEASE, get with your County Law Counsel ASAP and review this information to inquire what the next step is for your county to ensure lawful procedure of reporting any evidence of any election law violation!

THIS IS EVIDENCE. We do not consent to unlawful machine use.