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The California Secretary of State has recently certified the ES&S AutoMARK Voter Assist Terminal for use in California. Despite certification, the AutoMARK is not accessible to voters with a variety of physical disabilities, including voters with limited manual dexterity. Accordingly, the AutoMARK is not compliant with the accessibility requirements mandated by the Help America Vote Act of 2002 (commonly referred to as HAVA) and should not be purchased for that purpose.

HAVA requires *voting systems* to be accessible for individuals with disabilities in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters. Title III § 301(a)(3)(A). This requirement can be satisfied through the use of at least one accessible voting system at each polling place. Title III § 301(a)(3)(B). HAVA defines a *voting system* as the total combination of equipment that is used to, among other things, *cast* and *count* votes. Title III § 301(b)(1)(B). An accessible voting system, as defined by HAVA, must allow voters with disabilities, including those with physical disabilities, to *cast* and have their vote *counted* in a private and independent manner.

The AutoMARK Voter Assist Terminal does not allow voters with physical disabilities the opportunity to *cast* or have their vote *counted* in a private and independent manner. Voters with manual dexterity issues, such as voters who cannot grasp paper, will be forced to rely upon the assistance of a third-party to remove a marked ballot from the AutoMARK and place the marked ballot into the ballot box where it will be counted. If a voter were not to receive assistance from a third-party, it would be impossible for the ballot to be cast and counted. This situation is in clear violation of both the text and the spirit of the accessibility requirements mandated by HAVA. The necessary assistance of third-parties destroys privacy and independence.

The AutoMARK Voter Assist Terminal was certified on the false premise that it was primarily designed to assist those who are visually impaired, *physically disabled*, or prefer to

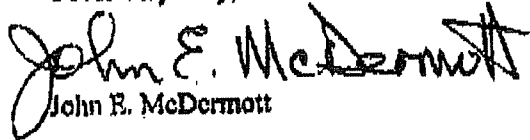


vote in an alternate language, allowing them to vote privately and independently and therefore violates California law. Additionally, with its current configuration, AutoMARK also does not comply with HAVA. This violation of federal law has been discussed, in writing, prior to certification with the Secretary of State's Office and subsequently in conversation with his staff. Given that the AutoMARK is not accessible to physically disabled voters and unless reconsideration is agreed upon, a lawsuit challenging the recent certification is imminent.

Through HAVA, federal monies have been appropriated to support the modernization of voting systems across the United States. However, counties that use such funds to purchase voting systems that are not in compliance with HAVA may be forced to reimburse those monies and shoulder the burden of purchasing inaccessible voting systems.

I encourage you to pursue the purchase of voting systems that are HAVA compliant and provide access to voters with visual and manual disabilities. The January 2006 deadline for compliance is rapidly approaching and immediate measures should be taken to purchase accessible voting systems.

Yours very truly,


John E. McDermott

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