

**Matthews, Maria I.**

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**From:** Matthews, Maria I.  
**Sent:** Monday, June 12, 2006 3:52 PM  
**To:** Matthews, Maria I.  
**Subject:** RE: Rules Update--INPUT NEEDED ASAP

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**From:** Ertel, Mike [mailto:ertel@voteseminole.org]  
**Sent:** Thursday, June 01, 2006 5:36 PM  
**To:** Matthews, Maria I.  
**Cc:** Bill Cowles  
**Subject:** RE: Rules Update--INPUT NEEDED ASAP

Maria,

I just looked over the new rules about security procedures and have tons of individual questions about the proposed rules. One that seems to stand out quite a bit is in 1S-2.004, on top of page 11, portion c relating to machines used for public outreach and training. The first sentence seems to cover wholly what the rule should entail. But then there's more information that doesn't seem to pertain to the systems we use. I think it's your intention to ensure that the machines used for educational purposes can't be molested by third parties. If a county does their public outreach and training using machines that are segregated, and always under the supervision of a staffer, then why should we have to go through those seemingly onerous steps of backing up a system that doesn't contain any information that would be part of a "real" election anyway?

Unless, of course, I'm totally misreading this section, which is possible . . .

Mike

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**From:** Bill Cowles [mailto:Bill@ocfelections.com]  
**Sent:** Wednesday, May 31, 2006 5:08 PM  
**To:** Jerry Holland-Duval Co.; Ann Bodenstein - Santa Rosa Co; Ann McFall - Volusia Co; Annie Williams ; Arthur Anderson - Palm Beach Co; Babs Montpetit; Barbara Kirkman; Bob Sweat; Bobby Beasley; Brenda Snipes; Buddy Johnson; Carol Finch Griffin; Connie Asbell; David Stafford; Dawn Roberts; Debbie Wilcox Morris - Holmes Co; Deborah Clark; Dee Brown; Donna Bryant; Doris Gibbs; Emogene W Stegall; Fred Galey ; Gertrude Walker; Glenda Williams; Gwen Chandler; Harry Sawyer; Holly Whiddon - Glades Co; Ion Sancho (E-mail); Jeff Ussery; Jennifer J Edwards; Joe A Campbell; Karen Krauss; Kathy Dent - Sarasota Co; Kay Clem - Indian River Co; Kurt S Browning; Lana B Morgan; Laura Dees - Hamilton Co; Lester Sola (MiamiDade); Linda Griffin; Linda T Howell - Madison Co; Liz Horne - Columbia Co; Lori Edwards; Lucretia Strickland; Mac Horton - Charlotte Co; Mae Beville; Marcia Wood; Margie Laramore - Calhoun Co; Mark Andersen; Mark Negley; Marty Bishop; Ertel, Mike; Molly Lilliot; Nita D Crawford - Baker Co; Pam Carpenter; Pat Hollarn; Peggy Rae Border; Penny Halyburton; Sharon Harrington; Sheridan Crum - Wakulla Co; Shirley Green Knight - Gadsden Co; Susan Bryant; Susan Gill; Susan McCool; Sylvia D Stevens - Jackson Co; Terry Vaughan; Vicki Cannon; Vicki Davis - Martin Co  
**Subject:** Rules Update--INPUT NEEDED ASAP

Bill Cowles  
Supervisor of Elections  
Orange County FL  
407-254-6500  
Bill@ocfelections.com

**Matthews, Maria I.**

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**From:** Roberts, Dawn K.  
**Sent:** Tuesday, June 06, 2006 12:16 PM  
**To:** Matthews, Maria I.; Bradshaw, Sarah  
**Subject:** FW: Proposed Rules 1S-2.015 and 1S-2.004  
**Attachments:** soeletterhead.JPG

FYI

*Dawn Kimmel Roberts*  
Director of the Division of Elections  
Florida Department of State  
(850) 245-6200

-----Original Message-----

**From:** Sharon L. Harrington [mailto:sharrington@leeelections.com]  
**Sent:** Friday, June 02, 2006 1:57 PM  
**To:** Roberts, Dawn K.  
**Cc:** Bill Cowles  
**Subject:** Proposed Rules 1S-2.015 and 1S-2.004

Dear Dawn,

I have had the opportunity of reviewing the above mentioned proposed rules regarding Minimum Security Procedures and Use and Assessment of Voting Systems. I will not be able to attend the workshop currently scheduled for June 12th, but felt that I needed to express a concern I'm having with the development of new rules, especially these two.

I would like to recommend that these proposed rules be put on hold until after the completion of this year's election cycle. They are both very important issues and they need to be studied in depth before making radical changes at this time. Since it is so late in the year many of us do not have ample time to analyze the recommended changes and offer suggestions in a manner that is not done hastily and which may have adverse consequences later on.

I am very pleased that our association has established a Rules Making Committee and that the Division has been willing to take the time to hear their recommendations and consider their proposals. It has truly been refreshing to finally have input from those of us who work with it every day. However, our Committee can not fully represent the Association if it's members are unable to have adequate time to study the issues and be able to offer educated opinions and suggestions.

Your consideration of this request is greatly appreciated. Thank you.

6/6/2006

Sharon L. Harrington  
Supervisor of Elections  
Lee County Florida  
Ph 239 533 6301  
Fax 239 533 6310

NOTE: NEW MAIN NUMBER: 239-LEE-VOTE  
[sharrington@leeelections.com](mailto:sharrington@leeelections.com)

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**Matthews, Maria I.**

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**From:** Matthews, Maria I.  
**Sent:** Wednesday, June 07, 2006 2:28 PM  
**To:** 'bill@ocfelections.com'  
**Cc:** Drury, David R.; Roberts, Dawn K.  
**Subject:** FW: Propose Rule 1s-2.015 & 1s-2.004  
**Attachments:** Maria Rules.doc; mou for soes.doc

Bill,

Thank you for forwarding those comments. It is not necessary to submit a hard copy. It will still be made a part of the public hearing record. By copy, I forwarding this to David Drury who will be present at the workshop and can lend his technical expertise.

Thanks.

Maria I. Matthews  
Assistant General Counsel

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**From:** Bill Cowles [mailto:Bill@ocfelections.com]  
**Sent:** Wednesday, June 07, 2006 1:50 PM  
**To:** Matthews, Maria I.  
**Cc:** Roberts, Dawn K.  
**Subject:** Propose Rule 1s-2.015 & 1s-2.004

Maria,

Attached are the comments from the FSASE Rules Development Committee concerning both rules to be discussed on Monday, June 12th during the Rule Development Workshop. I plan to be in attendance. If you have any question concerning any of our comments don't hesitate to call me. Do you need a hard copy of this letter? We can Fedex to you.

Bill Cowles  
Supervisor of Elections  
Orange County FL  
407-254-6500  
Bill@ocfelections.com

6/12/2006

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June 7, 2006

Maria Matthews  
Assistant General Counsel  
Florida Department of State  
R.A. Gray Building  
500 S. Bronough Street  
Tallahassee, Florida 32399

Re: Minimum Security Procedures for Voting Systems 1S-2.015  
Procurement, Use and Assessment of Voting Systems 1S-2.004

Dear Maria,

The following recommendations, suggestions, and input concerning the proposed rules, listed above, are from the Florida State Association of Supervisors of Elections by way of the Rules Development Committee. The association committee was asked to provide thoughts on each proposed rule for this response; supervisors were also encouraged to send their own comments directly to the division and to attend the rule development hearing on Monday, June 12, 2006.

Our initial recommendation to the division would be to delay the revision of these rules until after the 2006 elections. Counties are actively re-writing their existing security procedures to comply with the current July 7, 2006 submission deadline. Our revised security procedures are being written to include the points in the Technical Advisory and the addition of our ADA voting devices. As explained by David Drury, Bureau Chief for Voting Systems Certification, at the five User's Meeting during the month of May, the purpose for the proposed rule on security procedures was to include the Technical Advisory, to add to the ADA voting devices, and to clean up old language and outdated procedures. We believe this can be accomplished within the current statutory deadlines. Delaying these proposed revisions until 2007 will allow the division and all of the affected parties to focus on properly rewriting this rule. Even in the current proposed draft it has references to old voting systems (lever and punch card), the sequence is not in line with actual steps taken to prepare for an election, it appears to limit the supervisor's authority in setting procedures, and also seems at times to bounce between voting devices versus being clear for each voting system certified in the state. Caution is needed in light of the fact that many of the terms used or procedures added are for a specific voting system. Either the system needs to be identified or the terms and procedures need to be re-written for each certified system. For all of these reasons and all of the other new issues for the 2006 elections, i.e. FVRS and ADA Voting Equipment, we highly recommend that the division make revision a post-election priority.

If this is not the direction that the Division of Elections decides to take, the association through its Rules Development Committee wishes to submit the attached detailed review of Proposed Rule 1S-2.015 Minimum Security Procedures for Voting Systems. We submit these changes for the division's inclusion in the next draft of this rule. Also, we

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have included brief comments concerning Proposed Rule 1s-2.004 Procurement, Use and Assessment of Voting Systems. The question has been raised as to whether the changes proposed in this rule are applicable to all voting systems currently certified in Florida or limited to just one system (Diebold). Are the changes restricting the supervisor's authority based on other statutes? Lastly, there has been discussion concerning the possibility of some type of Memorandum of Understanding between Supervisors of Elections for providing emergency elections support. Is this something that should be added to the Minimum Security Procedures for Voting Systems Rule?

Thank you for the opportunity to have input on these two proposed rule. I will be in attending the Rule Development Workshop on Monday, June 12<sup>th</sup> at 1:30 PM. Should you or any of the division staff have question or need additional information on any of our recommendation please don't hesitate to contact me.

Sincerely

Bill Cowles  
Orange County Supervisor of Elections

Cc: Supervisors of Elections

Page One

**1S-2.015 Minimum Security Procedures for Voting Systems**  
Concerns and Recommendations by FSASE

Page 3 (3) Filing of Security Procedures

The association has a major concern about the timing of this proposed rule becoming finalized and the requirement that we must submit new security procedures within fifteen days of the effective day. Current revisions are due July 7, 2006. For uniformity we would want them to cover both the primary and general elections. This procedure is very time consuming and would unduly tax the resources of smaller counties, which are focusing on election programming and preparation, particularly if required prior to the general election. Thus, our recommendation is to delay this whole process until 2007. David Drury stated at one of the User's Meetings that he didn't expect this rule to be completed until after the general election.

Page 5 (5) (a) Standards for Security Procedures

It was our understanding from David Drury's presentation at the various User Group Meetings that "copies" of the actual forms or documents would NOT be needed and that all he wanted was descriptions of the contents. Can it be either provide copies or include description but not both?

Page 6 Elections Parameter Statement

We recommend that the words "election materials" listed within the statement be changed. This is based on the definition of "Election Material" listed on page 3 of the proposed rule.

Page 7 (e) is it "Preparation and Configuration of Tabulation Systems" or "Voting Systems" (1)?

Page 10 (2) (a)

"Where applicable, coded election media must be immediately loaded into the relevant voting device..." This wording should be flexible enough to accommodate counties wherein the election media is issued to the poll Clerk. Examples: Miami-Dade County needs at least 5 days to load and Orange County has the poll Clerk deliver and insert the memory pack into the optical scan unit. We recommend the wording be changed to state, "secured until loaded."

Page 10 (2) (c)

All references to the "protective count" number are prior to election day and on election day. To truly be effective there needs to be a post election review and recording of the protective count in order to provide a starting point for the next time that voting device is used.

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Page Two

Note: Understand that "protective count" is an ES&S term. Diebold uses "systems total"; I'm unaware of Sequoia's specific terminology. There needs to be a clear definition of the number wanted in the rule.

Page 12 (2)

It appears that (1) is all about "marksense ballots" but in (2) the word "DRE/Touch screen or electronic" voting devices is left out.

Page 12 (h)

Recommend rewording it to: Checking and sealing the voter authorization slips. The term "container(s)" is associated with the old lever machines and the central count punch card system. Many counties use pouches, an envelope, or multiple envelopes for this process.

Page 14 (l) *Receiving and Preparing the Ballots for Central and Regional Counting.*  
Is this section out of sync with the requirement for precinct count? The reference to ballot containers would lead one to believe it referring to the old punch card system.

Page 15 (3) Inspection of marksense ballots...

Much of what is referred here is software driven. Canvassing Boards should only be dealing with ballots that the system cannot count, specifically damaged ballots and/or ballots that the voter didn't correct at the poll, thereby determining voter intent.

Page 15 (m) (1) Again, the reference to central and regional processing sites. Much of what is referenced here is done at the polling place on election day, or at the early voting site or during the processing of absentee ballots.

Page 16 (2) and (3) are they not asking the same thing? For early voting there are no daily tabulation but public counts.

Page 16 (3) (e) should it not refer to central or regional collection site(s)?

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Page 3

**1S-2.004 Procurement, Use and Assessment of Voting Systems**  
Concerns and Recommendations of FSASE

Page 11 (3) (c) Training and educational purposes

This appears to be more extensive than necessary, as the opening sentence seems to adequately cover the point. The databases are not in the voting equipment. Shouldn't this actually be in proposed rule 1s-2.015 since it refers to the security procedures? This rule is not about security procedures as such.

**Memorandum of Understanding between Supervisors's of Elections for providing emergency election support**

Lester Sola, Miami-Dade County Supervisor of Elections, raised the question, prior to the various User Group Meetings, about an agreement being in place that sets forth backup site(s) for election coding and tabulation in case of a natural disaster (hurricane). Following the ES&S Blended Systems User's Group Meeting in Tallahassee, Michael Hardin, Chief of Staff in Escambia County and former State Division of Emergency Management employee, did some research and draft the attached MOU. The MOU still need to be worked on. Issues still to be addressed have to do with establishing cost levels and authorization, whether it should be with like system users, etc. The question to the division would be does the MOU need to be a part of one of these proposed rules or can it stand on its own? According to Michael Hardin's research the DEM's attorney agreed that supervisors would fall under the umbrella of the existing statewide mutual aid agreement for providing support during emergencies. We know that he is leading a panel discussion on emergency issues at the Division Workshop. Your thoughts as you deal with emergency preparedness issues for elections are appreciated.

Submitted by Bill Cowles  
FSASE Rules Development Committee Chair  
June 7, 2006

**MEMORANDUM OF UNDERSTANDING**  
**Between Supervisors' of Election**  
**For Providing Emergency Elections Support**

**I. PURPOSE**

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The Supervisors of Election recognize the importance of contingency plans to support election activities during emergency situations. Each Election Official is responsible for planning and successfully carrying out the tasks of elections in their jurisdiction. This Memorandum of Understanding (MOU) sets forth the processes and protocols for providing assistance, between the sixty-seven (67) Supervisors of Elections, for emergencies impacting a single jurisdiction, region of the State of Florida, or the entire State of Florida and falls under the umbrella of Florida's Statewide Mutual Aid Agreement.

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**II. AUTHORITY**

Florida Statute 101.733

Florida Division of Elections Rule 1S-9

**III. IMPLEMENTATION OF AGREEMENT**

In order to ensure effective collaboration and planning, it is agreed that the scope of the MOU will be reviewed annually. All signatories will identify representatives to implement and coordinate the MOU. These representatives shall meet as needed to discuss and direct activities conducted under the MOU. The following guidelines should be used to implement this MOU:

a) Requesting jurisdiction should identify specific need(s) such as:

- Staff support
- Programming
- Equipment
- Services (tabulation, etc)

b) Requesting jurisdiction notifies their appropriate local governing body of need.

c) Requesting jurisdiction makes request, through appropriate authorized agents, to participating elections offices. Request can be by contacting a Supervisor of Elections office directly, an officer of the Florida State Association of Supervisors of Elections (FSASE), or the Florida Division of Elections, to facilitate the request. Regardless of the route of request, the requesting jurisdiction will notify the Florida Division of Elections of any request for assistance. The request should include the following details:

- Type of assistance required
- Time/date of needed support
- Duration
- Logistical requirements (transportation, housing [if related to sending staff])
- Point(s) of contact
- Estimated costs (if appropriate)

d) The jurisdiction receiving the request for support shall determine if the equipment or resource is available and notify their local governing body of the request. If the equipment or service is not available, the requesting jurisdiction will be notified as soon as possible.

Deleted: §

e) The jurisdiction providing the assistance shall confirm all of the necessary details, listed in Section III-c, with the requesting jurisdiction. Once details are confirmed, supporting jurisdiction provides the agreed upon services and/or equipment.

f) The jurisdictions, both requesting and assisting, shall notify their local governing body and the Florida Division of Elections upon completion of the requested task(s) and/or return of all equipment.

#### IV. REIMBURSEMENT OF COSTS

All reasonable costs associated with providing the requested assistance shall be reimbursed by the requesting jurisdiction. All parties shall seek to resolve any dispute concerning the costs through good-faith discussions.

#### V. EFFECTIVE DATE

This MOU is effective upon signature of the parties and will remain in effect unless and until terminated as provided under Article VII.

#### VI. AMENDMENTS

This MOU may be modified or amended by written agreement among the parties hereto.

#### VII. TERMINATION

This Agreement shall be in effect for one year from the date of execution, and shall be automatically renewed each year thereafter. However, any party to the agreement may terminate the agreement by providing thirty (30) days written notice to each party to the agreement.

AGREED TO BY:

\_\_\_\_\_  
Supervisor of Elections

\_\_\_\_\_  
County

\_\_\_\_\_  
Date

**Matthews, Maria I.**

---

**From:** Drury, David R.  
**Sent:** Thursday, June 08, 2006 12:30 PM  
**To:** Matthews, Maria I.  
**Subject:** RE: Need clarification asap, thank you

Maria:

Yes, I think it should be an addition to paragraphs (5)(d)1. and (5)(d)2. in the proposed rule 1S-2.015  
The rule should explicitly state for each voting system exactly what computer files are needed.

I am working on this with the vendors.

I am also coming to the conclusion that the Purchase and Use rule may need to address in greater detail the so-called "system acquisition report" to reflect what we are trying to accomplish with this report and just what the report should entail (i.e., the two forms, a copy of the voting system software, and a copy of the manuals).

David

-----Original Message-----

**From:** Matthews, Maria I.  
**Sent:** Thursday, June 08, 2006 11:57 AM  
**To:** Drury, David R.  
**Subject:** RE: Need clarification asap, thank you

David:

Does this have any significance for potential modifications to the proposed rule 1S-2.015 or 1S-2.004?

-Maria

---

**From:** Drury, David R.  
**Sent:** Thursday, June 08, 2006 10:55 AM  
**To:** McCool, Susan C.  
**Cc:** Roberts, Dawn K.; Bradshaw, Sarah; Matthews, Maria I.; Larson, Sharon; Scoggins, Danielle C.; Harvey, Richard C.; Cade, Rosetta F.  
**Subject:** RE: Need clarification asap, thank you

Susan:

Section 101.5607(1)(a) pertains to the system acquisition report that is required to be filed with the Division of Elections when a county acquires a new or updated voting system. Richard Harvey has prepared two forms to facilitate meeting this requirement. The Supervisor only needs to sign the first form and have his/her IT person complete the remaining elements on the forms. The acquisition report consists of these completed forms and a copy of the install CDs for the voting system and a copy of the manuals (on CD if possible.)

Section 101.5607(1)(b) pertains to the L&A test. Upon completion of the L&A test, the supervisor of elections must send a copy of the "tabulation program." In this context, the tabulation program refers to the election parameters, which for your voting system would be the election database. The election parameters are what defines a unique election, how the tabulators are setup (i.e., coded/programmed), and how the vote totals are to be accumulated.

I am working on clarifying the filing requirement for the L&A election parameters to address exactly what

should be provided relative to each type of voting system. I will also be discussing these terms and the statute's requirements with the Division's management to address the best language and methodology for clarifying the requirements. It appears that the usage of some of these terms is a legacy item from the old PC-DOS days.

I hope this is helpful. Please contact me if you have any further questions.

Regards,

David Drury

-----Original Message-----

**From:** susan mccool [mailto:mccool@putnam-fl.com]

**Sent:** Wednesday, June 07, 2006 6:05 PM

**To:** Drury, David R.

**Subject:** Need clarification asap, thank you

**Importance:** High

David,

Could you please explain 101.5607(1)(a)F.S., where it reads Copies of the program codes? What exactly is the program codes? Is it the database? Pursuant to 1015607(1)(b), is this not covered when we send you a copy of the tabulation program after an L&A Test for each election?

What else do you want when we send the copy of our election database after an election? Would you list everything that is required exactly?

I realize this will probably be covered in the new proposed Security Procedures Rule, but if this rule does not take effect until after 2006 elections, which is what the SOE will be asking for next week, what exactly would you like? I realize that you may not be able to answer this particular question at this moment, but please respond to it after next week's outcome on the Rule. Thank you for your help. We appreciate all you are trying to get accomplished for us.

Susan McCool, SoE, Putnam County 6/7/06



RECEIVED  
2006 JUN 12  
OFFICE OF THE  
GENERAL COUNSEL

David H. Stafford  
Escambia County Supervisor of Elections

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[www.EscambiaVotes.com](http://www.EscambiaVotes.com)

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June 9, 2006

Maria Matthews  
Assistant General Counsel  
Florida Department of State  
R.A. Gray Building  
500 S. Bronough Street  
Tallahassee, Florida 32399

Dear Maria:

I want to bring to your attention a matter that several members of the Florida State Association of Supervisors of Elections (FSASE) have been discussing over the past few weeks.

As you know, given the high level of hurricane activity in Florida over the past several years, there has been an increased focus on contingency planning for elections offices, and on the procedures for carrying out elections in such an environment. To that end, a member of my staff has been collaborating with members from the Miami-Dade Elections Office to develop an agreement to facilitate elections support between Supervisors of Elections in emergency situations. Generally, this type of activity would fall under the existing Statewide Mutual Aid Agreement that is coordinated through the Florida Division of Emergency Management (FDEM). Representatives from FDEM concur with this assumption, but have recommended developing a memorandum of understanding (MOU) to layout the protocols for providing assistance, particularly related to voting equipment and programming.

I am also aware that there has been some discussion as to whether such an agreement should be included in the pending Rule 1S-2.015 - Minimum Security Procedures. As such, attached is the latest draft version of the MOU being circulated for review and comment among the FSASE. Should you have any questions or would like additional information, feel free to contact me or Michael Hardin, my Chief of Staff.

Sincerely,

David H. Stafford  
Supervisor of Elections

Attachment

**MEMORANDUM OF UNDERSTANDING**  
**Between Supervisors' of Election**  
**For Providing Emergency Elections Support**

**I. PURPOSE**

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**II. AUTHORITY**

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Staff support  
Programming  
Equipment  
Services (tabulation, etc)

- b) Requesting jurisdiction notifies their appropriate local governing body of need.

- c) Requesting jurisdiction makes request, through appropriate authorized agents, to participating elections offices. Request can be by contacting a Supervisor of Elections office directly, an officer of the Florida State Association of Supervisors of Elections (FSASE), or the Florida Division of Elections, to facilitate the request. Regardless of the route of request, the requesting jurisdiction will notify the Florida Division of Elections of any request for assistance. The request should include the following details:

Type of assistance required  
Time/date of needed support  
Duration  
Logistical requirements (transportation, housing [if related to sending staff])  
Point(s) of contact  
Estimated costs (if appropriate)

d) The jurisdiction receiving the request for support shall determine if the equipment or resource is available and can be provided. The SOE receiving the request shall notify their local governing body of the request and seek approval if necessary at the earliest possible time. If the equipment or service is not available, the requesting jurisdiction will be notified as soon as possible.

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e) The jurisdiction providing the assistance shall confirm all of the necessary details, listed in Section III-c, with the requesting jurisdiction. Once details are confirmed, supporting jurisdiction provides the agreed upon services and/or equipment.

f) The jurisdictions, both requesting and assisting, shall notify their local governing body and the Florida Division of Elections upon completion of the requested task(s) and/or return of all equipment.

#### IV. REIMBURSEMENT OF COSTS

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#### VII. TERMINATION

This Agreement shall be in effect for one year from the date of execution, and shall be automatically renewed each year thereafter. However, any party to the agreement may terminate the agreement by providing thirty (30) days written notice to each party to the agreement.

AGREED TO BY:

\_\_\_\_\_  
Supervisor of Elections

\_\_\_\_\_  
County

\_\_\_\_\_  
Date



**Matthews, Maria I.**

---

**From:** Alec Yasinsac [alecyasinsac@yahoo.com]  
**Sent:** Saturday, June 10, 2006 1:20 PM  
**To:** Matthews, Maria I.  
**Cc:** Breno; Mike.Burmester  
**Subject:** Statement for Monday meeting  
**Attachments:** 1814883378-Alecs\_Testimony.pdf

Dear Ms. Matthews,

Please find attached a statement and cover letter prepared for your Monday meeting regarding Rule #IS-2.004. The attached letter and statement will also be delivered by hand.

If you have any questions do not hesitate to contact me at the email address or phone number below.

Sincerely,

Alec Yasinsac

[alecyasinsac@yahoo.com](mailto:alecyasinsac@yahoo.com)  
850.545.6416

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**Security Consulting Partners, Inc.**  
1304 Conservancy Drive East  
Tallahassee, Florida 32312

June 10, 2006

Ms. Maria Matthews, Assistant General Counsel  
Division of Elections  
R:A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, FL 32399-0250

Dear Ms Matthews:

Please find attached a statement that I prepared for your June 12 meeting scheduled to discuss Rule # IS-2.004. This letter and statement will be sent via email attachment and a signed copy will be hand delivered.

If you have any questions, please do not hesitate to contact me at the below email address or phone number.

Sincerely,

Alec Yasinsac  
Director

re: alecyasinsac@yahoo.com  
850.545.6416

---

MEMORANDUM FOR THE RECORD

Subject: Comments on Rule # IS-2.004. Procurement, Use and Assessment of Voting Systems

Thank you for the opportunity to address you. My name is Dr. Alec Yasinsac. I am a retired Marine, local businessman, faculty member at Florida State University, and long time information security researcher. I am commenting regarding the proposed Florida Rule # IS-2.004, specifically regarding its potential impact on voting systems security. I am concerned that the rule, as presently worded, will decrease the opportunity to secure the voting process. The section of Rule # IS-2.004 that I will be referring to is included in the following inset.

(a)1. The supervisor of elections on his or her own, or upon the direction of the governing body, may conduct an assessment of a voting system for the purpose of examining or evaluating security procedures, access control, system reliability and accuracy. This assessment may be conducted as a routine test or a test on the basis of paragraph (2), a system audit or an examination of the functionality of the software and firmware and may include penetration testing. The supervisor of elections is responsible for the conduct of these assessments but may use the services of an independent professional person or entity approved in writing by the Division. The professional person or entity must possess one or more relevant certifications from either the American Software Testing Qualifications Board (ASTQB), the American Society for Quality (ASQ) or from EC-Council.

My concern is with the final sentence of this passage that limits authorized assessment organizations and persons by requiring assessment organizations be certified through one of three selected programs. The terminology gets a little tricky here. The passage mandates *organization/individual skills certification* for voting system assessors, essentially imposing a reputation or credibility standard. In the following paragraphs, I introduce the certification-related notion of *system verification* and contrast that with *system assessment*.

It is important to emphasize that the subject passage deals with system assessment, not system verification. System verification spans the development lifecycle and targets comprehensive functional analysis, essentially ensuring (possibly certifying) that a system accomplishes its goals. The developer generally performs system/integration testing, traditionally as the development life cycle conclusion. Though newer lifecycle models have less synchrony, in virtually all models, the developer exclusively accomplishes system testing and it is almost without exception time-driven. Verification commonly culminates in beta testing to identify

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errors that may occur “in the wild” but that are difficult to identify in standard testing methodologies.

Conversely, system assessment targets finding problems, flaws, vulnerability, and exposure to malicious acts. This process is often domain specific, i.e., specific application area knowledge enhances assessment, as does operational experience. It is not unlikely that two different, equally qualified assessment organizations, given the same period of access, would produce radically different assessment results, and that those results could be of equal quality. System assessment leverages some scientific method, but is largely an art.

Another important distinction between assessment and verification is that, unlike verification results, assessment results are easy to confirm. While system verification targets comprehensive analysis, it is well known that verification only reflects that tested processes work correctly and that certain errors were not found, not that ALL functions are correct nor that no errors exist. Corroborating a comprehensive verification would require a separate, comprehensive, lifecycle wide verification process occur (called Comparison Testing). Conversely, when assessments identify specific problems, we can easily reconstruct the tests, demonstrate the vulnerability, and document and confirm, or refute, the assessment results.

I make the distinction between system verification and system assessment because requiring certification for verifiers provides significant value, while certifying assessors is likely counter-productive. Finding problems often demands non-monolithic approaches from investigators with varying skills and perspectives. Assessor certifications tend to bound problem verification techniques into classes and to funnel thought processes into specific frameworks. This is contrary to the “out of the box” mentality necessary for effective assessment. There are many assessment techniques and approaches and certification cannot be comprehensive and is rarely broad.

The subject rule passage above acknowledges that SoEs are in a unique position to identify potential voting problems and vulnerability and that they need sufficient latitude to formally investigate potential problems. Unfortunately, the rule’s final sentence unnecessarily constricts this latitude. From a security standpoint, an assessment that finds no errors is a benign event, one that finds a verified flaw is an unequivocal success, and the two are easy to distinguish.

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Conversely, while ASTQB, ASQ, and EC-Council offer software quality, testing, and security certifications, there is no data that correlates their certification(s) with secure voting systems. On the other hand, members of security centers, such as the ACCURATE (A Center for Correct, Usable, Reliable, Auditable, and Transparent Elections) at Johns Hopkins University, could provide broad security skills and extensive domain experience. It is unlikely that such centers will consider ASQ, etc. certification. Similarly, many of the world's premier security consultants base their credibility on documented procedures, performance, and success. Counterpane, Inc. is one example. Their web page<sup>1</sup> reflects a commitment to success with their track record being the cornerstone of their reputation and the foundation for winning customer trust. Such consultants do not need and will not seek ASQ, etc. certification. Thus, it is likely that the arbitrary rule limitation would disqualify the most qualified assessment resources from service.

Sound security policy should embrace anyone that can find flaws, as long as the flaws can be easily verified/contradicted, which has proven to be true so far in this debate. It is widely recognized among software and security specialists that the more open and varied the assessment, the more likely that system flaws can be identified and removed.

For these reasons, it is likely that the requirement as it is written will reduce voting system software security. I am well aware that vendors are sensitive to assessment techniques and that they have a vested interest in the process. It is in everyone's best interest if qualified, dedicated vendors offer their services to Florida voters. However, limiting access in any form is a double-edged sword. While centralizing or monopolizing control, it also expands vulnerability impact. In cyber-jargon, this is termed the "shrink wrap" effect. If a flaw exists and is exploited in the monopolized system, broad impact is ensured by policy.

It is my strong opinion that security should be the overriding priority in this rule. There is value in identifying specific criteria, e.g. certifications that can unilaterally qualify assessment organizations and can help SoEs select suitable assessors. The exclusivity creates the security problem, preventing SoEs from selecting the best assessor for the job.

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<sup>1</sup> <http://www.counterpane.com/wins-trust.html>

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Fortunately, there are several simple options to reverse the rule's present negative impact. The ideas below have some complementary properties and are not mutually exclusive.

- (1) Allow SoEs to engage any assessment team. This allows the greatest flexibility and provides the best opportunity to identify voting system vulnerability.
- (2) Introduce an escape clause to allow SoEs to engage skill-appropriate assessment teams based on documentary credentials approved by the governing body.
- (3) Appoint a software or security Center of Excellence or other independent organization or consortium to approve exceptions to the certification requirement.
- (4) Adopt and publish a simple process to add certification organizations to the already established list of three.

Again, thank you for your time and attention. I will gladly take questions if any exist.

**BENHAM  
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OFFICE OF THE  
GENERAL COUNSEL

# Fax Cover

**To:** Maria I. Matthews, Esq.                      **From:** Richard Benham

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**Fax:** 850-245-6127                                      **Pages:** 14 (including cover)

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**Date:** June 12, 2006

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**Re:** Proposed Rules 1S-2.004 & 1S-2.015              **CC:**

**Urgent**                       **For Review**               **Please Comment**               **Please Reply**

Dear Maria -

Please find attached a letter and two exhibits (comprising 13 pages total) concerning the proposed amendment to rules 1S-2.004 and 1S-2.015. (I've tried to deliver this by email, but it is being rejected by the DOS mail server).

Please accept this "for the record" in the proposed rule making process. I will deliver an original hard copy at the workshop today.

Thank you for your time and consideration. I look forward to seeing you.

Best,

Richard

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**BENHAM**  
**LAW FIRM P.L.L.**

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June 12, 2006

**Via Email and Hand Delivery**

Ms. Maria Matthews, Assistant General Counsel  
Division of Elections  
R.A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, FL 32399-0250

Dear Ms. Matthews:

We have been retained by the Leon County Supervisor of Elections (SoE) to review the Notices of Development of Proposed Rules and Negotiated Rulemaking attendant to the amendment of Rules 1S-2.004 and 1S-2.015. We recognize and appreciate that the intent of the proposed amendments is to enhance the level of security, assurance, and confidence in Florida's elections. Unfortunately, our analysis leads us to conclude that amending the rules as proposed will not have the desired effect and will have additional negative consequences. Specifically, these rules blur the line separating the powers of the Secretary of State and local Supervisors of Elections, derogate the authority of the constitutionally required County Supervisor of Elections to conduct elections, and result in a lesser degree of security and integrity for Florida's elections. We offer our general comments below and include an annotated review of selected provisions of the rules as "Exhibit A." In addition, we provide a short statement on the constitutionally based independence of the office of the Supervisor of Elections as "Exhibit B."

1. In Florida SoE's are constitutional officers elected by and accountable directly to the Voters. SoE's have primary responsibility for supervision of elections including all local management and operational tasks. Ensuring the reliability and security of elections and elections equipment is one of the primary functions of the SoE. In counterpoint, the Department of State (DOS) has limited authority and responsibility in these matters as specifically delegated to DOS by the Legislature. Many of the proposed rules concern matters that are beyond the scope of the authority delegated to DOS by the Legislature. On balance, because these proposed rules cross the line separating the responsibilities of DOS and the SoE's they should be withdrawn and redrafted.
2. The requirement for certification of voting systems creates enormous market power for the certified vendors. Recent, well documented failures in the voting system procurement process have exposed problems inherent in having a small pool of certified vendors for these systems. These proposed rules completely miss the opportunity to regulate the vendors conduct to ensure that they use their "license to sell" in a productive manner and not as a means to impose onerous terms on SoE's that jeopardize the security and integrity of our elections. Certification is a privilege, not a right, and the vendors gaining certification to sell in Florida should be required to use that privilege responsibly. At a minimum, these rules, or the certification process, should: require vendors to sell the certified systems to Florida SoE's upon request; establish uniform, non-discriminatory terms, such as are used for state contracts; require vendors license their products for statewide use in the event of emergencies (such as hurricanes) and other unanticipated

Maria I. Matthews  
Division of Elections  
June 12, 2006  
Page 2

local election system breakdowns; and require vendors to provide timely notice to SoE's when they learn of potential vulnerabilities in their products. The proposed rules do not contemplate any level of responsibility for the vendors and should be withdrawn and redrafted.

3. The rules as proposed limit the scope and effectiveness of independent testing of voting systems in Florida. The constraints on independent testing contemplated by these rules (like mandatory notices, test plan approval by DOS, etc.) would create a higher level of cost, delay, and overhead for any SoE seeking to verify the security and integrity of a voting system. Imposing such a burden will necessarily reduce the likelihood that independent testing will be done. Less testing, and consequently less exposure of the flaws in these systems, may create a greater public perception of security and integrity, but can only yield less secure elections overall. Florida has long favored extensive scrutiny of process at all levels of the government and nowhere is it more appropriate to shine the light than on our fundamental process for elections.
4. Several provisions of the proposed rules seek to impose requirements on SoE's to "protect the intellectual property" of the voting system vendors. These matters are inappropriate for state regulation. The vendor's intellectual property rights are fully protected by their license agreements and Federal law.
5. Some of these proposed rules attempt to limit or regulate the ability of a SoE to discover information about the systems in use in their office and publish that information. This raises constitutional concerns to the extent that the rules attempt to limit the right of the SoE to speak on matters of public importance.

In summary, we urge the Division of Elections to withdraw these proposed rule amendments and begin anew with an amendment process that respects the role of the independent Supervisors of Elections, enhances the voting System Certification Process, and creates real incremental improvements in the security and integrity of our voting systems.

Thank you for your time and consideration.

Very truly yours,



Richard M. Benham

cc: Ion Sancho, Supervisor of Elections, Leon County, Florida (email only)  
Lida Rodriguez-Taseff, Esq., Duane Morris, LLP (email only)

**Exhibit A**

RULE TITLE: Procurement, Use and Assessment of Voting Systems  
 RULE NUM. 1S-2.004

<i>Proposed Rule Text</i>	<i>Comment</i>
<p>1S-2.004 <u>Procurement, Use and Assessment of Voting Equipment and Systems</u></p> <p>(1) Purpose... (a) Promote efficiency, and economy and to effect the coordination in the purchase, sale, use and assessment <del>sale</del> of voting machines and attendant equipment and voting systems in the State;</p> <p>(b) Provide a uniform <u>policies and procedures for minimum requirements in the procurement of voting equipment and voting systems</u></p> <p>(c) Provide for the maximum of competition on a basis of fair and equal opportunity to persons, companies and corporations interested in the sale and purchase of voting equipment and <u>voting systems</u> in the State;</p>	<p>This rule is supposed to promote cost effective procurements and maximize competition; in fact it has the opposite effect. The general purpose of sealed competitive bidding is to derive the best price and specifications from a wide range of sellers. The market for elections systems is unlike the market for commodity purchases in that the Department of State (DOS) must "pre-qualify" the bidders and the specific items that may be supplied. Most, if not all, of the certified election systems must be purchased as configured systems. (e.g. A county cannot buy scanners from one certified vendor and a tabulation system from another). Accordingly, there is little incentive for vendors to act competitively at the time of procurement.</p> <p>Rather, the <b><u>only effective time to ensure competition is at the time of certification.</u></b> Since certification serves as a "license" to sell equipment in the state, and without the "license" a vendor cannot sell here, the certification process should include steps designed to get the most competitive proposals and ensure that all vendors will use fair business practices. <sup>1</sup></p> <p>The rule should require that the vendor will sell to all jurisdictions in Florida on non-discriminatory terms, will grant licenses for use of their products</p>

<sup>1</sup> Vendors offering certified systems in Florida have demonstrated their willingness to use their market power, derived from the license to sell, to impose onerous conditions on local governments or to use unfair business practices. During a recent procurement in Leon County, the incumbent vendor withheld software necessary to comply with state law in violation of the existing license and support agreement, and demanded that the County accede to new burdensome conditions in order to obtain the software. This issue arose when the County Supervisor of Elections (SoE) began to investigate the possible use of components offered by a new vendor in combination with the incumbent vendor's products. Facing potential loss of market share and profits, the incumbent vendor unilaterally determined to withhold the necessary software in violation of the existing license and support agreement. In the wake of this incident, each of the other two authorized sellers made offers to the County which were then withdrawn without reasonable notice or explanation.

<sup>2</sup> Recently, the supervisor of elections of Polk County offered to make their certified election system available to Leon county should an emergency need arise before Leon County could complete acquisition of its own system. The vendor expressed the position that they would not consent to such use of the system that Polk County had purchased, paid for, and kept under maintenance continuously. If this is permissible, then by the same logic, any vendor could require payment of a fee when one County attempts to assist another County by loaning equipment in an emergency situation.

	<p>state wide<sup>2</sup> to promote efficient sharing of systems when feasible, will commit to maintaining certified status and providing updates under their maintenance programs, and will support, rather than inhibit, integration of system components that create better, more cost effective solutions.</p>
<p><u>(3) Certification and Notice of Use of Voting Equipment and Voting System.</u>  <u>a. Prior to the procurement of any voting equipment or voting system, each governing body shall certiv in writing to the Division that the equipment or system shall be used for the purpose intended, that the equipment or system meets the requirements for certification under state law and rules, and that the equipment or system satisfies all other requirements under federal and state law. Prior to the subsequent sale of any voting...</u></p>	<p>This subsection (3) is so vague as to be meaningless, and should be deleted. If it has any meaning it appears to be a direction to Supervisors of Elections (SoEs) as to how to use equipment in the conduct of an election and in preparing to conduct elections. This is an encroachment on the Constitutional authority of the SoEs in any form; once the equipment is acquired and in use it is the SoEs burden and responsibility to comply with the law.</p> <p>Further, local governing bodies do not have any way to independently make the determination required by this subsection. A local governing body has no way to certify that the equipment "meets the requirements for certification" absent referencing the actual certification documents issued by DOS. It is inappropriate for the DOS to ask the local governing body to certify something which can only be certified by relying on the DOS certification.</p>
<p><u>b. A supervisor of elections or the governing body shall notify the Division when he or she receives any voting equipment or voting system that fails in any respect to meet the standards for certification under state law or that fails to meet the specifications upon which a contract, agreement or other written representation was based.</u></p>	<p>This should be prefaced by the phase "upon discovery that equipment received fails in any respect..." A Supervisor of Elections cannot report what is not known to his office. Further, there should be language here that requires the DOS to take specific action to investigate such reports and notify all other Supervisors of Election of the issue involved. Similarly, certified equipment vendors should be required to notify the Division immediately if they become aware of any condition that may cause their product to "fail in any respect to meet the standards for certification"</p>
<p><u>(5) Procedures for Use of Voting System.</u>  <u>b. Improvement to the election process. A voting system may be used in any manner approved by the vendor in an effort to improve the election</u></p>	<p>This is a matter of contract between the vendor and SoE, and including it in this rule is an encroachment on the Constitutional authority of the SoEs. The DOS has no authority to regulate the normal use of specific equipment in an individual County after purchase. Any direction to the SoEs to obtain</p>

<p><u>process. However, any deviation from the documented procedures or manual for use and operation of the voting system must be approved and documented by the vendor and must be approved in writing by the Division. Such documentation may be in the form of "user notes," "technical bulletins," or other suitable format.</u></p>	<p>"approval" of the vendor is absolutely inappropriate. This language should be deleted.</p> <p><b><u>Why should elected officials in Florida need the approval of a vendor to use a voting system in a manner that "improves the election process?"</u></b></p>
<p><u>c. Training and educational purposes... Any training or educational session or program must occur sufficiently in advance so as not to interfere with or comprise the preparations of the voting system for use in an upcoming scheduled election</u></p>	<p>This language should be deleted due to it's encroachment on the duties of the SoE. DOS has no authority to regulate training decision of SoEs.</p>
<p><u>(6) Procedures for Assessments of Voting Systems.</u></p> <p><u>(a)1. The supervisor of elections on his or her own, or upon the direction of the governing body, may conduct an assessment of a voting system for the purpose of examining or evaluating security procedures, access control, system reliability and accuracy. This assessment may be conducted as a routine test or a test on the basis of paragraph (2), a system audit or an examination of the functionality of the software and firmware and may include penetration testing. The supervisor of elections is responsible for the conduct of these assessments but may use the services of an independent professional person or entity approved in writing by the Division. The professional person or entity must possess one or more relevant certifications from either the American Software Testing Qualifications Board (ASTQB), the American Society for Quality (ASQ) or from EC-Council.</u></p>	<p>The entire subsection (6) should be deleted as not within delegated statutory authority, and an encroachment on the Constitutional responsibility of SoE's. The statute cited provides no delegated authority for regulating "assessment" of voting systems. It is the responsibility of SoEs to assess the security, reliability and accuracy of equipment once acquired. DOS may also so assess, but cannot regulate SoEs doing so.</p> <p>This article reads as if it is intended to create a new type of authority for the SoE, but it actually seriously limits the already inherent authority of the SoE to assure elections are secure. Requiring the "person or entity" to have "one or more relevant certifications" will constrain the available pool of testers without creating any additional assurance of competence. These certifications may tend to demonstrate some level of professional ability, but failing to particularly specify that the individual performing the test must be personally qualified is poor practice. The better approach is to require the test conductor to present his/her qualifications along with the test results report and allow the reader to assess the credentials independently.</p>
<p><u>2. A supervisor of elections may also conduct or order an assessment based upon any potential or actual deficiency, problem.</u></p>	<p>This places constraints on those in a position to discover problems with a certified system, rather than imposing a requirement that such person document the concerns and requiring DOS to act on the report.</p>

<p><u>vulnerability or flaw identified or detected in a certified voting system that relates to its hardware, software, design, operation, vote tabulation, access control, system reliability and accuracy, or security including the potential for unauthorized manipulation and fraud. Any potential or actual deficiency, problem, vulnerability or flaw that is identified or detected must be reported in writing to the Division of Elections and the affected vendor(s) no later than 10 days of its identification or detection.</u></p>	<p>Further, this section should impose a duty on DOS and all vendors of Certified voting systems to report potential security problems to the SoE's. For example, independent tests conducted by the State of California confirmed suspected vulnerabilities in some Florida certified voting systems. The Department should <b>require</b> vendors to disclose any suspected vulnerability, potential problem, or issue raised in any jurisdiction within or outside Florida along with their assessment of the information and the process they are following to correct or mitigate any problem.</p>
<p><u>(b) The following procedures apply to an assessment of a voting system under this subsection:</u></p>	<p>These procedures are impermissibly intrusive into the affairs of the independently elected office of Supervisor of Elections and should be struck in their entirety. The statute cited as authority for these rules does not concern assessment of voting systems and these proposed rules far exceed the authority of the DOS. Beyond that general statement, the following details are particularly addressed:</p>
<p><u>1. The supervisor of elections shall provide written notice to the Division of Elections of its intent to conduct an assessment. A test plan must be submitted to the Division of Elections for approval before an assessment is conducted. The test plan must include at a minimum, provisions for protecting the vendor(s)' intellectual property and confidential and exempt information, whether the voting equipment or voting system will be altered or an attempt made to alter such equipment or system during the assessment, ensuring that all terms of the license and maintenance agreements will be maintained during such scheduled assessment.</u></p>	<p>DOS does not have authority to require SoEs to notify DOS prior to a test, or get DOS approval of such test; although DOS can certainly require disclosure of results pertaining to security or reliability of systems statewide.</p> <p>It is baffling why, in this context, the first criteria to be addressed is protection of the vendors' intellectual property. If a SoE is pursuing this type of testing it is because there are concerns about the ability to conduct a fair and secure election. The drafters of this language seem to have their priorities misplaced. Furthermore, every SoE is subject to the requirements in their License Agreement(s) with the vendor(s) of their systems. These agreements already impose contractual duties of non-disclosure and this language is needlessly duplicative.</p>
<p><u>2. Upon approval, the supervisor of elections may not schedule the assessment of the voting system any earlier than 21 days from the date the Division approves the test plan.</u></p>	<p>Why is it necessary under any circumstances to delay a test the SoE deems important to determine security and reliability of elections equipment?</p>
<p><u>3. The supervisor of elections shall provide notice</u></p>	<p>Again, DOS does not have authority to regulate the</p>

<p><u>of the scheduled assessment and opportunity to attend to the following persons or entities: the Division, the vendor(s) of the certified voting system or equipment components affected by the test or assessment, other supervisor of elections who have similar voting systems in operation in their county, and the governing body. Notice to the public shall also be posted continuously at least 2 weeks in advance of the assessment on the respective supervisor of elections' webpage and published for two consecutive weeks in a newspaper of general circulation in advance of a scheduled assessment.</u></p>	<p>manner in which an SoE supervises elections, including operational matters such as testing systems for security and reliability. Although an SoE would certainly choose to give notice in most cases, that decision would depend upon the circumstances, and its within the purview of the SoE, not DOS.</p>
<p><u>4. The Division of Elections has the right to be present or to have access, pursuant to Section 101.58, to all premises, records, and equipment and staff of the supervisor of elections during the assessment</u></p>	<p>The Division of Elections is a unit of the Florida Department of State. As a governmental agency, the Division has no "rights"; this language is inappropriate. The People have "rights" and the Government has limited powers.</p> <p>This language is unnecessary. The Secretary of State's authority to designate an employee to be present is provided by statute. But that power, if constitutional, is limited to the express authority given by the statute.</p>
<p><u>5. The assessment of the voting system shall be conducted in public and on location, if practicable, in the county of the respective supervisor of elections.</u></p>	<p>As a practical matter such testing cannot be conducted in a public place, and to so require is an apparent attempt to prohibit testing. The exercise of day-to-day governmental responsibilities of this nature is not subject to the Florida Sunshine Law, and to require they be performed "in public" is overly burdensome.</p> <p>In addition, testing "in public" raises serious security concerns. In matters of system security, it is common practice to disclose the results of testing but not necessarily the detailed procedures used to obtain the results. Providing a "roadmap" of "how to" exploit a vulnerability can create a significant security risk, and is often precluded by proprietary rights agreements. A complete report disclosing the specific methods used is customarily made available to persons and entities with demonstrated need to know the information and those responsible for mitigating the vulnerability.</p>
<p><u>6. The assessment shall be conducted in a manner that protects the disclosure of intellectual property and other information and documentation</u></p>	<p>Again, the drafter's priorities seem misaligned with the needs of the Voters. The intellectual property rights of the vendor are fully protected by their license agreements with SoE's and Federal law.</p>

<u>protected under the public records law.</u>	Further, this clause coupled with the preceding requirement to conduct the test publicly may create an effective "veto" of any testing by a vendor.
<u>9. The vendor(s) of the voting system or voting equipment component affected by the assessment may submit a written response to the report.</u>	That a vendor "may respond" to a report documenting vulnerabilities in their certified systems seems intuitively obvious. Clearly, such responses should be mandatory. If these rules cannot be used to impose such a requirement, then the Certification Process should be modified to include the requirement.
<u>10... The Division may also issue technical advisories to the supervisors of elections and the governing bodies relating to the results of any such assessment.</u>	The Division should be required to notify SoEs statewide of significant issues disclosed in tests. Once again the Division "may" issue a notice in the wake of these discoveries, but is not required to do anything.

RULE TITLE: Minimum Security Procedures for Voting Systems  
 RULE NUM. 1S-2.015

<i>Proposed Rule Text</i>	<i>Comment</i>
RULE NO: 1S-2.015 Minimum Security Procedures for Voting Systems	
<p>(5) STANDARDS FOR SECURITY PROCEDURES...</p> <p><u>1. The process for permanently identifying electronic media type including but not limited to memory packs, compact flash cards, PC Cards or PCMCIA cards, Personalized Electronic Ballots (PEBs), voter card encoders, supervisor cards, and key cards with a unique identification (e.g., serial number). This activity shall include:</u></p> <p><u>a. The process to create and maintain an inventory of all electronic media.</u></p> <p><u>b. The chain of custody process and procedure for identifying, documenting, handling, and tracking electronic media from the point of collection or transfer from their storage location, through election coding, through the election process, to their final post-election disposition and return to storage. Such process must use two or more individuals to perform any written check and verification checks whenever a transfer of custody takes place. <i>This electronic media must be given the same level of attention that one would give to official ballots.</i> (emphasis added)</u></p>	<p>This clause misapprehends the differences between traditional official ballots and electronic media. While it is possible to tamper with a paper ballot before it is used in an election, any such tampering that would affect the result of the vote is virtually certain to be noticed by the voter, or there will be a traceable inconsistency between the number of votes counted and the number of voters processed at the precinct. In contrast, with electronic media, it is impossible for the voter verify the state of his or her "virtual ballot" before recording his/her vote.</p> <p>Post-election tampering with either paper ballots or electronic media is also possible. However, any method of changing the paper ballot is both time consuming and difficult to do without leaving obvious traces of the change. Conversely, changing records in many electronic forms is simple, quick, and can be done in a manner that leaves no evidence at all.</p> <p><b><u>For these reasons and others, giving electronic media "the same level of attention that one would give to official ballots" is an insufficient standard.</u></b></p>
<p><u>c. A procedure is created and maintained for tracking the custody of these voting devices once these devices are loaded with an election definition. This record shall include the protective count for the voting device, where applicable. The chain of custody must specifically provide for the identifying, documenting, handling, and tracking of such devices from the point of loading to final post-election disposition. <i>A minimum of two persons must be used to perform any written checks and verification checks when a transfer of custody takes place. These voting devices must be given the same level of attention that one would give to official ballots.</i> (emphasis added)</u></p>	<p>Again, treating digital systems "the same" as traditional paper based analog systems misapprehends the inherent vulnerability of the digital system to modification without leaving easily detectable traces.</p>
<p><u>3. A recovery plan that is to be followed should there be any indication of a security breach in the accountability and chain of custody procedures. <i>Any indication of a security breach must be confirmed by more than one individual.</i> (emphasis added)</u></p>	<p>Consider 2.c with 3. A minimum of two people must be used to perform checks. But, any indication of a security breach must be confirmed by "more than one individual." What if one of the two breaches security and refuses to admit the breach? Even if it is completely apparent to the second, his/her report of it will be unconfirmed and therefore insufficient under this article.</p>

<p><u>4. A description of the process to create and maintain a secured location for storing and transporting voting devices once the election parameters are loaded. This shall include procedures that are to be used at locations outside the direct control of the supervisor of elections, such as overnight storage at a polling location or early voting site. This description shall include:</u></p> <p><u>a. A process for creating and maintaining an inventory of these items for each storage location, for each election. These voting devices must be given the same level of attention that one would give to official ballots. (emphasis added)</u></p>	<p>Same problem as described above. These voting devices and their media <b>must be subject to a much greater level of attention</b> than one would give official ballots.</p> <p>Possible additional procedures not needed for official ballots but useful in securing digital systems might include</p> <ul style="list-style-type: none"> <li>- pervasive video recordation of the systems in use and storage</li> <li>- a program of random audits</li> <li>- stringent background checking for the personnel accessing the systems, and</li> <li>- random additional supervision, among others</li> </ul>
<p>(6) ACCESS TO TABULATION PROGRAM SOURCE CODE.</p> <p>(a) No supervisor shall have access to any vote tabulation program source code to be used in an election unless prior approval has been obtained from the Division of Elections. Approval shall be based on the supervisor establishing security procedures which provide for maintaining a secured control copy of the certified release of the tabulation program source code; protecting source code from unauthorized access; and verification that the tabulation program source code used for each election is identical to the certified release.</p>	<p>Although this already exists in the F.A.C., it is improper. The DOS has no authority to prevent a SoE from accessing computer source code or any other information. This is a fundamental violation of the First Amendment of the U.S. Constitution and Article I, Section 4 of the Constitution of Florida.</p> <p>Importantly, this provision would also likely inhibit the adoption and use of any "Open Source" election system should one become available for certification. Open Source systems are widely considered to be cost effective and secure solutions in many domains. This rule limits the possibility of using open source systems for elections.</p>

Exhibit B

**Constitutional Independence of the Supervisor of Elections**

**I. Introduction**

The Division of Elections (the "Division") has submitted for comment, Proposed Rules IS-2.004 which relates to the procurement, use and testing of voting systems. This Proposed Rule, however, would infringe upon the constitutionally created office of the supervisor of elections (the "Supervisor") and would violate the limitations set forth by the Administrative Procedure Act (the "APA"). The Proposed Rule, as currently proposed, infringes on the Supervisor's role as sole custodian of the voting system in the county. Moreover, the Proposed Rule impermissibly diminishes the statutory authority of the Supervisor to test the voting system. Moreover, the Proposed Rules infringes upon the right of the Supervisor, as constitutional officer, to retain volunteers. Therefore, for the reasons set forth more fully below, the Proposed Rule cannot and should not be adopted as currently drafted.

**II. The Rule-Making Authority of the Division is Constrained by the APA**

"An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute . . . . Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute." Fla. Stat. §120.536(1). In interpreting Florida Statutes §120.536(1), Florida courts have consistently invalidated administrative rules that go beyond implementing or interpreting the specific powers granted to them by enabling statutes.

For example, in the case of *State of Florida Bd. Of Tr. Of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So.2d 696 (Fla. 1<sup>st</sup> DCA 2001), the administrative body at issue in that case was not permitted to promulgate rules to restrict the use of submerged land because such rules went beyond the administrative body's delegated authority. *Id.* at 704.<sup>1</sup> In that case, the court applied the test of whether a proposed rule "implements or interprets 'specific powers or duties'". *Id.* at 704 (citation omitted). Applying that test, the court found that there was no specific delegation of authority by the legislature to propose such a rule and held it to be invalid. *Id.* Moreover, in *Sw. Florida Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1<sup>st</sup> DCA 2000), the court found that a rule was invalid because it was not a specific grant of legislative authority. *Id.* at 599. In that case, the Water Management District promulgated a rule that would permit exemptions based on the prior approval of the Water Management District. *Id.* at 596. The Manatee Club challenged the proposed rule and the court, in invalidating the rule, stated that for a rule to valid, it must be based on the "explicit power or duty identified in the enabling statute." *Id.* at 599.

<sup>1</sup> The rule at issue in that case was directed directly at "cruises to nowhere" and day cruises that legally allowed off-shore gambling. *Id.* at 697.

### III. The Powers of the Supervisor Are Constitutionally Granted

As set forth in the Florida Constitution, the office of the Supervisor is a constitutional office: "There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, *a supervisor of elections*, and a clerk of the circuit court . . ." (emphasis added) FLA. CONST. art. VIII, §1, cl. d (Amended 1998).

While the Department of State is empowered to adopt rules which establish minimum standards for hardware and software for electronic and electromechanical voting systems (*see* Fla. Stat. §101.015(1)), Florida Statutes §101.34 makes the Supervisor *the custodian of the voting system* in his own county and, importantly, authorizes the Supervisor to deputize those who are to prepare and supervise the voting system prior to and during elections.<sup>2</sup> In addition, pursuant to Fla. Stat. §101.5612(2), it is the Supervisor, not the Department of State or the Division, who is required to have the automatic tabulating equipment tested publicly no more than ten (10) days prior to the commencement of early voting. *See* Fla. Stat. §101.5612(2).

There is no provision in Florida law giving the Department of State or the Division concurrent custody over a county's voting system. Nor is there a provision in Florida law empowering the Department of State to deputize the Division or any other party, to prepare or supervise a county's voting system either prior to or during a particular election. Moreover, there is no provision in Florida law that permits the Department of State or the Division to conduct or control testing of a voting system while in the custody of the county. In fact, Florida Statutes §101.591 states that it is the Florida Legislature, "upon specific appropriation and directive" that "may provide for an independent audit of the voting system in any county." Fla. Stat. §101.591(1).

### IV. Proposed Rule 1S-2.004(6) is Invalid as Drafted

Proposed Rule 1S-2.004 purports to set forth procedures for the Supervisor to conduct "assessments" of the voting system. According to the Proposed Rule, in conducting the assessment,

. . . . The supervisor of elections is responsible for the conduct of these assessments but may use the services of an independent professional person or entity *approved in writing by the Division*. *The professional person or entity must possess one or more relevant certifications* from either the American Software Testing Qualifications Board (ASTQB), the American Society for Quality (ASQ) or from EC-Council.

<sup>2</sup> "The supervisor of elections *shall be the custodian of the voting system in the county*, and he shall appoint deputies necessary to prepare and supervise the voting system *prior to and during elections*." Fla. Stat. §101.34 (emphasis added).

1S-2.004(6)(a)1(2) (emphasis added). Proposed Rule S1-2.004(6)(b)1, for its part, would require the Supervisor, when conducting an assessment of the voting system, to provide the Division with a test plan for approval, before the assessment is conducted. See S1-2.004(6)(b)1. If the Supervisor receives authorization for the assessment, he must wait a minimum of twenty-one (21) days before conducting the assessment. See 1S-2.004(6)(b)2.

As written, Proposed Rule 1S-2.004(6)'s requirement that the Supervisor obtain written approval from the Division for any independent professional entity or person to be used by the Supervisor to conduct a voting system assessment and that the Supervisor obtain approval of the test plan and if approval is granted, wait twenty-one (21) days before conducting the assessment, is an impermissible intrusion into the powers and authority of the Supervisor because it infringes on the Supervisor's sole authority as custodian of the voting system and limits his power, outlined in Fla. Stat. §101.5612(2), to test the voting system prior to an election. Moreover, the provision of Proposed Rule 1S-2.004(6)(a)1(2) which attempts to set forth the qualifications of the independent professional person or entity conducting the assessment of the voting system infringes on Florida Statutes §125.9502(1) which permits the Supervisor, as a constitutional officer, to recruit and accept, "*without regard to requirements of any civil service system*, the services of volunteers, including regular-service volunteers, occasional-service volunteers, or material donors, to assist in programs administered by that unit of county government or constitutional county officer." Fla. Stat. §101.591(1) (emphasis added); see also *Dep't of Prof'l Regulation, Board of Dentistry v. Florida Dental Hygienist Ass'n*, 612 So. 2d 646, 648 (Fla. 1<sup>st</sup> DCA 1993) (invalidating rule promulgated by Board of Dentistry which would have allowed Board to certify any dental hygiene schools, where intent of legislature was only to grant Board authority to certify schools accredited by American Dental Association).

**Matthews, Maria I.**

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**From:** Sophia Letourneau [sophialinus@yahoo.com]  
**Sent:** Sunday, June 11, 2006 5:38 PM  
**To:** Matthews, Maria I.  
**Cc:** Ellen H. Brodsky; electionreform@yahoogroups.com  
**Subject:** Procurement, Use and Assessment of Voting Systems 1S-2.004

**Maria Matthews**, Assistant General Counsel, Division of Elections, R.A. Gray Building, Tallahassee, Florida 32399; 850-245-6536;

Dear Ms Matthews, I have read the proposed changes to the:  
Notice of Development of Proposed Rules and Negotiated Rulemaking  
DEPARTMENT OF STATE  
Division of Elections  
RULE TITLE: RULE NO.:  
Procurement, Use and Assessment of Voting Systems 1S-2.004

I think the following rule pertaining to an assessment of a voting sytem would make it a hardship on any Supervisor of Elections to conduct a security test and assement of the system being tested. The Supervisor of Elections should have the right and authority to conduct any and all tests on the systems being utilized for testing with out the prior approval of the Division of Elections.

I strongly urge the committee that is meeting on June 12, 2006 to strike out the following:

!!!

(b) The following procedures apply to an assessment of a voting system under this subsection:

1. The supervisor of elections shall provide written notice to the Division of Elections of its intent to conduct an assessment. A test plan must be submitted to the Division of Elections for approval before an assessment is conducted. The test plan must include at a minimum, provisions for protecting the vendor (s)' intellectual property and confidential and exempt information, whether the voting equipment or voting system will be altered or an attempt made to alter such equipment or system during the assessment, ensuring that all terms of the license and maintenance agreements will be maintained during such scheduled assessment.
2. Upon approval, the supervisor of elections may not schedule the assessment of the voting system any earlier than 21 days from the date the Division approves the test plan.
3. The supervisor of elections shall provide notice of the scheduled assessment and opportunity to attend to the following persons or entities: the Division, the vendor(s) of the certified voting system or equipment components affected by the test or assessment, other supervisor of elections who have similar voting systems in operation in their county, and the governing body. Notice to the public shall also be posted continuously at least 2 weeks in advance of the assessment on the respective supervisor of elections' webpage and published for two consecutive weeks in a newspaper of general circulation in advance of a scheduled assessment.
4. The Division of Elections has the right to be present or to have access, pursuant to Section 101.58, to all premises, records, and equipment and staff of the supervisor of elections during the assessment.

Sophia Letourneau  
203 East Laurel Drive  
Margate, Fl 33063

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**Matthews, Maria I.**

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**From:** Andy Johnson [downtobusinessandy@yahoo.com]  
**Sent:** Sunday, June 11, 2006 11:14 PM  
**To:** Matthews, Maria I.  
**Cc:** Holland, Jerry; Sancho, Ion V.; Billee Bussard; downtobusinessandy@yahoogroups.com; David Decamp; ACLUjax@yahoogroups.com; arlingtondemocratic@yahoogroups.com; usdemocrat-florida@yahoogroups.com; usdemocrat-fl-jacksonville@yahoogroups.com  
**Subject:** Re proposed rule, 1S-2.004, which prevents local SOE from doing independent testing.

Dear Ms. Matthews:

I would like to register my objection to proposed rule, 1S-2.004, which would prevent the local Supervisor of Elections from doing independent testing of new voting machinery.

I would also point out that more than 99% of Florida voters would also object to any such scheme if the Governor or the Division of Elections or the various Supervisors were to point out what is going on.

Sincerely,

Andy Johnson  
former member, Florida House

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Andy's mailing address:  
12260 Spiney Ridge Drive South  
Jacksonville, FL 32225  
More Andy: <http://downtobusiness.org>



**Matthews, Maria I.**

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**From:** Anita Lapidus [nitalapidus9@cfl.rr.com]  
**Sent:** Monday, June 12, 2006 11:41 AM  
**To:** Matthews, Maria I.  
**Cc:** 'Susan Pynchon'  
**Subject:** FFEC\_Comments\_on\_Proposed\_Rule\_IS\_2[1].004\_FINAL.pdf  
**Attachments:** FFEC\_Comments\_on\_Proposed\_Rule\_IS\_2[1].004\_FINAL.pdf

Dear Maria

Attached please find the comments of Florida Fair Elections Coalition on proposed rule 1S 2.004. Please make these part of the record of today's proceedings. Thank you in advance for your cooperation.

Sincerely,

Anita Lapidus  
General Counsel  
Florida Fair Elections Coalition





**Florida Fair Elections Coalition Inc.**  
112 W. New York Ave., Suite 201, P.O. Box 317  
Deland, Florida 32721  
386-736-8086  
[www.FloridaFairElections.org](http://www.FloridaFairElections.org)

Florida Fair Elections Coalition has read the proposed rule IS-2.004 and has the following comments:

IS-2.004 implements law 101.292, 101.292(3), 101.294, 101.295 and 101.5604, F.S.

It is clear that the proposed rule is designed to make tests such as those conducted in Leon County in 2005 difficult if not impossible, even though those tests have been to the public good. The Leon County tests, which have become known nationally as the "Hursti hacks" after the computer consultant, Harri Hursti, who conducted them, have resulted in numerous other security vulnerabilities being discovered in voting systems. The ability to exploit the security vulnerabilities exposed in the Leon County and other security tests calls into question the accuracy and security of elections both in Florida and around the country.

The Supervisors of Elections are required to perform tests under Florida Statutes § 101.5612 which this rule covers (even though this statute is not listed as one of the laws implemented in the preface to the proposed rule). The constitutionality of the State taking over the Supervisors of Elections functions is questionable under the Florida Constitution and certainly, Florida Statutes § 101.58 should not be read to allow the Department of State to totally usurp the normal functions of supervisors of elections without cause.

The proposed rule gives too much power to voting machine vendors. Florida voting systems should be used and tested in an independent manner for the benefit of Florida voters. Section (5) (b) of the proposed rule states: "A voting system may be used in any manner approved by the vendor and must be approved in writing by the Division." (Emphasis added). Voting machine suppliers are required by the Florida Voting System Standards to provide a "User's Manual" to describe safe and efficient use of the voting system. However, it is unreasonable to expect a vendor to willingly cooperate in security testing after a sale - the vendor has everything to lose and nothing to gain. Granting power to the vendor to approve the way the voting system is used is absurd. There are limits to vendor discretion. The taxpayers have purchased the system and its use and security should be determined by them through their elected officials.

#### **Requirements of the Test Plan**

While it is questionable that state law authorizes the Department of State to control the testing of voting systems by a supervisor of elections, there are also some dubious concepts and requirements in the testing plan itself.

The first item listed as a minimum requirement for a test plan is protection of vendors' intellectual property. This might give the wrong impression that the intent of requiring such a plan is to protect the vendors.

Also, any test plan should not place the vendor in charge of the test process as this is a conflict of interest. This rule effectively does that.

There are no substantive standards listed for approval of the plan. This might allow the Department of State to arbitrarily withhold approval of any plan submitted.

The reason to demand that any assessment be conducted by an individual certified by one of three listed professional associations is unclear. There are other credible professional



associations and many credible computer scientists who do not have these affiliations. Also, one point of security testing would seem to be to determine what level of expertise is needed to exploit the systems' vulnerabilities. If a 15-year old with a laptop can alter election results, we need to know it. The fact is that Paul Craft, former Chief of the Bureau of Voting Systems Certification, apparently could not meet this requirement (no professional affiliations are listed on his resume

It is illogical for the state to assume responsibility for test procedures and then assign responsibility to the supervisors of elections for any problems those tests might uncover. It is a statutory function of the Division of Elections to promulgate minimum security procedures. Once major security vulnerabilities have been uncovered, it is incumbent on the state to step forward with meaningful solutions. The supervisors of elections do not have the power over vendors or others in the chain of custody that the state enjoys. The following wording, or something similar, would be more appropriate:

The Supervisor shall implement all available procedures to mitigate adverse effects resulting from any problem discovered during testing and may make recommendations to the State. The State, after reviewing the assessment, shall conduct necessary investigations into the problem, shall issue technical advisories and regulations designed to mitigate any adverse effects, and should decertify the voting system if appropriate.

It is redundant to state that the Supervisor's procedures will be replaced if and when the State issues procedures as that is the law

The current procedures for testing security during the certification process are not always followed and the procedures that do exist are inadequate. The State should have meaningful procedures in place for security testing and follow them. Adequate security testing would have uncovered the security vulnerability exploited in the Hursti hacks. At the very least, the State should have recognized the existence of an interpreter and interpreted code in the Diebold AccuBasic language and responded appropriately. The Hursti Hack should have failed because the State had eliminated that security vulnerability. Instead, it is still possible and will remain possible in the 2006 elections. However, the responsibility of the State to detect and mitigate security vulnerabilities does not excuse each supervisor of elections from his or her duty to make our elections as safe as possible. The State could help them by providing rational guidelines, not mandates, for test plans and by choosing the least burdensome methods of safeguarding intellectual property.

#### **Editing Notes**

Section 1(f) defines voting system as a method of casting ballots and processing "voters." This should read "votes." If "voters" was meant a more accurate term for voting than processing should be used

The proposed rule appears to skip from section 3 to 5 without a section 4.

#### **Summary**

While appropriate regulations are welcomed and encouraged, their aim should be the security of voting systems. Does the Department of State want to protect the integrity of Florida elections or does it want to minimize the possibility that real threats will be found? Electronic voting systems pose problems and risks to our democratic process that have never before been contemplated. All states are struggling with ways to prevent the exploitation of security vulnerabilities and any new findings should be welcomed, not condemned.

The task of the Department of State is to make these systems safe not pose obstacles to their testing for safety. The proposed rule constitutes just such an obstacle.



**Matthews, Maria I.**

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**From:** Anita Lapidus [nitalapidus9@cfl.rr.com]  
**Sent:** Monday, June 12, 2006 11:41 AM  
**To:** Matthews, Maria I.  
**Cc:** 'Susan Pynchon'  
**Subject:** FFEC\_Comments\_on\_Proposed\_Rule\_IS\_2[1].015\_FINAL.pdf  
**Attachments:** FFEC\_Comments\_on\_Proposed\_Rule\_IS\_2[1].015\_FINAL.pdf

Dear Maria:

Attached please find the Comments of Florida Fair Elections Coalition on the proposed 1S1.015. Please include them in the record of today's proceedings. Thank you in advance for your cooperation in this matter.

Sincerely

Anita Lapidus  
General Counsel  
Florida Fair Elections Coalition.

