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Examples of State and Local Government Actions Against Deceptive and Other Unlawful Practices by Voting Machine Companies

Hancock County, Illinois, 2008. In January 2008, Hancock County Clerk Kerry Asbridge requested the U.S. Department of Justice to investigate ES&S for deceptive business practices regarding the AutoMark voting machine. ES&S increased costs nearly four-fold in six years, changed requirements three times retroactively, and charged the exact amount of the federal grant for these voting machines.¹

California and City and County of San Francisco, CA, 2007. On January 22, 2008, the City of San Francisco announced \$3.5 million settlement with ES&S.² On November 17, 2007, the City and County of San Francisco sued ES&S for breach of contract, fraud, negligent misrepresentation, and violations of California Elections Code Sections 18564.5, 12650, and 17200 for selling and servicing voting systems to the city and county that were not certified by California. Two days later the Secretary of State of California separately filed suit against ES&S for violations of California Elections Code Sections 18564.5(a)(5) and (a)(6), and 19214.5 in connection with unauthorized changes to electronic voting systems and failure to notify the Secretary of State of such changes. Both complaints allege that ES&S sold almost 1,000 voting machines that were of a model different from the one submitted to the state for certification.³

Cuyahoga County, Ohio, 2006-07. Election commissioners in the Ohio county that includes Cleveland proposed suing Diebold over the Accu-Vote TSx DRE voting system, which Cleveland purchased post-HAVA and which failed miserably in the 2006 federal election and otherwise had problems. Commission Jones said “[h]anging chads were much less of a problem,” and Commission Dimora argued against any touch-screen voting machine.⁴ Cuyahoga is in the process of replacing Diebold DREs with optical scan voting machines.⁵

Luzerne County, PA, 2007. Luzerne bought 750 touch-screen voting machines from ES&S using \$2.4 million in federal taxpayer dollars in a rush to avoid losing federal HAVA money and a year later ES&S demands more than \$300,000 for a three-year warranty. In a July 19, 2007, letter to the Deputy Secretary of the Commonwealth of Pennsylvania, the director of elections for Luzerne County asked the state to make sure “that voting-system vendors doing business here do not have the opportunity to threaten the democratic process with such unsavory business practices that vendors, such as ES&S, seemingly have a deep commitment to employing.”⁶ The Luzerne County Board of Elections negotiated a warranty resolution with ES&S at a cost of \$60,550 for four years.⁷

Kentucky, 2007. Attorney General investigation revealed that Diebold installed uncertified software in Kentucky’s most populous city Louisville, which uncertified software was used in at least three separate elections.⁸

Northampton County, PA, 2007. Northampton County sued AVS for breach of contract and warranties regarding touchscreen voting machines and failure to provide promised services and claimed damages arising from having to use other machines in elections.⁹

Mercer County, PA, 2007. Election officials troubled by ES&S pricing for voting machine warranty for maintenance and repair.¹⁰

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Georgia, 2007. State Board of Elections referred to the State Attorney General for investigation a complaint that Diebold installed uncertified software in voting machines in Georgia.¹¹

Indiana, 2007. Secretary of State recovered \$363,000 in civil penalties and costs, and \$170,000 in legal fees, in an administrative ruling against Microvote for knowingly selling faulty machines.¹²

West Virginia, 2006. The County Commissioners Association and State file suit against ES&S for breach of contract and the Secretary of State complained to the federal Election Assistance Commission.¹³

Oregon, 2006. The Secretary of State sued ES&S for breach of contract regarding AutoMark touch-screen voting machines.¹⁴

Arkansas, 2006. The Secretary of State opened an investigation for breach of contract against ES&S. Four counties in Arkansas were unable to use touch-screen voting machines provided by ES&S and ES&S failed to deliver programmed computer chips for optical scanners.¹⁵

City of Chicago and Cook County, Illinois, 2006. After massive problems with Sequoia DREs, governments consider changing vendors and/or securing financial relief from Sequoia.¹⁶

California, 2005. The California Attorney General recovered \$2.6 million for the state and others and secured injunctive relief in the resolution of claims against Diebold for violations of the state's False Claims Act and Unfair Competition Laws. The State complained that Diebold falsely represented the security, and state and federal certification, of its touchscreen machines and vote tabulation systems to induce counties to spend taxpayer money on its voting systems.¹⁷ Diebold stockholders have filed securities fraud class actions arising from Diebold conduct with respect to its voting machine business;¹⁸ the SEC is investigating and in 2008 it was reported that the U.S. Department of Justice has opened a possibly broader investigation of Diebold voting machines business conduct.¹⁹

Marion County, Indiana, 2005, ES&S paid the county 1.2 million to settle a lawsuit claiming that ES&S installed uncertified software in the county's optical scan voting systems.²⁰

Four Counties in Indiana, 2004, the State election commission required ES&S to put up \$10 million bond because the certified version of the firmware for the iVotronic DREs did not work. The discovery of ES&S secretly installed uncertified firmware in the iVotronics led to the discovery that the certified firmware did not work.²¹

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