

Minutes
State Election Commission Meeting
October 08, 2012

The State Election Commission meeting was called to order by Chairman Kent Younce at 12:10 p.m., Central Standard Time October 08, 2012. The following members and staff were present: Chairman Younce; Commissioners Blackburn, Head, Wallace, and Wheeler, Coordinator of Elections Mark Goins; and Krysten Velloff, Administrative Assistant. The following members participated by phone, but were not allowed to vote: Commissioners DuBois and Duckett.

Motion was made, seconded and unanimously approved to adopt the minutes from September 10, 2012.

Pursuant to T.C.A. § § 2-12-101 and 2-12-106, motion was made, seconded and unanimously approved to accept the nominations for county election commission appointment as submitted by commission members. (See attached list of appointments made.)

Old Business

- None

New Business

- Commission members discussed the Shelby County Election Commission Administrator Rich Holden's response to the Comptroller's letter. (See attached letters.) Shelby County Election Commissioners were present along with Shelby County Election Commission Administrator Rich Holden. Rich Holden gave an overview of the redistricting problems in Shelby County. The Commissioners established a lack of preparation/back-up plan and sought reassurance that this will not occur again. The Shelby County Election Commissioners were reasonably comfortable with the approach and direction that is being outlined by Administrator Holden.
- Commission members discussed the software updates in the 4.0 B MicroVote voting machines. Bill Whitehead gave a demonstration of the updates in the software. Coordinator Goins mentioned how each county would not be required to upgrade; however, if the county decided to upgrade, the county would receive a discounted price along with a warranty.

Motion was made, seconded and unanimously approved to request the MicroVote voting machines 4.0 B be certified.

- Commissioner Wallace spoke regarding the Benton County Election Commission. Benton County AOE, Mark Ward was sued in Federal Court and the county insurer is refusing to pay the expenses associated with the court case based on the federal court ruling. Attorney Brandon Gibson, representing Administrator Ward, was present and gave an overview of the case. Commissioner Wallace would like for the State Election Commission to make a recommendation to the legislature to clear up this issue of whether an Administrator of Elections is a state employee or county employee.

Chairman Younce made a motion requesting Commission members to meet with Speaker Harwell, Lieutenant Governor Ramsey, and the State and Local Government Chairpersons regarding the status of Administrators' of Elections and other county election commission issues which need to be cleaned up.

Coordinator Update

- **Honor Vote Program**

Coordinator Goins gave an update regarding the newly established Honor Vote Program. A voter can dedicate his/her vote to someone who is a veteran or active in the military.

The next meeting is November 13, 2012. The meeting will be held in the William R. Snodgrass – Tennessee Tower, 3rd Floor, Montgomery Room at NOON Central Daylight Time.

Motion was made to adjourn, and there being no further business to come before the commission at this time, the meeting was adjourned.

Respectfully submitted,


Tom Wheeler – Secretary
State Election Commission

Vacant Status

27-Sep-12

Benton

D Greg Duckett

R Jimmy Wallace

D

Lake

D Greg Duckett

R Jimmy Wallace

R

Total Vacancies: 2

Holdover Status

27-Sep-12

		Appointment	Reappointment
Gibson			
D	Greg Duckett		
R	Jimmy Wallace		
	D Kathleen Smith	6/22/2007	5/27/2009
	D Robert S. Phelan	4/3/1995	5/27/2009
Haywood			
D	Greg Duckett		
R	Jimmy Wallace		
	D Aubrey Lee Bond	4/3/1995	4/6/2009
	D Ida Ruth Bradford	4/3/1995	4/6/2009
Henderson			
D	Greg Duckett		
R	Jimmy Wallace		
	D Cornelia T. Morris	4/3/1995	4/6/2009
	D Pope Thomas	4/17/2001	4/6/2009
Henry			
D	Greg Duckett		
R	Jimmy Wallace		
	D Paul David Hessing	4/6/2009	4/6/2009
	D Sylvia C. Humphreys	5/19/1998	4/6/2009
Total Holdovers: 8			

New Appointment Status

09-Oct-12

		Appointment
Benton	D Greg Duckett / R Jimmy Wallace	
	D Diane Latimer	10/8/2012
Lake	D Greg Duckett / R Jimmy Wallace	
	R Steve Parks	10/8/2012
Total New Commissioners: 2		



MicroVote
GENERAL CORP.
ELECTION SOLUTIONS

September 13, 2012

Mr. Mark Goins
State Election Coordinator
Tennessee Election Commission
312 8th Ave. North
9th Floor. Snodgrass Tower
Nashville, TN 37243

Dear Mark,

Enclosed for your review is documentation pertaining to the MicroVote Infinity Voting System EMS 4.0B. We are requesting upgrade certification of this EAC Certified version on October 8, 2012. Included in this packet are the Certificate(s) of Conformance and a comparison document detailing the changes from our currently certified version, 3.07 and the EAC certified version, 4.0B.

We look forward to demonstrating this version upgrade during our meeting on the 8th. If you have any additional questions, please feel free to contact me at your convenience.

Warm regards,

James M. Ries
President, MicroVote General Corp.

Enclosure(s): 3

COPY

Tre Hargett, Secretary of State
State of Tennessee



Division of Elections
312 Rosa L. Parks Avenue, 9th Floor
Nashville, Tennessee 37243-0305

Mark Goins
Coordinator of Elections

615-741-7956
Mark.Goins@tn.gov

November 15, 2012

Jim Ries
President, MicroVote General Corp
6366 Guilford Avenue
Indianapolis, IN 46220-1750

Dear Mr. Ries:

This letter is to inform you of certification of the MicroVote EMS 4.0 B (Modifications), bearing the EAC Certification Number: MVTEMS40B by the State Election Commission on October 8, 2012. The machine was made available before the State Election Commission on October 8, 2012 for demonstration.

Thank you for your cooperation in the certification process.

Sincerely,

Mark Goins
Coordinator of Elections

Cc: Bill Whitehead

Attachment: EAC Certification Number MVTEMS40B



United States Election Assistance Commission



Certificate of Conformance

MicroVote EMS 4.0B (Modification)

The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the *2005 Voluntary Voting System Guidelines Version 1.0*. Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the *EAC Voting System Testing and Certification Program Manual* and the conclusions of the testing laboratory in the test report are consistent with the evidence adduced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.

Product Name: MicroVote EMS 4.0B (Modification)

Model or Version: Version 4.0B

Name of VSTL: Wyle Laboratories, Inc.

EAC Certification Number: MVTEMS40B

Date Issued: August 23, 2010

Executive Director, U.S. Election Assistance Commission

Scope of Certification Attached



Scope of Certification: System Modification

Manufacturer: **MicroVote General Corporation**

Product: **MicroVote EMS 4.0B (Modification)**

Laboratory: **Wyle Laboratories**

Certificate: **MVTEMS40B**

Standard: **VVSG 2005**

Date: **08/18/2010**

This document describes the scope of the certification of the modified system identified above, which is the system certified under certificate MVTEMS4 with changes modifying the system to MicroVote EMS 4.0B (Modified). Configuration changes, revision changes, additions or subtractions from the system defined in this document are not included in this certification.

Significance of EAC Certification:

An EAC certification is an official recognition that a voting system (in a specific configuration or configurations) has been tested to and has met an identified set of Federal voting system standards. An EAC certification is **not**:

- An endorsement of a Manufacturer, voting system, or any of the system's components.
- A Federal warranty of the voting system or any of its components.
- A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.
- A substitute for State or local certification and testing.
- A determination that the system is ready for use in an election.
- A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

Representation of EAC Certification:

Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific systems. Any action by a Manufacturer to suggest EAC endorsement of its product or organization is strictly prohibited and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

Language capability:

In addition to English, the voting system has the capability of presenting the ballot, ballot selections, review screens and instructions in Spanish.

Definition of Modification:

A modification is any change to a previously EAC-certified voting system's software, or firmware or hardware that is not determined to be a de minimis change. All modifications to a voting system require testing and review by the EAC in accordance to the requirements of Chapter 4 of the Voting System Testing & Certification Program Manual.

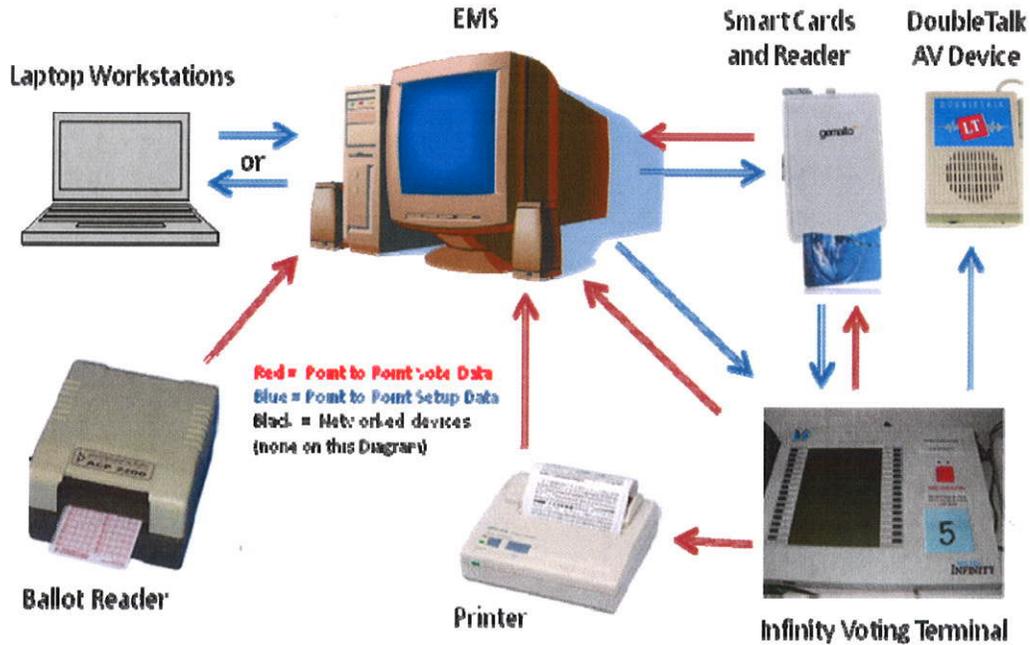
Certified System before Modification:

MicroVote General Corporation Election Management System Release 4.0

Certificate ID: MVTEMS40

Components Included:

This section provides information describing the components and revision level of the primary components included in this Certification.



<i>System Component</i>	<i>Software or Firmware Revision</i>	<i>Hardware Revision</i>	<i>COTS Information</i>	<i>Dependency Notes</i>
EMS Software MicroVote 4.0B	Firmware 4.0.26.0	-----	-----	MicroVote EMS 4.0B
EMS Server Dell Desktop	COTS MS SQL 2000	COTS Model DHM	Windows XP Profession SP2	Both Certified Systems
Laptop(s) Dell	-----	COTS Model PP17L	Windows XP Profession SP2	Both Certified Systems
Infinity Model VP 1 Voting Panel	Firmware 4.00B	Rev C See Certified Configuration Notice	-----	Both Certified Systems <i>See Certified Configuration Notice</i>

System Component	Software or Firmware Revision	Hardware Revision	COTS Information	Dependency Notes
Scanner Dual Sided Chatsworth ACP 2200	COTS	COTS Model 605000-190	-----	Both Certified Systems
Printer Seiko	COTS	COTS Model DPU – 414 or Model DPU – 3445	-----	Both Certified Systems
Printer Dell	COTS	COTS	-----	MicroVote EMS 4.0B
Doubletalk Model LT3	Firmware BIOS0212	V1.0 LT RC8650	-----	Both Certified Systems
Smartcard Reader Gemplus	COTS	COTS	-----	Both Certified Systems
Mark Products LM64K83 LCD Display	COTS	COTS	COTS	Both Certified Systems
Smart Cards	-----	COTS	-----	Both Certified Systems
Voting Booth	-----	Model 2000	-----	Both Certified Systems

Certified Configuration Notice:

The manufacturer of the MicroVote EMS 4.0B voting system uses the term Engineering Change Number (ECN), which is equivalent to the term Engineering Change Order (ECO). All applicable ECO's must have been applied to the MicroVote EMS 4.0B (Modification) in order for it to be considered in a certified configuration.

ECO 103 must be applied to all Infinity Voting Panels with serial numbers below 5000, and the updated Field Implementation ECO 1408 must be applied to all Infinity Voting Panels with serial numbers 5000 and above. If an Infinity Voting Panel is being fielded as an EAC certified system in an incorrect configuration, the manufacturer will be subject to the provisions in the Certification Manual and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

System Limitations:

This table depicts the limits of the system has currently been exercised and the manufacturer calculated design limits.

Characteristic	Limiting Component	Evaluated	EMS	Infinity	ACP 2200
Maximum Ballot Positions	Ballot Design Form	150	600	600	402
Maximum Precincts in Election	Precinct Number	559	9,999	9,999	9,999
Maximum Contests in Election	Contests in Ballot Style * Ballot Styles/Election	100	300,000	2,999,700	2,009,799
Maximum Candidates/Counters in Election	Precinct Counters * Total Precincts	300	5,989,401	5,989,401	4,019,598
Maximum Candidates/Counters in Precinct	Ballot Design Form	125	599	599	402
Maximum Candidates/Counters in Activation	Ballot Design Form	125	599	599	402
Maximum Ballot Styles in Election	Ballot Style Number	270	1000	9999	1000
Maximum Contests in a Ballot Style	Ballot Design Form	50	300	300	201
Maximum Candidates in a Contest	Ballot Design Form	68	599	599	401
Maximum Count for any Precinct Element	Transact-SQL Bigint	600	<i>Note 1</i>	65,000	<i>Note 1</i>
Maximum Ballot Styles in a Precinct	Precinct Style Assignment Form	1	1	1	1
Maximum Activations per Ballot Style	Build Activations Form	15	99	30	99
Maximum Activations per Election	Act/Ballot Style * Ballot Style/Elec	1300	99,000	299,970	299,970
Maximum Number of Parties	Party Code Combinations	8	50,653	598	400
Maximum Vote For in Contest	Office Vote Limit	56	99	64	99

Note 1: 9,223,372,036,854,770,000

Functionality:

The table below specifics the features that the system does *not* support:

Function	Inclusion
VVPAT	No
Used as a precinct counting device?	No
Local Area Network Functionality (No use if TCP/IP, No use of infrared, No use of Wireless even though those interfaces are present on defined equipment)	No
Primary: Open Defined in VVSG 2.1.7.2	No
Names of candidates rotation: Defined in VVSG 2.1.7.2	No

Recall: Defined in VVSG 2.1.7.2	No
Ranked Voting: Defined in VVSG 2.1.7.2 (Voters rank candidates in a contest in order of choice (1,2,3,etc.) A write in vote can be ranked)	No
Ranked Vote Tabulation: Defined in VVSG 2.1.7.2	No
Voting method exclusive to multi-member boards. (Each voter may cast as many votes as there are seats to be filled and may cast two or more of those votes for a single candidate)	No
Encryption of data (Per Federal Standards -FIPS 140-2)	No

Engineering Change Orders Included in the Modification:

The system must be configured with all the changes listed in the original certification MVTEMS40B plus the new changes listed in this table. This table does not include any de minimis changes that may be applied to the system.

<i>DATE</i>	<i>ECO Identification</i>	<i>Manufacturer</i>	<i>Description</i>
6/02/2010	# 103	Carson Manufacturing Co. Inc.	ECN 103 defines the scope, applicable documents, service history, identification, upgrade and inspection procedures in order to accommodate use of newer flash drives of 32MB or larger in older Infinity voting panels. Execution of this upgrade using a soldered bridge between pin 33 and an adjacent grounded pin will bring older panels into compliance for use in certified voting systems.
4/19/2010	# 1408 Updated Field Implementation	Carson Manufacturing Co. Inc.	Accommodates the use of newer flash drives of 32MB or larger for use in the Infinity voting panel. ECN 1408 adds a manufactured "trace" to the motherboard which connects pin 33 on the connector holding the flash drive to ground.

List of Changes to Certified System:

This section outlines the features that have been changed from the originally certified system:

Enhancement	System	Description
E-01	EMS	A five minute timeout was removed and two stored procedures were improved to provide better performance when posting vote data.
E-02	EMS	Offices were wrapped if there was no room for the entire office in a column or on a page. A modification was made to move the entire office to the top of the next column if the entire contest would not fit in the previous column.
E-03	EMS	A warning was added for the "Resorting of Candidate" function to prevent unintended results.
E-04	EMS	Candidate name wrapping caused ballots to be longer than necessary. A calculation was updated to calculate the page width accounting for the fact that a two-column layout only needs space for a single gutter where the calculation previously allocated space for a gutter per column. In the EMS, the default border for the candidate box was removed and font size was modified to decrease the ballot size and provide a more accurate representation of the Infinity Panel display.
E-05	EMS	"All" option on the Precinct summary report was modified to be more useable. Page breaks and numbering were added to enhance the

		readability of the report.
E-06	EMS	A modification was made to add running mate to the "Report", "Tally", and "Phonetics" fields.
E-07	EMS	Report and Tally Names did not allow the "/" or "&" characters. A modification was made to allow these characters.
E-08	EMS	The arrow navigation keys required a double press to get to the next field. A modification was made to allow a single selection to navigate to the next field.
E-09	EMS	Activation names did not allow the dash character. A modification was made to allow the dash character in the activation name.
E-10	EMS	Text could not be added between the "Office Title" and "Candidate Names" in the ballot layout. A modification was made to allow additional text to be added between these fields.
E-11	EMS	To allow the ballot designer to observe custom text formatting by the user, the auto left and right alignment was removed for this text except for the first line of text on absentee ballots.
Defect	System	Description
D-01	EMS	An office placed on a ballot without enough space for the entire contest was being split into two parts with a gap. This issue has been corrected.
D-02	EMS	The "Sort By Name Within Party" function did not function properly. Non-Partisan candidate fields like "Write-in"

		and "No Candidate Filed" would appear at the top of the sorted list even after candidates were added. A modification was made to place non-party candidates (including "Writein" and "No Candidate Filed") at the end of the candidate list.
D-03	EMS	The sorting preference of "None" placed the "No Candidate" after regular candidate names and before "Write-In" candidate name. A modification was made to preserve the order of entry for candidates.
D-04	EMS	Ballot text ran across the center line on the Infinity panel. A modification was made to correct this issue.
Feature	System	Description
F-01	EMS	"Merge" database option was added to the existing options to backup, restore, delete, and copy a current database. This feature shall merge a "backed up" election database into the current database.
Hardware	System	Description
H-01	Infinity Voting Panel	The use of Mark Products LTBSHH356JC graphic LCD Module is being replaced by the Hitachi SP24V001-A due to "end of life" for the LTBSHH356JC. The new display shall be an alternate display thus an Infinity panel can have either display.



Microvote General Corporation

3.07 vs. 4.0B

Item	3.07 Firmware	4.0B Firmware
Write-In locations	Allows write-ins to be entered after vote limit has been reached if office extends over one page (EX: Delegates-At Large). Does not put an X in the box and does not count it, but allows it to be entered.	Handles Write in issue correctly
Tally Card limits	Tally card limits will force large counties to manually enter in the PPP and almost all counties in August Primary	Data compressed before being copied to the tally card. Blown cards is not an issue
Randomized Vote Records	Does not randomize vote records	Randomizes vote records
Voter Control Screen	Starts on voter control screen. Confuses some voters.	Starts on Page 1 of the ballot with the option to return to the voter control screen.
Double Talk and Magnify	Uses a quick double push of buttons that confuses/troubles voters	Uses a 2 consecutive push of buttons that is easier for voters to manage. Double talk allows rate of speed adjustment and pause/resume for audio ballots.
Confirm Vote	Forces voter to go to Confirm Vote page and select Confirm Vote option before being allowed to cast ballot.	Voter only needs to go to Confirm Vote page to cast ballot.
Tally Process	Problem with premature removal of Tally Card or Tally Card write error and provide indication on card	Added warning if premature removal of Tally Card or Tally Card write error and provide indication on card.
EMS Access Card	Necessary for 3.07. Extra component that techs shouldn't have to worry about	Start Card handles all accessibility
D Drive	More frequent D drive failures. The D drive is a disc on chip backup inside the panel.	Added fault tolerance for backup drive (D) failure.
Write-In Votes on Early Voting panels	Due to buffer issue, all write-ins do not print on a panel with over 697 votes.	No buffer issue during printing
Write-In Votes in a race with a vote limit greater than one	Doesn't separate the write-in names on the tally tape. Audit trails have to be used to verify voter didn't write the same name multiple times	Issue corrected so an overvote on the write-in can be detected from the tally tape.



United States Election Assistance Commission

Certificate of Conformance

Micro Vote EMS Version 4.0

MicroVote General Corporation



The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the *2005 Voluntary Voting System Guidelines Version 1.0*. Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the *EAC Voting System Testing and Certification Program Manual* and the conclusions of the testing laboratory in the test report are consistent with the evidence adduced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.

Product Name: Election Management System (EMS)

Model or Version: Version 4.0

Name of VSTL: iBeta Quality Assurance

EAC Certification Number: MVTEMS4

Date Issued: February 6, 2009

Executive Director, U.S. Election Assistance Commission

Scope of Certification Attached

Scope of Certification

Manufacturer: MicroVote General Corporation Product: Election Management System Release 4.0

VSTL: iBeta Quality Assurance Certification #: MVTEMS4 Standard: VVSG 2005 Date: 02/06/2009



Significance of EAC Certification

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- An endorsement of a Manufacturer, voting system, or any of the system's components.
- A Federal warranty of the voting system or any of its components.
- A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.
- A substitute for State or local certification and testing.
- A determination that the system is ready for use in an election.
- A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

Representation of EAC Certification

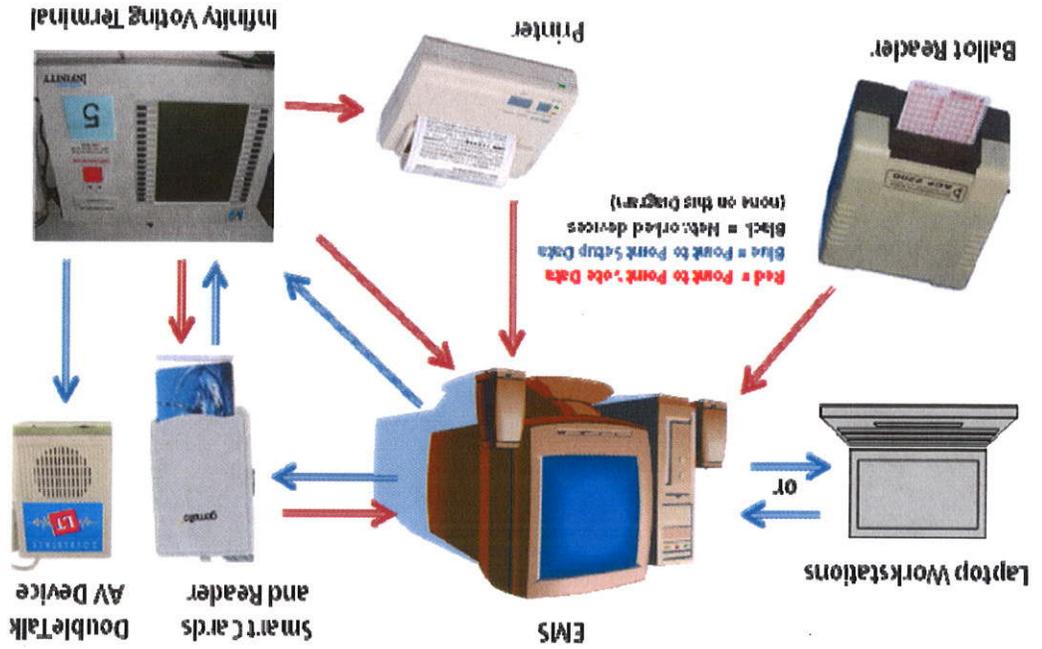
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Language capability:

In addition to English, the voting system has the capability of presenting the ballot, ballot selections, review screens and instructions in Spanish.

Components Included:

This section provides information describing the components and revision level of the primary components included in this validation.



System Limitations

This table depicts the limits of the system has currently been exercised and the vendor calculated design limits.

Characteristic	Limiting Component	Evaluated	EMS	Infinity	ACP 2200
Maximum Ballot Positions	Ballot Design Form	150	600	600	402
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Maximum Contests in Election	Contests in Ballot Style * Ballot Styles/Election	100	300,000	2,999,700	2,009,799
Maximum Candidates/Counters in Election	Precinct Counters * Total Precincts	300	5,989,401	5,989,401	4,019,598
Maximum Candidates/Counters in Precinct	Ballot Design Form	125	599	599	402
Maximum Candidates/Counters in Activation	Ballot Design Form	125	599	599	402
Maximum Ballot Styles in Election	Ballot Style Number	270	1000	9999	1000
Maximum Contests in a Ballot Style	Ballot Design Form	50	300	300	201
Maximum Candidates in a Contest	Ballot Design Form	68	599	699	401
Maximum Count for any Precinct Element	Transact-SQL Bigint	600	Note 1	65,000	Note 1
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Maximum Activations per Ballot Style	Build Activations Form	15	99	30	99
Maximum Activations per Election	Act/Ballot Style * Ballot Style/Elec	1300	99,000	299,970	299,970
Maximum Number of Parties	Party Code Combinations	8	50,653	598	400
Maximum Vote For in Contest	Office Vote Limit	56	99	64	99

Note 1: 9,223,372,036,854,770,000

Functionality

This section outlines the features that the system does not provide:

VVPAT	No
Wide Area Network Functionality (No use of modems even if included in COTS devices)	No
Used as a precinct counting device?	No
Local Area Network Functionality (No use of TCP/IP, No use of Irad, No use of Wireless even though those interfaces are present on defined equipment)	No

No	Primary: Open Defined in VWSG 2.1.7.2
No	Names of candidates rotation: Defined in VWSG 2.1.7.2
No	Recall: Defined in VWSG 2.1.7.2
No	Ranked Voting: Defined in VWSG 2.1.7.2 (Voters rank candidates in a contest in order of choice (1,2,3,etc.) A write in vote can be ranked)
No	Ranked Vote Tabulation: Defined in VWSG 2.1.7.2
No	Voting method exclusive to multi-member boards. (Each voter may cast as many votes as there are seats to be filled and may cast two or more of those votes for a single candidate)
No	Encryption of data (Per Federal Standards -FIPS 140-2)

Engineering Change Orders (ECOs) Included in the Certified Product:

DATE	ECO Identification	Manufacturer
4/16/2001	# 1330	Carson Manufacturing Co. Inc.
6/7/2005	# 1408	Carson Manufacturing Co. Inc.
10/10/2005	# 1413	Carson Manufacturing Co. Inc.
3/14/2006	# 1420	Carson Manufacturing Co. Inc.
5/12/2006	# 1424	Carson Manufacturing Co. Inc.
4/18/2007	RC Systems Double Talk RC8650 Voice Synthesizer	RC Systems
8/22/2007	# 1437	Carson Manufacturing Co. Inc.
9/19/07	# 1438	Carson Manufacturing Co. Inc.
1/23/08	Infinity Revision C Engineering Change Notice Declaration	Carson Manufacturing Co. Inc.
4/13/2008	# 1449	Carson Manufacturing Co. Inc.
4/21/2008	ECR/ECN 101 Part Number 0431164951	MicroVote General Corp.
5/15/2008	# 1450	Carson Manufacturing Co. Inc.

RC Systems	# 1023	5/28/2008
RC Systems	# 1024	5/28/2008
RC Systems	# 1025	5/28/2008
RC Systems	# 1026	6/5/2008

Certificate: MVTMS4

Manufacturer: MicroVote

COPY

Judy H. Blackburn
1011 Heykoop Drive
Morristown, TN 37814
(423) 586-5828

Tom DuBois
810 South Garden Street
Columbia, TN 38401
(931) 388-2526

Greg Duckett
9435 Forest Wind Cove
Collierville, TN 38017
(901) 227-5233

Tommy Head
1026 Hazel Drive
Clarksville, TN 37043
(931) 362-3229

State of Tennessee



State Election Commission
312 Rosa L. Parks Avenue
9th Floor, William R. Snodgrass Tennessee Tower
Nashville, TN 37243

Jimmy Wallace
428 Wiley Parker Road
Jackson, TN 38305
(731) 668-2700

Tom Wheeler
1196 Blockhouse Valley Road
Clinton, TN 37716
(865) 457-8758

Kent D. Younce
423 Fairway Drive
Lafollette, TN 37766
(423) 871-0245

September 26, 2012

Rich Holden, Administrator of Elections
Shelby County Election Commission
150 Washington Ave, Suite 205
Memphis, TN 38103-2009

Dear Rich,

This letter is being sent to advise you and your commission members the State Election Commission (SEC) will be discussing the Shelby County Elections Commission at their October 8, 2012 meeting. The State Election Commission requested the Shelby County Election Commission and/or you appear at their next meeting.

Attached you will find a meeting notice for the next State Election Commission meeting scheduled for October 8, 2012, at Noon Central Daylight Time.

Please let Krysten Velloff know if you have any questions regarding this request. You may reach her at 615-741-7956.

Sincerely,

A handwritten signature in black ink that reads "Kent D. Younce".

Kent Younce, Chairman
State Election Commission

Attachment: Meeting Notice – October 8, 2012

Cc: Shelby County Election Commissioners

Shelby County Election Commission

ROBERT D. MEYERS
Chairman

NORMA LESTER
Secretary

GEORGE C. MONGER, III
DEE NOLLNER
STEVE STAMSON
Members



October 1, 2012

(901) 222-1200
FAX (901) 222-1217

RICHARD L. HOLDEN
Administrator of Elections

JOE WM. YOUNG, II
*Deputy Administrator
of Elections*

Kent Younce
Chairman State Election Commission
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

Dear Chairman Younce,

I am in receipt of your September 26th letter requesting that the members of the Shelby County Election Commission and the the Shelby County Administrator of Elections ("AOE") attend the State Election Commission meeting on October 8th at noon central daylight time. I understand the AOE, Richard Holden, and other Shelby County Election Commissioners plan on attending. However, I cannot attend. I will be out of town the week of October 8th. I would be glad to participate by phone, if that is an option. Please let me know. Otherwise, I trust my absence will be excused.

Sincerely,

A handwritten signature in black ink that reads "Robert Meyers".

Robert Meyers, Chairman
Shelby County Election Commission



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DEPARTMENT OF AUDIT
DIVISION OF INVESTIGATIONS

Justin P. Wilson
Comptroller of the Treasury

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505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1402
PHONE (615) 401-7907
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October 2, 2012

Honorable Bill Haslam, Governor
Members of the General Assembly
Honorable Tre Hargett, Secretary of State
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

We have completed our review of selected records and practices of the Shelby County Election Commission (SCEC), as requested by Tennessee Secretary of State Tre Hargett. The review was requested due to “a troubling pattern of errors” over the past 10 years by the commission. Most recently brought to light were significant and widely publicized balloting and other errors during early voting in the 2012 state primary and county general election in Shelby County. This review focused on the period January 1, 2012, through July 31, 2012. However, when the examination warranted, this scope was expanded. Our investigation was limited to a review of the redistricting activities leading up to and during the 2012 elections.

Background

The United States (US) Census Bureau conducts a census every 10 years. The census bureau separates the US population into “blocks,” which are clearly defined geographic areas, and the population of each block is quantified. The various county election commissions group these blocks together to create voting precincts.

The 2010 census reflected national population changes, which required that county, state, and federal legislative district boundaries within the state and within Shelby County be redrawn. The county commission districts and the precinct lines are often redrawn at the same time. This process is commonly known as “redistricting.” SCEC used a computerized system for voter registration and a geographic information system (GIS) to draw lines and assign voters to their respective precincts and districts.

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Review Summary

Our review identified no discernible evidence of intentional misconduct or other actions intended to affect or influence the election process or election outcomes in Shelby County. It appears that poor judgment and mistakes were the most likely causes of the ballot errors and SCEC staff did not identify or correct the errors in a timely manner. We identified the following conditions:

- The administrator directed all of SCEC's redistricting efforts toward an unapproved plan and failed to develop an alternative plan.
- The administrator stopped redistricting work for approximately four weeks. These four weeks could have been spent redistricting based upon existing district lines or another alternate plan.
- The SCEC board of commissioners did not exercise adequate oversight or supervision over the administrator or the redistricting process to ensure the commission conducted a reliable and accurate election.
- Information system staff failed to identify and correct inaccuracies in a reasonable and timely manner without extensive assistance from a private citizen, Secretary of State personnel, and a consultant.
- SCEC relied primarily upon technical resources (geographic information system software, aerial maps, etc.) for redistricting and did not include field work such as driving streets to verify addresses¹.

Significant Issues Noted

- **Shelby County Commission failed to approve district lines prior to the 2012 elections**

Relative to the 2012 elections, Section 5-1-111, *Tennessee Code Annotated*, required that by January 1, 2012, county legislative bodies in Tennessee should "change the boundaries of districts or redistrict a county entirely if necessary to apportion the county legislative body so that the members represent substantially equal populations." Several plans were proposed by the Shelby County Commission and, according to officials of

¹ The scope of this review did not include a thorough review of the voter registration and GIS software used.

SCEC, the plan known as 2J was expected to be approved by the county commission at some point. However, the county commission failed to approve any of the proposed redistricting plans prior to the elections held in August 2012.

- **SCEC redistricting based upon proposed 2J plan**

Redistricting was a major portion of daily operations of the SCEC. The Shelby County Administrator of Elections, Richard Holden, was responsible for this process in Shelby County². In preparation for redistricting, Mr. Holden created a detailed 50-step project management plan for redistricting which assigned expected dates of completion for each step by the SCEC. The SCEC's information system department, under the supervision of Dennis Boyce, was responsible for managing the voter registration and GIS system, including but not limited to, inputting data and drawing lines.

Mr. Holden stated he directed SCEC employees to begin the redistricting process in January based upon the proposed 2J plan. Mr. Holden stated he did not have a back-up plan in the event that the proposed 2J plan was not approved. In interviews with a Comptroller investigator, Mr. Holden stated he put "all his eggs in one basket" and assumed 2J would be approved in time to prepare for the August election. Mr. Holden acknowledged that a viable alternative or back-up plan would have been to redistrict Shelby County based upon the existing 2011 county district lines, but told investigators he did not want to do work that would have to be redone.

Mr. Holden stated he stopped the redistricting process at step 39 of the project management plan in mid-May 2012,³ because the county commission had not approved 2J or any other plan at that time. Although the redistricting project was behind schedule when he halted the work on it, Mr. Holden did not initiate redistricting based upon the existing county district lines, but continued to wait for the county commission to approve the 2J plan.

- **SCEC board failed to exercise adequate oversight over SCEC administrator**

Based upon a review of the minutes and interviews of the commissioners, the board relied entirely upon Mr. Holden to ensure the redistricting was completed accurately and timely. Members of the SCEC board of commissioners stated that Mr. Holden did not consult with them regarding his decision to rely solely on the 2J plan, and that they did not inquire about a back-up plan. Each commissioner indicated he/she was unaware of

² Section 2-12-116, *Tennessee Code Annotated*

³ Mr. Holden was unsure of the exact date, but was certain it was between May 15 and May 20.

the enormity of the redistricting process and did not recognize the potential looming problems.

- **State Election Coordinator urges SCEC to complete redistricting**

During a presentation at a conference of the Tennessee Association of County Election Officials held June 4-5, 2012, at which Mr. Holden was present, Shelby County was identified as the only county in Tennessee in which the county commission had not approved county district lines. According to the Tennessee Secretary of State Division of Elections (SOS) personnel, conversations with Mr. Holden subsequent to this presentation alerted them to the fact that Shelby County had not completed redistricting. State Election Coordinator Mark Goins stated he informed Mr. Holden shortly after this conference that it was imperative that SCEC resume their redistricting efforts and that the ballots for military personnel be out by June 18.

- **SCEC Board of Commissioners orders redistricting to resume**

During an SCEC board of commissioners meeting on June 13, 2012, the board directed Mr. Holden to resume redistricting, using the 2011 district lines. Mr. Holden stated that some of the work performed during the previous redistricting efforts (steps 1-12 of the project management plan) did not have to be replicated and redistricting began the next day at step 13. At this point, SCEC staff had only five days before military ballots were due, while the original plan allowed for 47 days. Similarly, SCEC staff had only 29 days until early voting started, while the original plan allowed 72 days for this process.

- **SCEC work to consolidate precincts**

In the original redistricting plan begun in January, Mr. Holden included the consolidation of smaller precincts into larger precincts. He indicated that his primary purpose for these consolidations was to reduce related costs, including those associated with staff required at polling sites and transporting voting equipment, as well as to eliminate any non-ADA compliant polling sites, and to replace polling sites no longer available. Mr. Holden included several of these consolidations in the redistricting efforts resumed on June 14, although he acknowledged some were not essential to preparing for the election and added additional work and unnecessary delay to a process that was already critically behind schedule.

- **Military Ballots**

Preparation of military ballots was not reliant on the completion of redistricting. All military ballots sent through the US Postal Service were mailed before the midnight June 18 deadline, and some of the military ballots transmitted by e-mail were sent before the midnight deadline. Mr. Holden stated that most of the ballots sent via e-mail were sent between midnight and 2:30 a.m.⁴

- **SCEC failed to properly align precinct and population block boundaries**

Tennessee participated in the Block Boundary Suggestion Program prior to the 2010 census. This Census Bureau program attempted to align newly created block lines with existing boundaries such as city limits and voting precincts. The proposed precinct lines drawn by the information systems department and submitted by SCEC to the Comptroller's Office of Local Government (OLG)⁵ in February 2010 had improperly divided blocks. OLG notified SCEC that the improperly split block data may not be accepted by the Census Bureau. OLG then forwarded the data to the Census Bureau with a request that it be considered. Ultimately, the Census Bureau rejected some of the proposed precinct lines. It is noteworthy that Shelby County was the only Tennessee county that submitted proposed precincts which improperly split blocks.

Although the requirement that precinct lines align with block lines is one of the primary tenets of redistricting, during the 2012 redistricting efforts, SCEC staff again established precinct lines across block lines. OLG received SCEC's 2012 redistricting data on July 13, 2012, the first day of early voting. Similar to 2010, OLG noted instances of precinct lines improperly splitting population blocks. SCEC was notified of these discrepancies the following day. OLG worked with SCEC and by July 18 had corrected all improper precinct lines. Mr. Boyce and his staff was apparently not aware of these easily avoidable and detectible errors until notified by OLG.

- **Early voting discrepancies**

Early voting began on July 13, 2012. SCEC staff became aware that ballot errors existed when several voters complained that they received incorrect ballots. However, SCEC failed to identify these errors or determine whether additional discrepancies existed. Instead, a private citizen analyzed various election data, including voter participation data on SCEC's website, and identified multiple voters who had voted in the wrong election.

⁴ 78 military ballots were sent before Midnight and 108 were sent between Midnight and 2:30 a.m.

⁵ The Office of Local Government is the liaison between the Census Bureau and the State of Tennessee.

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The SOS became aware of the numerous inaccuracies and by July 21, SOS staff confirmed that SCEC had multiple ballot errors. Again, SCEC staff did not immediately identify the errors.

On July 23, 2012, OLG staff trained SOS personnel to use mapping software to identify inaccuracies in assigned ballots. Using this software, SOS staff discovered additional ballot errors of which SCEC staff was unaware. With the assistance of the State Office of Information Resources (OIR), all Shelby County voters were mapped and significant discrepancies were found. No discernible pattern to the errors was evident. Some of the errors involved voters living near a district or precinct boundary, while others involved voters who lived in the middle of a district.

Between July 23 and July 25, 2012, OIR and SOS worked to identify errors, such as eligible voters listed in incorrect districts or elections, and forwarded this information to SCEC for correction.

- **Administrator Holden's claim that OLG lost data**

In a letter to Mark Goins dated August 15, 2012, Richard Holden claimed that OLG lost precinct data submitted by SCEC (in 2010) and failed to provide the most recent precinct information to the state legislature for inclusion in the legislature's redistricting process. As noted previously, OLG personnel stated that SCEC data was rejected by the Census Bureau in 2010 because some precinct lines improperly split population blocks.

Conclusion

The primary responsibility of the SCEC is to conduct elections in Shelby County, yet SCEC has demonstrated an inability to conduct elections without significant inaccuracies, including those identified in the 2012 elections.

Our review identified no discernible evidence of intentional misconduct or other actions intended to affect or influence the election process or election outcomes in Shelby County. It appears that poor judgment and mistakes were the most likely causes of the ballot errors and that SCEC staff did not identify or correct the ballot errors in a timely manner.

We identified the following conditions:

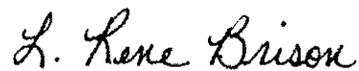
- The administrator directed all of SCEC's redistricting efforts toward the 2J plan and failed to develop an alternative plan. As a result, the time available for the redistricting process was limited.
- The administrator stopped redistricting work for approximately four weeks (mid-May until mid-June). These four weeks of inactivity could have been spent redistricting based upon existing district lines or another alternate plan, which may have reduced the ballot error rate.
- The SCEC board of commissioners did not exercise adequate oversight or supervision over the administrator or the redistricting process to ensure the commission conducted a reliable and accurate election.
 - The commissioners did not consider the possibility that the 2J plan would not be approved.
 - The commissioners did not suggest or instruct the administrator to prepare an alternative plan in case the 2J plan was not approved.
 - The commissioners were not cognizant of the potential problems created by the lack of an alternative redistricting plan and the subsequent late start of the process.
- Information system staff failed to identify and correct inaccuracies in a reasonable and timely manner without extensive assistance from a private citizen, SOS personnel, and a consultant.
- SCEC relied primarily upon technical resources (GIS software, aerial maps, etc.) for redistricting, despite guidance from SOS to combine technical resources with field work, such as traveling in a vehicle to inspect divided roads and new subdivisions.⁶

⁶ It should be noted that the scope of this review did not include a thorough review of the voter registration and GIS software used.

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As a result of the issues that arose during the 2012 elections, on August 29, 2012, the SCEC board of commissioners placed Mr. Holden on leave without pay and a six-month probation.

Very truly yours,

A handwritten signature in cursive script that reads "L. Rene Brison".

Rene Brison, CPA, CFE, Assistant Director
Division of Investigations

LRB/RAD

IN THE CHANCERY COURT FOR PUTNAM COUNTY, TENNESSEE,
AT COOKEVILLE

STATE OF TENNESSEE, ex rel.,]
JEAN G. CODY, JOSEPH TERRY HERRIN, and]
JOAN ROSS, in their capacities as members of the]
PUTNAM COUNTY ELECTION COMMISSION]
and THE PUTNAM COUNTY ELECTION]
COMMISSION,]

Plaintiffs,]

vs.]

No. 2009-260]

KIM BLAYLOCK, in her capacity as the]
County Executive for Putnam County, Tennessee,]
and PUTNAM COUNTY, TENNESSEE,]
and]
ROBERT E. COOPER, JR., in his capacity]
as the Attorney General for the State of Tennessee,]

Defendants.]

MEMORANDUM

In this case the plaintiffs are Jean G. Cody, Joseph Terry Herrin and Joan Ross, in their capacity as members of the Putnam County Election Commission and the Putnam County Election Commission. They have sued Putnam County and the Attorney General for the State of Tennessee seeking a declaratory judgment as to which of the defendants have the responsibility for their representation in the defense of a federal lawsuit brought by the former Putnam County Administrator of Elections, Nancy Boman. In her suit, Ms. Boman has sued the three Republican members of the Putnam County Election Commission alleging they had determined not to reappoint her because of her alleged affiliation with the Democratic Party. In the alternative, plaintiffs seek a writ of mandamus requiring Putnam County or the State Attorney General's Office to be responsible for legal expenses incurred by them in a federal lawsuit. Plaintiffs also seek to have the court require Putnam County to be responsible for their legal expenses in bringing this action.

The State Attorney General has filed a motion seeking dismissal of the complaint as to it on the ground the action against the Attorney General is barred by the doctrine of sovereign immunity. The State also seeks dismissal on the further ground that a writ of mandamus is not appropriate because the Attorney General has broad discretion to decide when his office should provide assistance in defending public officials.

Putnam County, through its County Executive, Kim Blaylock, filed a motion to dismiss the complaint on the ground that plaintiffs as individual members of the Putnam County Election Commission do not have standing to bring the action seeking payment of their legal expenses in the federal action or in the action before this court. Ms. Blaylock also alleged that she was not the proper party to the action. That contention has been made moot by the plaintiff's motion to amend its complaint to add Putnam County as a party defendant which motion has been granted by the court. Ms. Blaylock and Putnam County have alleged in an amended motion to dismiss that the Administrator of Elections and the members of the Putnam County Election Commission are State employees and, consequently, Putnam County is not responsible for their legal expenses or any liability they may have.

The plaintiffs have filed a motion for summary judgment alleging that, as a matter of statutory construction, Putnam County is responsible for their legal expenses incurred in defending the federal action brought by the former Administrator of Elections for Putnam County and for prosecuting this action. They seek a writ of mandamus requiring Putnam County to appropriate funds for this purpose and directing they be responsible for these ongoing expenses.

Sovereign Immunity

Article I, section 17 of the Tennessee Constitution provides: "Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct." This constitutional provision has been held to provide for sovereign immunity, the doctrine that a sovereign governmental entity cannot be sued in its own courts without its consent. Northland Ins. Co. v. State, 33 S.W.3d 727, 729 (Tenn. 2000). Moreover Tennessee Code Annotated section 20-13-102 (a) provides:

No court in the state shall have any power, jurisdiction or authority to entertain any suit against the state, or against any officer of the state acting by authority of the state, with a view to reach the state, its treasury, funds or property, and all such suits shall be dismissed as to the state or such officers, on motion, plea or demurrer of the law officer of the state, or counsel employed for the state.

The Tennessee Supreme Court has held that the principle of sovereign immunity set forth in the Tennessee Constitution requires that legislation authorizing suits against the state must provide for the state's consent in "plain, clear, and unmistakable" terms. Northland Ins. Co., 33 S.W.3d at 729.

In the case before the court, neither the plaintiffs nor the defendants, Ms. Blaylock and Putnam County, have offered any statutory authority for allowing the lawsuit brought by plaintiffs in this case. While defendants, Ms. Blaylock and Putnam County, argue that the Putnam County Election Commission and the Administrator of Elections are State employees and that the State is responsible for their expenses and liabilities in the federal action, it has cited no statutory provision for bringing an action against the State.

The court is of the opinion that plaintiffs action against the State of Tennessee is barred by the doctrine of sovereign immunity and that the State's motion to dismiss should be granted on that basis. The court's determination as to the sovereign immunity claim renders moot the additional claims of the State.

Standing

The defendants, Ms. Blaylock and Putnam County, take the position that plaintiffs do not have standing to bring the suit seeking to have Putnam County held responsible for the legal expenses of the three named Putnam County Election Commissioners who were sued in the federal proceeding in their official capacity as members of the Putnam County Election Commission. As the court understands it, Ms. Blaylock and Putnam County assert that because Ms. Boman did not name the Putnam County Election Commission as a party in the federal action but brought suit against the three named Putnam County Election Commissioners, the obligation of providing for their legal representation would not be an expense of the Putnam County Election Commission but of the three individual members.

The court does not agree. In the opinion of the court, the entity responsible for providing legal representation to the Putnam County Election Commission would likewise be responsible for providing legal representation for any member of the Election Commission sued in their official capacity. Tennessee Code Annotated section 2-12-101(c) which allocates the responsibility for legal representation in municipal, state and federal elections makes specific reference to legal proceedings which name the county election commissioners as defendants. That Code Section also indicates the representation is for the benefit of the election commissioners rather than the county election commission as an entity. The court can think of no reason to treat a legal proceeding naming members of the county election commission as defendants in their official capacity, but is unrelated to municipal, state or federal elections, in a different fashion.

Status of the Putnam County Election Commissioners and the Administrator of Elections as State Employees.

The defendants, Kim Blaylock and Putnam County, allege that the Putnam County Election Commissioners and the Administrator of Elections are State employees and, as provided in Tennessee Code Annotated section 8-6-109(b) (2009), the State Attorney General has the duty to handling the "trial and direction of all civil litigated matters and administrative proceedings in which the state of Tennessee or any officer, department, agency, board, commission or instrumentality of the state may be interested."

Ms. Blaylock's and Putnam County's position was correctly summarized in their brief as follows:

Tennessee's election administration laws provide that the state election commission is comprised of five (5) persons. *Tennessee Code Annotated* § 2-11-101. By statute, three (3) of the members of the state election commission are

designated to be members of the majority political party and two (2) of the members are designated to be members of the minority political party. Each of the five (5) members, whether “majority” or “minority” members, are nominated by a joint Senate-House caucus of the members of the respective “majority” and “minority” political party of which each such nominee is a member. *Tennessee Code Annotated* § 2-11-103. Once the five (5) members of the state election commission are designated, the state election commission then appoints the respective election commissioners for each county, with each member to serve for a two (2) year term. *Tennessee Code Annotated* § 2-12-101. Upon consultations with the members of the General Assembly serving a particular county, the three (3) “majority” political party members of the state election commission appoint the three (3) “majority” members of the election commission of each county. Likewise, the two (2) “minority” political party members of the state election commission appoint the two (2) “minority” political party members of the of the election commission for each county. *Tennessee Code Annotated* § 2-12-103. That five (5) person election commission for each county then appoints an administrator of elections to serve at the will and direction of the county election commission. *Tennessee Code Annotated* § 2-12-116(a)(1).

The Putnam County government is not involved with the appointment of the election commission or administrator of elections in Putnam County in any manner. State law does not vest the Putnam County government with any appointment, removal or oversight authority with regard to the Administrator of Elections position. The Administrator of Elections for Putnam County is appointed solely by the members of the Election Commission for Putnam County. Putnam County does not have any appointment, removal or oversight authority with respect to the members of the Election Commission for Putnam County. Those members are appointed solely by the State election commission, which is in turn appointed by the State legislature.

The court agrees with Ms. Blaylock’s and Putnam County’s characterization of both the members of the Putnam County Election Commission and the Putnam County Administrator of Elections as being state employees. That status does not, however, result in the State Attorney General having the duty to represent the members of the county election commission when they are sued in their official capacity or in the State of Tennessee having the responsibility to fund the expense of their legal representation. *Tennessee Code Annotated* section 2-12-109(a) provides: “Except as otherwise provided by law, it is the responsibility of the county to fund the operations of its election commission.” This language makes the expenses incurred by the election commission in the conduct of its operations the responsibility of Putnam County unless there is a specific provision elsewhere in Code that makes them the responsibility of another entity. Subsection (b) of section 2-12-109 provides that “expenses, including compensation of its employees and election officials, incurred by the county election commission or its members in the performance of duties under this title in holding municipal elections shall be paid out of the funds of the municipality.” Subsection (c) provides that where a special election is held for the sole purpose of electing a member of the State general assembly, “all expenses, including

compensation of its employees and election officials, incurred by a county election commission or its members in the performance of duties under this title shall be paid out of the state treasury.” Subsection (d) provides that all expenses incurred by a county election commission or its members in connection with a presidential preference primary or a county primary held in conjunction with a presidential preference primary be paid by the State.

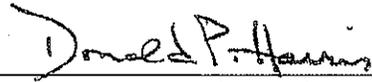
Similarly, Tennessee Code Annotated section 2-12-101(c) provides that where legal proceedings are brought in which members of the county election commission are named defendants in connection with a municipal election, the municipality shall provide legal representation. If the legal proceeding attacks a state law or presents a question concerning a state of federal election, the State Attorney General shall provide representation. It is the opinion of the court that other than the specific exceptions contained in these two Code sections, all other funding requirements of the Putnam County Election Commission or its members are the responsibility of Putnam County pursuant to Tennessee Code Annotated section 2-12-109(a). It is further the opinion of the court that this provision controls over Tennessee Code Annotated section § 8-6-109(b) referred to above. “Specific provisions relating to a particular subject must govern in respect to that subject, as against general provisions in other parts of the law which otherwise might be broad enough to include it.” Arnwine v. Union Co. Bd. of Educ., 120 S.W.3d 804, 809 (Tenn. 2003). See also Hayes v. Gibson Co., 288 S.W.3d 334, 339 (Tenn. 2009) (“Where there is a general provision applicable to a multitude of subjects, and also a provision which is particular and applicable to one of these subjects, and inconsistent with the general provision, it does not necessarily follow that they are so inconsistent that they both cannot stand. The special provision will be deemed an exception, and the general provision will be construed to operate on all the subjects introduced therein except the particular one which is the subject of the special provision.”)

Tennessee Code Annotated section 2-12-116(a)(1) provides that the Putnam County Election Commission appoint an administrator of elections. It is the opinion of the court that a suit against a county election commission or its members in their official capacity, involving the hiring or firing of the administrator of elections is a part of the operations of the county election commission. Tennessee Code Annotated section 2.12-116(a)(4) authorizes the county election commission to hire legal counsel if necessary to conduct its business. The Putnam County Election Commission has necessarily hired counsel to represent its members who have been sued in their official capacity. It is the opinion of the court that Putnam County, as a matter of law, is responsible for the reasonable costs of that representation and for any liability imposed as a result of the pending federal action. It has refused to assume that responsibility. Tennessee Code Annotated section 2-12-101(c)(4) provides that “[i]f, in order to properly discharge its duties, the county election commission has to bring legal action against a county or municipality, the compensation for the commission's legal representation shall be borne by the county or municipality as the case may be.” Thus, Putnam County is also responsible for the legal expenses of the Putnam County Election Commission in bringing this action.

The court is satisfied that there is no genuine issue of any material fact and that summary judgment is appropriate in this case. The motion to dismiss filed by the Attorney General for the State of Tennessee is granted. The motion to dismiss, as amended, and the motion for summary

judgment filed by Kim Blaylock in her capacity as the County Executive for Putnam County are denied. The motion for summary judgment filed by the plaintiffs as to Putnam County is granted. Counsel for plaintiffs will prepare an appropriate order and writ of mandamus requiring Kim Blaylock in her capacity as County Executive of Putnam County and Putnam County to pay the court costs and legal expenses of this action; to pay the legal expenses that have been incurred and will be incurred in representing the members of the Putnam County Election Commission in their official capacity in the federal suit styled Lisa Person, et al., v. James Dean, et al, Case No. 3:09-cv-0628, pending in the United States District Court, Middle District of Tennessee; and to pay any damages or costs awarded in that action against the individual plaintiffs in their official capacity as members of the Putnam County Election Commission.

This 20th day of April 2011.



Donald P. Harris, Senior Judge
Sitting by Designation of the
Tennessee Supreme Court

c: John I. Harris, III
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