



September 15, 2020

Via email

The Honorable Alex Padilla
California Secretary of State
1500 11th Street
Sacramento, CA 95814

Re: Proposed certification of Los Angeles County's VSAP 2.1 voting system

Dear Secretary Padilla:

On behalf of the California Voter Foundation (CVF), I'm writing to urge you to refrain from certifying Los Angeles County's VSAP 2.1 voting system and instead continue providing conditional certification, for several reasons:

1. Contrary to the staff report, we believe the test results of this system do not show satisfactory performance of key components;
2. The VSAP voting system utilizes technology and procedures that are not covered by California's current voting system standards; and
3. The testing was conducted to verify that the voting system addressed issues known to your office before the March 3 election took place but did not address the numerous problems that became apparent during the election, resulting in an extensive review by Los Angeles County identifying several additional, serious issues that need attention.

1. VSAP test results do not show satisfactory performance of key components

According to the Volume and Reliability Test Report prepared by SLI Compliance, a total of 50 VSAP Ballot Marking Devices (BMDs) were tested by your staff and SLI Compliance in Los Angeles in late July 2020.¹ These 50 machines represent just .17 percent of the 30,000 BMDs Los Angeles has built and will deploy once again for the November election.

Even with this relatively small number of machines, significant problems were discovered, including one unit that jammed and displayed a blank screen, requiring a reboot, as well as problems with "timid" paper feeds and QR code printing and reading errors.

¹ <https://votingsystems.cdn.sos.ca.gov/vendors/LAC/vsap2-1/vsap21-vol.pdf>.

1.1. *“Timid “ paper feeds*

23 of the 50 units tested - **46 percent** - encountered a “timid feed” error, where the device hesitates upon taking up the ballot card into the machine’s paper path. Out of 5,000 ballots fed into the test units, 149 of them - **nearly 3 percent** - resulted in these “timid feeds” requiring the ballots to be re-fed into the device. According to the test report, “(t)esters would sometimes attempt to force feed the ballot or would pull the ballot back after the device began to gently pull the ballot into the device. When the tester did one of those two things, the BMD would appear to pull the ballot in, but immediately eject it. Clear instructions to voters and poll workers regarding the timid feed will mitigate the chances of this occurring.”

I witnessed the chaos in Los Angeles the day before March 3, and I do not have confidence that the vast numbers of election staff at vote centers will be able to be successfully train voters on the spot how to correctly feed the ballots back into the machines. In one site I visited the election staff were heavily preoccupied checking in voters on very slow e-pollbooks, taking machines out of service that had repeated paper jams, and instructing voters how to use the new BMD.

Additionally, there is no other BMD in use in California that operates in this manner. In every other county where BMDs are used, the voter deposits their BMD-issued ballot into a separate ballot box. This reduces the chance for mechanical problems and also has an added benefit of ensuring that additional markings could not be printed onto the ballot after the voter has already verified it by sending it back through the same device that just printed it out.

CVF recommends you **require Los Angeles County to establish separate ballot boxes** where voters can securely and confidently deposit their voted BMD ballots as a condition of this system’s use.

1.2 *QR Code Errors*

According to the test report, five BMDs - or **ten percent of the machines tested** - encountered a “QR Code not Read” error upon initial insertion into the ballot box. Testers resolved this by inserting the ballots into another device where they were reportedly successfully read. This solution may work in a test environment, but making it work in a live election is another matter entirely. In two of the sites I visited on March 2, there were only five or six machines and lines of people waiting to use them. Having to stop and re-feed the ballot into an available machine will only create more confusion and delays and erode voter confidence.

The test report notes that “(f)urther examination of the ballots determined that the QR codes printed on the ballots, used to activate the voting session were slightly skewed when printed, thus causing random anomalies in some machines, but not others.” This is not an acceptable problem to have in a voting system to be used in a live, major national election.

For this reason, we urge you to, as a **condition of certification, require additional post-election auditing of ballots' QR codes to ensure the data contained in them matches the selections made by voters, and that the results of this additional auditing be made public.**

2. The VSAP voting system utilizes technology and procedures that are not covered by California's current voting system standards.

While the VSAP system is innovative in many ways, it also utilizes technology that is not covered by California's Voting System Standards which have not been updated in the past six years.²

There is nothing included in the current CVSS to prohibit the use of QR codes as the primary method of counting ballots, but there should be. Election security advocates fought hard for years to eradicate paperless electronic voting in California, based on the fundamental idea that voters should be able to verify, in plain language, that their ballots are going to be accurately counted and not be asked to trust in software they cannot see or verify. The QR code on the BMD ballot undermines the transparency the paper ballot is supposed to provide.

CVF urges you to act with haste to **update the California Voting System Standards** to address this oversight and expand the standards to address potential risks associated with the use of QR codes or bar codes in the voting process that can undermine voter confidence in the reliability of election results.

3. The testing was conducted to verify that the voting system addressed issues known to your office before the March 3 election took place but did not address the numerous problems that became apparent afterwards.

The amount of chaos, frustration and confusion Angelenos experienced in their county's March 3, 2020 Primary Election was unprecedented, resulting in the Registrar of Voters conducting a news conference that night, while voters were still waiting to cast their ballots, acknowledging the widespread technical problems and excessive wait times. The week after the election, Los Angeles' Board of Supervisors met and heard testimony from dozens of angry voters and expressed their own anger and frustration as well. They approved a lengthy list of questions an investigation independent of the registrar's office was supposed to answer.³ The registrar, Dean Logan, conducted his own investigation and in April released a 134-page report summarizing his responses to the board's questions.⁴

² <https://elections.cdn.sos.ca.gov/pdfs/california-voting-system-standards.pdf>.

³ See LA County Board of Supervisor's March 10, 2020 Statement of Proceedings: http://file.lacounty.gov/SDSInter/bos/sop/1070030_031020.pdf.

⁴ <https://www.lavote.net/docs/rcc/board-correspondence/VSAP-Board-Report.pdf>.

A second, independent investigation by a firm called Slalom was conducted as well, but the full report of this investigation was never released. Instead, a six-page report was released,⁵ dated June 5th and released several weeks later, after two news organizations - Politico and the Los Angeles Times - published stories about its findings.⁶ This report makes several recommendations to address excessive wait times, staffing issues, e-pollbook problems, poor training, insufficient planning, and inadequate vendor, technical and call center support.

Essentially Los Angeles County was allowed to pilot a new voting system as well as a whole new voting process in a live presidential primary election. While some of these issues may be beyond the purview of the CVSS, we know they are important to you because you authored the legislation that paved the way for VSAP and helped lead and guide the implementation of the Voter's Choice Act.

In the long run, we hope California can develop voting system standards that take a more holistic, end-to-end approach, recognizing that a "voting system" includes more parts than just the voting equipment, and should be tested to ensure all components are well integrated. This would include the election management system, VoteCal, e-pollbooks, and signature verification software.

We look forward to working with you and your staff to make further improvements to California's voting system standards to ensure our voting systems perform in a secure and reliable way, from start to finish. In the meantime, we urge you to refrain from fully certifying VSAP 2.1 at this time and impose conditions for its use that require ballots be deposited in a secure box separate from the BMD and reduce risks associated with the use of QR codes.

Sincerely,

Kim Alexander
President & Founder

⁵ This report was made available to me through an email link provided by staff of a member of the LA County Board of Supervisors, https://ceo.lacounty.gov/wp-content/uploads/2020/06/LAC-Voting-Assessment-Summary-of-Findings.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term= .

⁶ "L.A. County primary was plagued with technology flaws," by Jaclyn Cosgrove, John Myers and Matt Stiles, Los Angeles Times, July 17, 2020, <https://www.latimes.com/california/story/2020-06-17/l-a-county-primary-voting-was-plagued-with-technology-flaws> and "L.A. County has found the cause of its hourslong poll lines. It wasn't the new voting machines," by Kim Zetter, Politico, July 17, 2020, <https://www.politico.com/news/2020/06/17/la-county-blames-voter-check-in-tablets-for-election-day-chaos-324894> .