



SHIRLEY N. WEBER, Ph.D.

CALIFORNIA SECRETARY OF STATE

May 6, 2022

John Arntz
Director
City and County of San Francisco Department of Elections
1 Dr. Carlton B. Goodlett Place
City Hall, Room 48
San Francisco, CA 94102

Dear Mr. Arntz,

Thank you for submitting the City and County's plan to conduct a pilot pursuant to California Elections Code section 19209 during the November 8, 2022, Consolidated General Election. The proposed plan and supporting documentation have been reviewed by Secretary of State staff and feedback has been provided and discussed.

As California's chief election official, the Secretary of State is responsible for ensuring that elections are efficiently conducted and that state election laws are enforced. (See Cal. Govt. Code section 12172.5) This responsibility includes ensuring that California's elections are safe, secure, fair, transparent and accurate.

Background

On February 7, 2022, the City and County of San Francisco submitted a plan to conduct a pilot program pursuant to California Elections Code section 19209. Specifically, you requested to implement components of the VotingWorks VxSuite v2.1 voting system in addition to your current certified voting system, Dominion Democracy Suite 5.10A, during the November 8, 2022, Consolidated General Election. The VotingWorks VxSuite v2.1 voting system components proposed to be utilized included the following:

- 1) VxAdmin, used to program the ballot marking device (BMD);
- 2) VxMark BMD as the in-person voting method; and
- 3) VxBatch laptop and scanner used for tabulation and to generate results for a partial risk-limiting audit of the VotingWorks system.

On March 4 and 17, 2022, Secretary of State staff provided feedback on the application and requested additional information.

On March 28, 2022, Secretary of State staff, the City and County of San Francisco, and VotingWorks, conducted a conference call. During the call, VotingWorks

informed all parties that the proposed system was not complete and still under development. VotingWorks also noted that the Ranked Choice Voting portion of the system needed to be developed and subsequently tested by the City and County of San Francisco to ensure the functionality worked. Additionally, VotingWorks discussed removal of the tabulation portion of the proposed pilot plan.

On March 30, 2022, in a follow-up to the March 28, 2022, conference call, Secretary of State staff requested the following:

- a) The San Francisco/VotingWorks software development finalization plan and timeline.
- b) Updated Application, as discussed.
- c) Updated Use Procedures document, as discussed.
- d) Updated Attachment 5 - Remake Procedures, according to feedback provided.
- e) Updated Attachment 7 - Custody Transfer Procedures, according to feedback provided.
- f) Updated SOS - Pilot Program Application - FINAL, according to feedback provided.

On April 1, 2022, you acknowledged receipt of the March 30, 2022, follow-up and reiterated that: (1) VotingWorks' removal of the tabulation piece from the pilot program rendered the system unable to support the risk-limiting audit statutory requirement of California Elections Code section 19209(e)(1); and (2) the system is not sufficiently developed to conduct the pilot in accordance with the plan submitted to the Secretary of State on February 7, 2022.

On April 29, 2022, VotingWorks provided an updated Use Procedures document, one of the documents requested on March 30, 2022. In the correspondence, VotingWorks also indicated that ballots will not be scanned/tabulated via the VotingWorks system and that only duplicated ballots will be scanned/tabulated via the Dominion system. In addition, all references to the VxBatch laptop and scanner used for tabulation and to generate results for a partial risk-limiting audit of the VotingWorks system were removed from the Use Procedures document.

On May 3, 2022, VotingWorks provided an updated application and the San Francisco/VotingWorks software development finalization plan and timeline. In the development timeline, VotingWorks indicated that development of the VotingWorks VxSuite v2.1 system would not be complete until August 31, 2022, and testing and verification by San Francisco would not be able to occur until then. Assuming that there were no issues or further delays, this would be approximately 60 days before the statewide General election. VotingWorks also proposed that a subsequent and modified system, VotingWorks VxSuite v2.1.1, might be released by September 30, 2022, should testing of the v2.1 system identify any anomalies. This would be approximately 30 days before the statewide election; ballots go out to voters in California 29 days before the election.

Discussion

California has the strictest voting technology standards in the country. Voting technology is subjected to rigorous testing and has strict chain of custody requirements for use. Prior to each election, only trusted software builds from the Secretary of State are installed on each system. All ballots are paper and provide an opportunity for voters to review their selections before casting their ballot. Voting systems are air gapped and do not have the capability to connect to the internet. Prior to each election, county election officials perform logic and accuracy testing on the voting equipment. And, following each election, county election officials perform a 1% manual audit of the ballots or a risk-limiting audit.

The City and County of San Francisco has requested that the VotingWorks VxSuite v.2.1 system, as an open-source voting system, be used in a pilot – in a manner that bypasses the rigorous testing and certification that all systems certified for use in California must undergo. (See Cal. Elections Code sec. 19209). The City and County of San Francisco is requesting this system be used in a real election to cast real, live ballots.

As proposed, the City and County requests that the Secretary of State approve for use, a voting system that is not yet completely developed, has not been tested or reviewed by the Secretary of State or the City and County of San Francisco's Department of Elections, and on its face, cannot meet the basic statutory requirements.

Pursuant to Elections Code section 19209(b)(2)(B), the voting system must meet the requirements of subdivision (b) of Section 19101. Elections Code section 19101(b)(1) provides that the machine or device and its software shall be suitable for the purpose for which it is intended, 19101(b)(3) provides that the system shall be safe from fraud or manipulation, and 19209(b)(2)(D) requires that the system implement risk-limiting audits. As the proposed system is not completely developed, the plan as presented does not demonstrate whether the system meets California Elections Code section 19101 (b)(1) and (b)(3), thus the Secretary of State cannot determine if the proposed system can meet these basic statutory requirements.

Furthermore, Elections Code section 19209(b)(2)(D) requires that the piloted voting system implement risk-limiting audits. Elections Code section 15366(f) defines risk-limiting auditing as a hand-to-eye human inspection of ballots against the results reported by the voting system. In the City and County of San Francisco's pilot plan, the City and County request the Secretary of State allow a full manual tally of all ballots cast and tabulated in place of conducting a risk-limiting audit. Removing the tabulation portion of the system, duplicating VotingWorks ballots onto Dominion ballots, tabulating on the Dominion system, and conducting a full hand-tally of all VotingWorks marked ballots and their respective duplicated Dominion copies, as proposed in the updated Use Procedures document submitted on April 29, 2022, does not constitute a partial risk-limiting audit in accordance with 15366(f), as no results will be reported by the VotingWorks voting system to compare against.

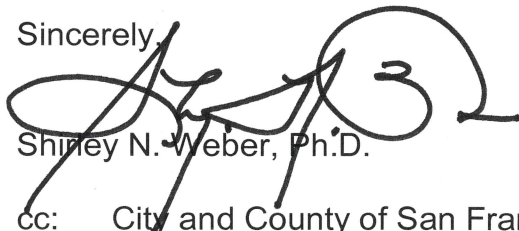
While our office is open to pilots involving voting systems using open-source platforms, it is just as important that these systems, like every other current voting system in use in California, comply with all state and federal election laws and function as designed and as required by law to ensure the integrity and security of the votes being cast is protected. Because the proposed system is not complete and still under development, including but not limited to the Rank Choice Voting portion of the system, and testing by the City and County of San Francisco to ensure the functionality works has not been conducted, your request to conduct a pilot program pursuant to California Elections Code section 19209 during the November 8, 2022, Consolidated General Election is denied.

I encourage you to work to appropriately develop the voting system to conform to state election code, conduct sufficient testing and verification, and then re-apply in the future when a fully developed system can be presented. It appears that the next election for the City and County of San Francisco is a Municipal Election to be held on November 7, 2023. If you wish to pursue a pilot program pursuant to California Elections Code section 19209 for that election, a new pilot plan and supporting documentation should be submitted to our office no later than February 7, 2023.

As discussed in our meeting this morning with you, Supervisor Shamann, VotingWorks, and the San Francisco City Attorney's office, my staff has drafted initial regulations relating to open-source pilot plans. These draft initial regulations will be shared with you in the days to come to get initial feedback from you and other stakeholders before we begin the official Administrative Procedures Act rulemaking process with the Office of Administrative Law.

We look forward to our continued work with you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shirley N. Weber', with a large, stylized flourish at the end.

Shirley N. Weber, Ph.D.

cc: City and County of San Francisco Board of Supervisors:
Supervisor Connie Chan (District 1)
Supervisor Catherine Stefani (District 2)
Supervisor Aaron Peskin (District 3)
Supervisor Gordon Mar (District 4)
Supervisor Dean Preston (District 5)
Supervisor Myrna Melgar (District 7)
Supervisor Rafael Mandelman (District 8)
Supervisor Hillary Ronen (District 9)
Supervisor Shamann Walton (District 10)
Supervisor Ahsha Safai (District 11)
San Francisco City Attorney, David Chiu
Mayor London Breed, City and County of San Francisco