

MOTION EXPRESSING THE SENSE OF COUNCIL OF ALLEGHENY COUNTY

Urging the Board of Elections not to consider electronic voting systems manufactured by Diebold, Inc. as viable alternatives for Allegheny County's move to a HAVA-compliant voting system.

WHEREAS, the Help America Vote act requires the replacement of Allegheny County's lever voting machines in time for the May 2006 Primary Election; and

WHEREAS, Allegheny County has been advised by the Department of Administrative Services to acquire approximately 5,600 Diebold TSX voting machines, and the Board of Elections, which is vested with authority over purchasing new voting machines under the Pennsylvania Election Code at 25 P.S. §2642(c), is currently considering this purchase; and

WHEREAS, the voters of Allegheny County who have commented upon the acquisition of Diebold machines have overwhelmingly voiced their distrust of both the manufacturer and its product; and

WHEREAS, comments made by the voters have highlighted a promise made by the then Chief Executive Officer of Diebold, Walden O'Dell, that he was "committed to helping Ohio deliver its electoral votes to" one party's candidate in the 2004 general election, as evidence of Diebold's partiality; and

WHEREAS, these comments have also highlighted Mr. O'Dell's federally designated status as a fundraising Pioneer, a designation that is only made when an individual has raised at least \$100,000 for the campaign activities of a specific party, as indicative of Diebold's established and longstanding partisan political activities; and

WHEREAS, comments have also centered upon the decertification of Diebold's TSX machines in California in 2004, which was occasioned in part by allegations that Diebold installed uncertified software on its machines on the eve of California's March 2004 primary, an action which could constitute a violation of both federal and California election law; and

WHEREAS, in the course of the California decertification hearings, Marc Carrel, the then Assistant Secretary of State for Policy and Planning, stated that he was "disgusted by the actions of this company, and I think we should forward our recommendations to the Attorney General, because I can't believe that a lot of the statements made...were accurate;" and

WHEREAS, Mark Kyle, the chair of the panel conducting the California decertification hearings, characterized Diebold's testimony before the panel as "ludicrous and offensive," and

noted that "[t]here's contradictory testimony here, folks, and it sounds like someone's not being truthful. Quite frankly, the panel is sick of it;" and

WHEREAS, the State of California ultimately filed suit against Diebold, with the company finally agreeing to pay a \$2.6 million settlement; and

WHEREAS, Rob Behler, an engineer hired to prepare Diebold's electronic voting machines for the 2002 gubernatorial election in Georgia, has also alleged that Diebold installed uncertified software on its machines in violation of federal and Georgia election law; and

WHEREAS, in 2005, Diebold refused to sell its voting machines in North Carolina, because state officials insisted upon being given detailed information about all software used in electronic voting machines, a step which Diebold is unwilling or unable to take, even though this decision is directly contrary to the concept of free access to source code that computer scientists have uniformly insisted in their comments to the Board of Elections is essential to verifiable elections;

NOW THEREFORE, IT IS MOVED, AND IT IS THE SENSE OF THE COUNCIL OF ALLEGHENY COUNTY, that the legitimacy and validity of any election are only as strong as the voters' confidence that their ballots were correctly and impartially tabulated, and that any erosion of this confidence, whether due to real or perceived factors, runs directly contrary to the core values of equal and unfettered exercise of the fundamental right to vote. Because of the number of comments that have been expressed both to the Board of Elections and to Council by the voters of Allegheny County against acquiring Diebold voting systems, because of the significance of the voters' allegations of Diebold's partiality, untruthfulness, and willingness to circumvent both state and federal election laws, and because of Diebold's refusal to permit free access to its source code, Council finds that it is impossible to conclude that the voters of Allegheny County currently have or will ever have the necessary confidence in any election conducted using a Diebold voting system. Council accordingly urges the Board of Elections to follow the clearly and consistently expressed will of the voters of Allegheny County and not consider the purchase of any voting system manufactured by Diebold.

SPONSORED BY COUNCIL PRESIDENT FITZGERALD and COUNCIL MEMBERS ROBINSON, BURN, CLEARY, FINNERTY, FRAZIER, JABBOUR, MARTONI, and NERONE

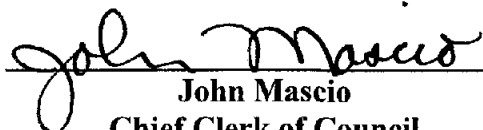
In Council February 21 2006.

Read and Approved.



Rich Fitzgerald
President of Council

Attest:



John Mascio
Chief Clerk of Council

Mascio, John

From: Mascio, John
Sent: Friday, February 24, 2006 9:22 AM
To: Onorato, Daniel; Fawcett, Dave; Defazio, John P
Cc: Flynn, James
Subject: Bill No. 2428-06 - Motion of Council regarding the selection of Diebold, Inc.

At the Regular Meeting of Council held on February 21, 2006, Council passed the attached Motion (Bill No. 2428-06) expressing the sense of Council of Allegheny County urging the Board of Elections not to consider electronic voting systems manufactured by Diebold, Inc. as viable alternatives for Allegheny County's move to a HAVA-compliant voting system.

The Motion was approved by a vote of 11-0-1, with Council Member Gastgeb abstaining, Council Member Fawcett absent, and Council Member Rea not present for the vote.

Your attention to this Motion is requested.

John Mascio
Chief Clerk

2/24/2006

Mascio, John

From: Jones, Charles (Buck) [bjones@dieboldes.com]
Sent: Monday, February 27, 2006 8:21 AM
To: jdefazio@county.allegheny.pa.us; dfawcett@county.allegheny.pa.us; rfrancis@county.allegheny.pa.us; jrea@county.allegheny.pa.us; ekress@county.allegheny.pa.us; dprice@county.allegheny.pa.us; vgastgeb@county.allegheny.pa.us; jcleary@county.allegheny.pa.us; ewatt@county.allegheny.pa.us; cljabbour@county.allegheny.pa.us; wrobinson@county.allegheny.pa.us; rnerone@county.allegheny.pa.us; bfrazier@county.allegheny.pa.us; executive@county.allegheny.pa.us; jflynn@county.allegheny.pa.us; tjohnson@county.allegheny.pa.us; achan@county.allegheny.pa.us; executive@county.allegheny.pa.us; webmaster.controller@county.allegheny.pa.us; mdroz@county.allegheny.pa.us; jburn@county.allegheny.pa.us; mfinnerty@county.allegheny.pa.us; donorato@county.allegheny.pa.us; mwolosik@county.allegheny.pa.us; Kaylor, Justin W.; webmaster.controller@county.allegheny.pa.us; gcasciato@county.allegheny.pa.us; Kevin.Kinross@county.allegheny.pa.us; mflaherty@county.allegheny.pa.us; dan.onorato@county.allegheny.pa.us; sfox@county.allegheny.pa.us; cmartoni@county.allegheny.pa.us; rfitzgerald@county.allegheny.pa.us; jcatanese@county.allegheny.pa.us; jliptak@county.allegheny.pa.us; jmascio@county.allegheny.pa.us; mwojcik@county.allegheny.pa.us
Subject: Response to Allegheny County Motion Against Diebold

Response to Allegheny County Motion Against Diebold

The following bold type represents Diebold's Response

Buck Jones - Regional Sales Manager - Diebold

February 27, 2006

MOTION EXPRESSING THE SENSE OF COUNCIL OF ALLEGHENY COUNTY

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WHEREAS, the Help America Vote act requires the replacement of Allegheny County's lever voting machines in time for the May 2006 Primary Election; and

WHEREAS, Allegheny County has been advised by the Department of Administrative Services to acquire approximately 5,600 Diebold TSX voting machines, and the Board of Elections, which is vested with authority over purchasing new voting machines under the Pennsylvania Election Code at 25 P.S. §2642(c), is currently considering this purchase; and

WHEREAS, the voters of Allegheny County who have commented upon the acquisition of Diebold machines have overwhelmingly voiced their distrust of both the manufacturer and its product; and

An internet war of allegations has been waged against Diebold in the effort to stop the use of all electronic voting of any kind which fosters an environment for promoting books and internet sites. Our two lead critics have books they are promoting about this alleged potential for election fraud. In fact, one of them was a book promoter before apparently discovering that she would do better promoting and selling her own books. Most of these internet sites are always asking for money. Some are non-profit but most are for profit. This war has been picked up by activist and supported by our competition. Unfortunately, the urban legend of election fraud has entered the mainstream. These people promoting books and internet sites have made these charges of the potential for voter fraud where no evidence exist just theories and allegations. They typically use Diebold as the

2/27/2006

main target for attacking electronic voting as a whole.

Diebold is an honest company that has been trusted to secure people's property for almost 150 years. Diebold is a company with a well known name making it an easy target and once had a CEO with poor judgment when it came to his personal life. Do you think that Allegheny County should be held responsible for allegations against its prior leadership for things they did in their personal life? He never suggested that he would influence the election in Ohio. He wouldn't have, couldn't have, and he didn't. How long do you think that Diebold employees should be punished for this former CEO's poor judgment?

WHEREAS, comments made by the voters have highlighted a promise made by the then Chief Executive Officer of Diebold, Walden O'Dell, that he was "committed to helping Ohio deliver its electoral votes to" one party's candidate in the 2004 general election, as evidence of Diebold's partiality; and

This is evidence that Diebold once had a CEO that was partisan. It is not evidence that Diebold is partisan. The main point is that he is the former CEO. He did not run the election division and could have probable only told you the names of 3 or 4 people in the election division. Again, he is no longer a part of Diebold.

The employees of Diebold represent the full spectrum of America. We are not an ivory tower white collar company. What kind of people do you think built safes, ATMs, voting systems, security systems and drive our vans around the country to maintain them? Some of our employees may have voted for you in the past. About 50 of our people live in the southwestern part of Pennsylvania and cheer for the same teams that you cheer for. They are good trustworthy hard working people. Diebold does its manufacturing in the US. ES&S does its manufacturing in the Philippines. Diebold is US owned and Sequoia is Venezuelan owned. Does being American made and owned no longer mean anything in Allegheny County?

The Allegheny County Council and the Board of Elections are 2 to 1 of one party. Your County Executive works hard doing fund raisers for members of his party and to help them get elected. I would not be surprised to learn that he has at some point said that he is committed to helping someone win. He is your CEO. He also serves on the Board of Elections. Does this make your election department partisan? Is this evidence that Allegheny County runs elections to assure that a single party's candidates win more often? No, I believe Allegheny County runs accurate fair fraud free elections. So does Diebold. Diebold only had equipment in 2 of the 88 counties in Ohio and the larger one voted for your CEO's candidate. Did anyone bother to call any counties in Ohio to ask about this? The systems were controlled by the counties not Diebold. Diebold is still the only company that has a corporate policy against political contributions. Does Allegheny County have a policy against personnel involved in elections making or accepting political contributions? None of our competitors have a policy against making them.

WHEREAS, these comments have also highlighted Mr. O'Dell's federally designated status as a fundraising Pioneer, a designation that is only made when an individual has raised at least \$100,000 for the campaign activities of a specific party, as indicative of Diebold's established and longstanding partisan political activities; and

Again, Odell is the former CEO. Diebold was not a Pioneer. I can assure you that he is not representative of Diebold. I hear no protest about the fact that ES&S is owned by a partisan newspaper, the Omaha World Herald. I hear no protest about the former President of ES&S, Chuck Hagel, that was elected in Nebraska on the ES&S system. Republican Senator Hagel is planning to run for President in 2008. Who do you think the Omaha World Herald does fund raisers for? I hear no concern about the fact that Sequoia has had three different owners in the past five years with two of them being foreign. I have heard no protest about the talk that Sequoia is partly owned by the Venezuelan Government. I have heard no protest about the allegation that Smartmatic, their current owner, got into the election business in order to hand the recall election to Hugo Chavez.

I have heard no protest of the fact that Sequoia gave \$100,000 and ES&S gave \$50,000 to a CA SOS (D) Kevin Shelley campaign. Again, Odell is gone and Diebold has a policy against political activity with the exception of

voting. I would be happy to share a copy of this policy from the Diebold employee handbook. No other company has this type of policy.

WHEREAS, comments have also centered upon the decertification of Diebold's TSX machines in California in 2004, which was occasioned in part by allegations that Diebold installed uncertified software on its machines on the eve of California's March 2004 primary, an action which could constitute a violation of both federal and California election law; and

Diebold is the only company to receive certification in CA under the new standards. The new standards are the most rigorous in the nation. Neither ES&S nor Sequoia has earned this certification on their end-to-end system as Diebold has. ES&S has not even applied to begin the process and Sequoia is not seeking certification of their 1988 vintage Advantage full face that Allegheny County is considering. This information is available on the CA SOS website.

An audit done by the former CA (D) SOS Kevin Shelley, who resigned due to allegations that he mishandled campaign funds and HAVA money (some of which was paid to consultants to write speeches against Diebold), found that every company was running uncertified software and hardware in California including both ES&S and Sequoia. That document is available on the CA SOS website. Did you have your staff investigate this?

WHEREAS, in the course of the California decertification hearings, Marc Carrel, the then Assistant Secretary of State for Policy and Planning, stated that he was "disgusted by the actions of this company, and I think we should forward our recommendations to the Attorney General, because I can't believe that a lot of the statements made...were accurate;" and

I found no protest of the fact that Sequoia gave \$100,000 and ES&S gave \$50,000 to a campaign for Kevin Shelley. This is public information. I find no protest of the fact that Sequoia and other vendors received special treatment from SOS Kevin Shelley, this is from testimony given by the then President of the election officials association in California. I can provide you with a copy of the transcript.

I find no protest of the fact that Bill Jones, the CA SOS just prior to Shelley worked for Sequoia as a liaison (lobbyist-consultant) while he was a Republican Senatorial candidate. He received \$60,000 for six months of consulting making himself available to take calls as he said. I find no concern about Alfie Charles the former press secretary for that SOS leaving his job with the SOS to do public relations for Sequoia.

WHEREAS, Mark Kyle, the chair of the panel conducting the California decertification hearings, characterized Diebold's testimony before the panel as "ludicrous and offensive," and noted that "[t]here's contradictory testimony here, folks, and it sounds like someone's not being truthful. Quite frankly, the panel is sick of it;" and

Mark Kyle is another member of the former CA SOS Kevin Shelley staff. I found no protest of the fact that Sequoia gave \$100,000 and that ES&S gave \$50,000 to a campaign for Kevin Shelley. I find no protest of the fact that Sequoia and other vendors received special treatment from the CA SOS, this is from testimony given by the then President of the election officials association in California. Transcripts are easily available.

I find no protest of the fact that Lou Didier left his role in the CA SOS heading up certifications for the state and went to work for ES&S or that former Florida Secretary of State Sandra Mortham scored a \$172,000 bonus from ES&S after helping them win a \$17 million contract from Broward County, Fla. She also earned undisclosed amounts from sales of electronic voting systems to Miami-Dade and 10 other counties.

WHEREAS, the State of California ultimately filed suit against Diebold, with the company finally agreeing to pay a \$2.6 million settlement; and

This is an unfortunate fact. This was a suit that was taken over by the state that was filed by Bev Harris, author and voting activist and Jim March her sidekick. They both received money in this settlement. I found no protest

of the fact that ES&S also had a settlement in Indiana and I find no protest for the current suits against Sequoia in Washington and New Mexico.

I heard your County Executive say in an Election Board meeting that suits are a fact of life. That anyone can file a suit. Has Allegheny County ever had to settle a suit no matter how unfair the situation may have been for the greater good of the county?

WHEREAS, Rob Behler, an engineer hired to prepare Diebold's electronic voting machines for the 2002 gubernatorial election in Georgia, has also alleged that Diebold installed uncertified software on its machines in violation of federal and Georgia election law; and

Rob Behler was a disgruntled temporary employee making Allegations with no basis in fact. There are numerous allegations about Sequoia and ES&S made by former employees that are not protested here. I can point you to documented cases of employees who quit their jobs because they were being forced to lie about the status of certification with other companies.

However, I think that you probable have situations in which former employees have made allegations against Allegheny County that are baseless. Should you be held responsible for those allegations?

WHEREAS, in 2005, Diebold refused to sell its voting machines in North Carolina, because state officials insisted upon being given detailed information about all software used in electronic voting machines, a step which Diebold is unwilling or unable to take, even though this decision is directly contrary to the concept of free access to source code that computer scientists have uniformly insisted in their comments to the Board of Elections is essential to verifiable elections;

This statement is false and slanderous. Diebold was willing to provide source code to North Carolina as well as to Allegheny County. The issue was and is that North Carolina also required that the vendor provide source code for all third party software, such as Windows. NC also required a complete list of programmers that had ever worked on any of this software, including third party software like Windows, and an affidavit signed by the CEO assuring that this was all complete and accurate information and that the source code is all of the source code including all third party source code that was used in the operation of the system. There is a \$100,000 fine for each violation or omission.

Diebold did an Open Record request in NC and found that the information that was filed by ES&S in North Carolina did not appear to include third party source code like Windows (regardless of what ES&S and Sequoia tell you their systems use Windows). It did not appear to include a list of programmers for any of the software including their own. It did not include an affidavit signed by their CEO. It was not even signed by an officer of the corporation. It was signed by a Vice President who we have found has made political contributions before. Diebold also has questions about the enforceability of the performance bond provided to North Carolina. Diebold has evidence that ES&S provided a defective performance bond in another state. Diebold is confident that no company can satisfy the black letter of the law in North Carolina and only time will tell if ES&S can.

Suits have been filed against Sequoia for not disclosing source code in other states. However, Sequoia could not sell in North Carolina due to the fact that they do not have federal certification and therefore could not get state certification. Sound familiar? You are being told that because the third largest county in PA uses this system you can have confidence that the system will be certified. Montgomery County is using this system because their previous system lost its certification. Three other counties had to buy new electronic systems because their systems lost certification. I doubt that Dr. Shamos or the Department of State will guarantee continued certification simple because a non HAVA compliant version of the equipment is now certified.

NOW THEREFORE, IT IS MOVED, AND IT IS THE SENSE OF THE COUNCIL OF ALLEGHENY COUNTY, that the legitimacy and validity of any election are only as strong as the voters' confidence that their ballots were

correctly and impartially tabulated, and that any erosion of this confidence, whether due to real or perceived factors, runs directly contrary to the core values of equal and unfettered exercise of the fundamental right to vote. Because of the number of comments that have been expressed both to the Board of Elections and to Council by the voters of Allegheny County against acquiring Diebold voting systems, because of the significance of the voters' allegations of Diebold's partiality, untruthfulness, and willingness to circumvent both state and federal election laws, and because of Diebold's refusal to permit free access to its source code, Council finds that it is impossible to conclude that the voters of Allegheny County currently have or will ever have the necessary confidence in any election conducted using a Diebold voting system. Council accordingly urges the Board of Elections to follow the clearly and consistently expressed will of the voters of Allegheny County and not consider the purchase of any voting system manufactured by Diebold.

While Diebold personnel were available on numerous occasions and placed numerous calls to the office of the County Executive, Allegheny County Council, and the Board of Elections no questions were ever asked about these allegations. Numerous emails were also sent each of which contained contact information. I understand that we were told that it would not be necessary to talk with Diebold when we offered to speak with the chairman of the Board of Elections. I understand that he in fact stated that he knew that the allegations were most likely false but it is the perception that he was concerned about. It is a sad day for American run government when the seriousness of the charge is more important than the nature of the evidence.

It appears that many of you have been contacted by people that saw something on the internet or read something in the press (that was probable on the internet first). I understand that some of you had phone calls from Howard Dean about this. What makes Howard Dean an expert on elections in Allegheny County? You also had approximately 12 hours of public meetings. Because of this you are willing to ignore the 6 months of careful thoughtful unbiased study done by your Search Committee.

Your Allegheny County Search Committee had contact with all of the vendors and examined the companies and their solutions for 6 months. They were fully aware of the allegations that you recount here. They recommended Diebold as the best choice for the future of Allegheny County.

Your Search Committee did not base their recommendations on allegations but investigation and examination. In their recommendation they demonstrated fiscal responsibility, courage, judgment, fairness, wisdom, patriotism and true concern for the future of Allegheny County.

If the Allegheny County Council, Board of Elections, and County Executive office had taken this same approach rather than base their actions on allegations and fear of the relatively small, yet loud, number of people that raised these concerns they would have reached the same conclusion as your capable Search Committee.