

VERIFIED VOTING NEW MEXICO
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Mr. Jim Noel, New Mexico Judicial Standards Commission
P.O. Box 27248 Albuquerque NM 87125-7248

Dear Mr. Noel

You received a letter dated Feb 7. from County Clerk Mary Herrera in which she alleges certain limitations of the combination of the ES&S Automark ballot marker and M-100 ballot scanner, then estimates the number of machines she will require. Our research indicates that every single one of her allegation are factually incorrect, the subsequent arithmetic erroneous, and her conclusions without justification. For example, far from requiring 1105 early voting machines for Bernalillo county as the Clerk claims, it might be accomplished with as few as 13 M-100s or just one M-650. Rapid implementation of optical scan is not unusual: nationwide, this fall more voters will vote on optical scan paper ballots than on electronic voting systems according to Election Data Services.

Ms. Herrera first alleges that *“The Florida Secretary of State did not certify the automark due to the apparatuses inability to mark a two or three page ballot”*. This would appear to be simply wrong. It can mark multi-page ballots and according to our research their decertification was for an obscure technical requirement in Florida elections that is irrelevant in NM election law. So neither statement is correct.

Ms. Herrera next alleges that *“The M-100 ES&S precinct tabulator can hold up to ten ballot combinations per unit in theory”*. According to ES&S, the M-100 can handle up to 400 ballot combinations. Ms. Herrera grossly overestimates the number of M-100 required when she states *“Bernalillo County will require 1105 M-100 voting tabulators”*.

The M-100 has two modes of operation. One mode is precinct-resolution. In that mode the machine can handle 10 precincts each with up to 40 different parties or ballot variations. Thus in this mode Ms. Herrera’s estimate is double the required number of early voting machines which is comparable to the number she will be managing for precinct operation. Additionally, ES&S has said a forthcoming software upgrade will handle 18 precincts in this mode, cutting down the Ms. Herrera’s estimate by almost a factor of four.

The other mode of operation is county-resolution. In that mode the machines can handle not 10 but 400 ballot combinations according to ES&S software engineer Herbert Deutsch. Thus to handle Bernalillo county’s 430 precinct would require only a single M-100 per early voting polling place for a grand total of 13 for all of Bernalillo. County-mode would require a subsequent scan using one M-650 to breakdown the county-wide early-vote totals by legislative district and by precinct.

Moreover, there is no reason a Clerk must use the model M-100 at the early voting stations. The model-650 ballot counter, used for absentee and early voting in many states, has no practical limits on the precincts-per-machine. Ms. Herrera dismisses this option stating, without basis, that the M-650 would negate the process of the voter marking and verifying their own ballot. We are bewildered by this assertion since paper ballots will still be marked and verified by the voter.

Ms. Herrera makes the assertion that the M-650 will threaten voter secrecy since the ballots will be batch-scanned after collection in a ballot box rather than scanned in real-time as each voter inserts them. While real-time scanning is indeed preferable when practical, this is already how absentee ballots are handled and it is also the procedure used when any precinct machine malfunctions: ballots are collected and counted later. Apparently Ms. Herrera does not even hold to her own rationale on this point because a few sentences later she urges considering “all elections be conducted by mail” which would mean all ballots are batch-scanned absentee ballots and never even granted the security and anonymity of the ballot box.

Ms. Herrera additionally raises a milieu of easily dismissed minor issues. For example, the interval required for the Automark to recognize a ballot, which the Ms. Herrera laments without specificity, is ultimately insignificant compared to the typical time a voter requiring assistance may wait in line, check in, go through the voting process or review his/her verifiable paper ballot. We will omit further detailed refutation of these lesser arguments for the sake of brevity, though we would gladly address them if your interest persists.

Clerks already use paper ballots in absentee voting so the processes of ballot preparation, tabulator programming and collation are all familiar to their workforce. Moreover whatever system is selected it will be a new one requiring instruction of workers. With the paper ballots we are much more assured that mistakes are reversible, so there is less concern about them than if we are using a new, untried, all-electronic voting system.

Ms. Herrera does not address the serious issues with her preferred alternative: direct electronic recording machines. Aside from the well-documented computer errors, a very serious issue with all-electronic voting is vote-suppression via long lines at the polls. Such lines preferentially disenfranchise select demographics such as the working class or parent voters who must vote in that golden hour before work or before rushing home to the kids. Only one voter can use one electronic machine at a time and if a machine fails or a bus-load of people show up long lines manifest. Paper ballots can accommodate surges since it simply requires more pens and privacy carrels. Even if the precinct's counting machine breaks it does not stop the voting process with paper ballots going into ballot boxes instead.

Regardless of whether it's an all-electronic election or a paper ballot election, no one should expect every election to be without mistakes. In the end what matters is what happens after a mistake. The fundamental distinction is that electronic elections require perfection of execution at every step because error detection and recovery is almost impossible. For example, in North Carolina they lost 4000 electronic “ballots” in 2004's presidential election and were on the brink of a state-wide special election to decide a contested race when one candidate conceded. That same election in Daytona Beach Florida they momentarily miscounted 18,000 paper ballots due to a mis-programmed counter. But they re-counted and had the election on track the same day.

The crux of the matter is that even if there are no errors, we can't tell that's the case unless we have the option of a paper ballot recount. There will always be upset elections and there will always be errors: we need a way to tell these conditions apart and to satisfy the public we can do so.

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