

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DR. SHIVA AYYADURAI,

Plaintiff,

v.

WILLIAM FRANCIS GALVIN, in his official
capacity as the Secretary of the Commonwealth
of Massachusetts,

Defendant.

CIVIL ACTION
NO. 1:20-cv-11889-MLW

AFFIDAVIT OF MICHELLE K. TASSINARI

I, Michelle K. Tassinari, on oath depose and state on personal knowledge and based on my review of the records of the Elections Division of the Office of the Secretary of the Commonwealth of Massachusetts (hereinafter, “the Elections Division”) as follows:

1. I am the director and legal counsel to the Elections Division. I have been legal counsel since April 2000 and director since 2005. As such, I have personal knowledge of the matters set forth herein.

2. The Elections Division is responsible for administration of state and presidential primaries and elections in the Commonwealth, including, among other things, responsibility for the printing of nomination papers, the receipt of certified nomination papers, and the printing of candidate lists and ballots, both official and absentee.

3. I am familiar with the candidacy of Shiva Ayyadurai for United States Senate, first as a Republican candidate in the September 1, 2020 primary election, and now as a write-in candidate for next week's general election.

4. Following the September 1 primary, on September 9, 2020, my office received a public records request from Ayyadurai for: "(1) All Scanned Digital Ballot Images from all jurisdictions in Massachusetts pertaining to the September 1, 2020, State Primary; (2) All Cast Vote Records (CVRs) from all jurisdictions in Massachusetts pertaining to the September 1, 2020, Massachusetts State Primary; and (3) The List of Vote Records (LVR), also called the Vote Cast Log, Cast Ballot Log, or other designation, from all jurisdictions in Massachusetts pertaining to the September 1, 2020, Massachusetts State Primary." On September 21, 2020, Ayyadurai filed with my office a "follow up" to his request in which he reiterated his request, apparently under the mistaken belief that our response to his request was due within 10 calendar days instead of 10 business days.

5. At 10:47am on September 24, I responded to Ayyadurai by email, informing him that no responsive records existed and that no ballot images existed because the certification of voting equipment in Massachusetts prohibits the capturing of ballot images. Ayyadurai responded seeking a citation for the prohibition on capturing ballot images. I responded again at 11:44am on September 25, attaching copies of the certification for two different types of digital scan equipment in Massachusetts (which, in any event, are not used by every municipality in Massachusetts – some do not use scanning equipment to tabulate ballots). Copies of these emails and the attachments are attached hereto as Exhibit 1.

6. Ayyadurai then began claiming on social media that the Secretary of State's office had unlawfully destroyed ballots.

7. Those statements were plainly false because, as I told Ayyadurai in an email response, all of the paper ballots – i.e., the *only* ballots – from the September 1 primary are being retained under seal by local election officials in accordance with state and federal law.

8. On September 24, 2020, Ayyadurai Tweeted this false claim:



9. The Elections Division is always concerned about false information being disseminated about the election process, as this can be a form of voter suppression. These concerns are particularly heightened this year, since we know that multiple state-sponsored and private actors engaged in widespread disinformation campaigns in the 2016 presidential election and are doing so now, in an attempt to influence the outcome of the election. For example, on September 28, 2020, the FBI and the Cybersecurity and Infrastructure Security Agency (CISA) issued a joint alert regarding the threat posed by election disinformation:

<http://ic3.gov/Media/Y2020/PSA200928>.

10. I asked our office's Communications Director, Debra O'Malley, to report the Tweet to Twitter as false.

11. That is the one and only time that I, or to my knowledge, anyone in my office, has reported any of Ayyadurai's Tweets to Twitter for any reason.

12. We have no control over Twitter or its complaint process. We do not have any input into whether Twitter imposes a sanction such as removing a Tweet or suspending a user's account. In fact, Twitter does not tell us what, if any, action they take in response to a complaint we submit; we merely receive what appears to be an automated reply stating that they will investigate and contact us if they need more information.

Signed under the pains and penalties of perjury this 29th day of October, 2020.

/s/ Michelle K. Tassinari
Michelle K. Tassinari

EXHIBIT 1

Sterman, Anne (AGO)

From: Tassinari, Michelle (SEC) <Michelle.Tassinari@sec.state.ma.us>
Sent: Thursday, September 24, 2020 10:47 AM
To: vashiva@vashiva.com
Subject: Records Request

Good Morning-

I am writing to acknowledge receipt of your request for records. Please note, that this Office does not maintain voter tabulation software, firmware or hardware. While this office certifies voting equipment, as required by law, we do not purchase or lease equipment. Once equipment is approved by this Office, cities and towns can purchase or lease such equipment. Accordingly, this Office has no records responsive to your request.

Further, to the extent you request the same information from local election officials, please note that the approval of digital scan equipment in Massachusetts specifically prohibits the capturing of ballot images.

Michelle K. Tassinari
Director and Legal Counsel
Elections Division
One Ashburton Place, Room 1705
Boston, MA 02108
617-727-2828

Sterman, Anne (AGO)

From: Tassinari, Michelle (SEC) <Michelle.Tassinari@sec.state.ma.us>
Sent: Friday, September 25, 2020 11:44 AM
To: Shiva Ayyadurai
Subject: RE: Records Request
Attachments: DS200.Certification.5.2014.pdf; ImageCast.Certification.5.2014.pdf

Shiva-

Attached please find the certification of two different types of digital scan equipment in Massachusetts.

Please note that while the ballot images are not stored, the actual ballots voted on at any federal election are secured and stored for 22 months in accordance with federal law. However, under state law, those ballots must remain sealed until such time as they can be destroyed.

Michelle K. Tassinari
Director and Legal Counsel
Elections Division
One Ashburton Place, Room 1705
Boston, MA 02108
617-727-2828

From: Shiva Ayyadurai <vashiva@vashiva.com>
Sent: Thursday, September 24, 2020 11:22 AM
To: Tassinari, Michelle (SEC) <Michelle.Tassinari@sec.state.ma.us>
Subject: Re: Records Request

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Michelle,

Kindly refer me to the statute or law, in which the "...approval of digital scan equipment in Massachusetts specifically prohibits the capturing of ballot images."

Thank you in advance.

Warmest regards,

Dr. Shiva Ayyadurai
US Senate Candidate.

On Thu, Sep 24, 2020 at 10:47 AM Tassinari, Michelle (SEC) <michelle.tassinari@state.ma.us> wrote:

Good Morning-

I am writing to acknowledge receipt of your request for records. Please note, that this Office does not maintain voter tabulation software, firmware or hardware. While this office certifies voting equipment, as required by law, we do not purchase or lease equipment. Once equipment is approved by this Office, cities and towns can purchase or lease such equipment. Accordingly, this Office has no records responsive to your request.

Further, to the extent you request the same information from local election officials, please note that the approval of digital scan equipment in Massachusetts specifically prohibits the capturing of ballot images.

Michelle K. Tassinari

Director and Legal Counsel

Elections Division

One Ashburton Place, Room 1705

Boston, MA 02108

617-727-2828

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Office of V.A. Shiva Ayyadurai, Ph.D.

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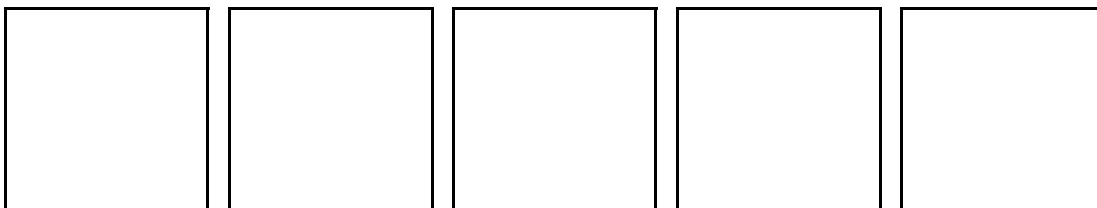
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The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Elections Division

APPROVAL OF VOTING EQUIPMENT IN MASSACHUSETTS

Name of Vendor: Elections Systems and Software, Inc.
Corporate Headquarters
11208 John Galt Boulevard
Omaha, Nebraska 68137
Phone: (402) 593-0101
(800) 247-8683
Fax: (402) 593-8107
www.essvote.com

Type of Product: ES&S DS200 Precinct Tabulator (EVS 5.0.0.3)
(Optical Scanning Vote Tabulator)

Submission of Detailed Specifications: Prior to May 29, 2013, the Office of the Secretary of the Commonwealth received detailed specifications for the DS200.

Office Demonstration of Equipment: On May 29, 2013, Benjamin Swartz, ES&S State Certification Manager, and other representatives from ES&S presented office demonstrations to members of the Elections Division at One Ashburton Place, Boston. On June 17, 2013, John Lento of ES&S presented another office demonstration (using modified equipment to meet the Massachusetts standards) to members of the Elections Division.

Field Tests: Field tests were successfully conducted in the Town of Concord at the Annual Town Election held on March 25, 2014 and in the Town of Reading at the Annual Town Election and Special State Election, which were held concurrently on April 1, 2014.

The DS 200 Precinct Tabulator performed without incident in both field tests.

Reasons for Approval:

The Office of the Secretary of the Commonwealth has determined that the DS200 Precinct Tabulator, which is manufactured by ES&S, is a type of voting equipment which is in compliance with the following standards set forth in 950 C.M.R. § 50.02 and the Voluntary Voting System Standards of 2005 adopted by the Election Assistance Commission.

Overview of System:

The DS200 is a paper ballot scanner designed for polling place use. Voters mark selections on a paper ballot and then insert the ballot in any orientation for immediate tabulation. Both sides of the ballot are processed simultaneously with high-resolution scanners and the resulting ballot images are decoded by a proprietary recognition engine. Once voter selections are processed, the ballot is dropped into a secure ballot box. The scanner also has the ability to capture digital images of each ballot, but this function can be disabled to comply with current state law.

Product features of the DS200 include a 12-inch touch screen providing voters and poll worker feedback, an internal thermal printer for generating machine totals and log reports, and USB thumb drive for loading the election definition and storing results. The scanner has also been equipped with a cancellation device, which will mark every ballot as it is dropped into the ballot box.

The scanner is powered by a standard 120-volt AC power cord and contains a back-up battery to power the machine in the event of electrical power failure. When fully charged, the battery can maintain more than two hours of continuous use.

There are three operating modes on the scanner system: Administration, Polls Open Mode, and Polls Closed Mode. The "Administration" mode provides diagnostic and testing functions to calibrate and test the scanner. In "Polls Open" mode, the DS200 actively scans ballots and tabulates results. In "Polls Closed" mode, the scanner prints poll reports, including election results.

Below please find an analysis of the system as it applies to the standards set forth in the General Laws and Regulations.

(1) Simple and Convenient to Use (950 C.M.R. 50.02(1)):

The system is as simple and as easy to use as paper ballots—filling in an oval to indicate the voter's choice. The width of the ballot is 8 ½ inches and the maximum length of the ballot is 19 inches and ballots may be printed with one, two or three columns. However, unlike current approved optical scanner systems, a ballot can be printed with up to three

columns at the top and then printed straight across the entire width at the bottom to accommodate ballot questions.

The vote indicators (ovals) can be filled in with almost any writing utensil, though not all pencil marks will be read by the scanner. While blue and black ink can be read by the tabulator, the BIC Grip Roller Ball Black pen with a .7mm tip is the only approved marking device for the DS200. Red and orange ink is not recommended. The scanner draws three types of information from each ballot during scanning: audit information, ballot information, and voter marks.

- (a) A reasonable and average person should be able to operate the equipment after a brief demonstration or explanation. Ballots can be fed through in all four orientations.
- (b) Voting an average ballot on this equipment should not take an undue length of time. The system seemed to process sample ballots relatively quickly. During the field test, the poll workers commented that the tabulator took longer to process ballots than the equipment they currently used. After careful review by the local election officials and representatives from this Office, it was determined that while the time for processing a ballot was slightly longer than current equipment, it was not significant.
- (c) After the paper ballot is marked, the voter feeds it through the machine. Only after the voter is ready to insert it into the tabulator is the ballot processed, thereby providing the voter with an opportunity to spoil a ballot and receive a new ballot in accordance with state law. The tabulator can be programmed to notify the voter if it detects certain discrepancies on the ballot such as under-votes or over-votes.
- (d) As with other optical scanning voting equipment, the ballot is marked in a separate area from the machine. Accordingly, marking units would be necessary with adequate lighting. Otherwise special lighting would be necessary.

(2) Maximize Accuracy and Prevent Fraud (950 C.M.R. 50.02(2)):

The DS200 is designed to maximize accuracy and prevent fraud. When adequate training is given to election officers in the handling of ballots and correct use of the system itself, the system will provide adequate counting accuracy. When correctly programmed and tested, the system registers the number of ballots cast and the number read. Also, the number of votes for each candidate or question(s) are recorded and printed on the paper tape that documents election results.

The ballot is marked by filling in an oval with a black pen beside the candidate's name or voter's yes or no response to a ballot question. This process is similar to marking an "X" beside the voter's selection on a paper ballot.

- (a) There are adequate locks on the compartment sections of the system and the area where the program card is inserted and where the printer tape is located for the end of the night reporting.
- (b) The machine contains electronic components that register votes for candidates and questions electronically as well as a digital display that indicates the number of voters continuously while the machine is in the "Polls Open" mode as a public counter. The DS200 also has a protective counter that registers the total number of times the machine has operated in its lifetime.
- (c) The system receives, registers and cancels each ballot prior to depositing it in a compartment. When using the steel ballot box, the system allows for three compartments: one for ballots tabulated by the unit, one for ballots where write-in votes have been detected which must be hand-counted at the close of polls, and one auxiliary compartment for ballots unable to be read by the machine. When using the plastic ballot box, the system has two compartments: the main compartment for ballots tabulated by the machine and the auxiliary compartment for ballots unable to be read by the machine. The plastic ballot box does not allow for the separation of write-in ballots.
- (d) Only when the scanner is in "Polls Open" mode can votes be registered which prevents the machine from being used to register votes before and after the election.
- (e) When marks for an office or question exceed the number to be elected, the tabulator will display a notification to the voter identifying a discrepancy on the ballot and allowing the voter to correct the ballot. If the voter chooses to cast the ballot with mistakes, the tabulator can be programmed to register the vote as a blank to prevent double voting.
- (f) The DS200 can be programmed to accept multiple ballot styles, including any party ballot for a party primary. As with paper ballots, the election official is responsible for ensuring that the voter is qualified to receive a particular party ballot to vote on.

(3) Secrecy (950 C.M.R. 50.02(3)):

The voter's choice can be kept from the public view by enclosing it in a secrecy sleeve, placing the top of the secrecy sleeve near the protective cover of the system and feeding the ballot into the scanner.

(4) Must Meet Demands of Average Election (950 C.M.R. 50.02(4)):

The DS200 is adequate to demands of average election.

- (a) The programmable cards used for the DS200 have a great capacity for reading and recording data. The size of the ballots is adequate to print candidates and questions for an average election.

(b) A recount of votes on the DS200 is absolutely possible as the actual paper ballots are retained for a hand recount if necessary.

(c) Ballots can be printed and the election definition programmed to receive write-in votes.

(5) Absentee Ballots (950 C.M.R. 50.02(5)):

Absentee ballots for use in the DS200 are optical scanner ballots.

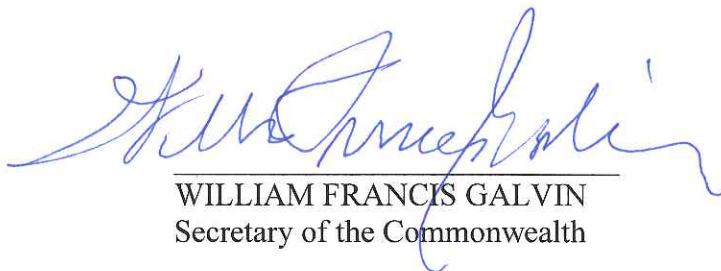
(6) Service by Manufacturer (950 C.M.R. 50.02(6)):

Service for the DS200 is provided by ES&S.

Conditions for Approval:

The Vendor will provide any city or town who purchases or leases the equipment with a sufficient supply of the approved ballot marking devices at no additional charge. The Vendor will include a printing kit and complete instructions to all purchasers of the system. No printer will be required to purchase paper stock from the Vendor. Further, the Vendor will work with any printer with whom the Commonwealth or any city or town contracts for the printing of ballots to assure that all ballots printed will be processed by the system and shall not require any such printer to pay for training or special equipment required to print any ballots for use with the equipment. This includes testing sample ballots sent by a printer as quickly as possible to prevent any delays in the ballot printing process.

Dated: May 7, 2014



WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Elections Division

APPROVAL OF VOTING EQUIPMENT IN MASSACHUSETTS

Name of Vendor: LHS Associates, Inc.
10 Manor Parkway Unit B
Salem, NH 03079
www.lhsassociates.com

Name of Manufacturer: Dominion Voting Systems Corporation
1201 18th Street, Suite 210
Denver, Colorado 80303
www.dominionvoting.com

Type of Product: ImageCast Precinct Tabulator (ICP)
(Optical Scanning Vote Tabulator)

Submission of Detailed Specifications: Prior to May 6, 2013 the Office of the State Secretary received detailed specifications for the ImageCast Precinct Tabulator.

Office Demonstration of Equipment: On May 6, 2013, John Silvestro, President of LHS, and other representatives from LHS presented office demonstrations to members of the Elections Division at One Ashburton Place, Boston. On August 5, 2013, John Silvestro of LHS presented a further office demonstration (using modified equipment to meet the Massachusetts standards) to members of the Elections Division.

Field Test: The equipment was field tested in the City of Quincy at their municipal election on November 5, 2013 and in the City of Easthampton for their municipal election on November 5, 2013. Based on issues identified during the field test in the City of Quincy, the equipment was required

to conduct another field test, which was done in the Town of Needham at their annual town election on April 8, 2014.

The ImageCast Precinct Tabulator performed without incident in two field tests as required by law.

Reason for Approval:

The Office of the Secretary of the Commonwealth has determined that the ImageCast Precinct Tabulator, which is manufactured by Dominion Voting Systems, is a type of voting equipment which is in compliance with the following standards set forth in 950 C.M.R. § 50.02, and the Voluntary Voting System Standards of 2005 adopted by the Election Assistance Commission.

Overview of System:

The ImageCast Precinct Ballot Tabulator is a precinct-based optical scan tabulator that is used in conjunction with ImageCast compatible ballot storage boxes. The system is designed to scan marked paper ballots, interpret voter marks on the paper ballot, and store and tabulate each vote from each paper ballot. The scanner also has the ability to capture digital images of each ballot, but this function can be disabled to comply with current state law.

The ImageCast Precinct Tabulator can process single or double-sided ballots, and may be configured to handle multiple ballot scenarios. The ImageCast can be programmed to accept multiple cards and ballot styles. The scanner has also been equipped with a cancellation device, which will mark every ballot as it is inserted into the scanner.

The scanner is powered by a standard 120-volt AC power cord and contains a back-up battery to power the machine in the event of electrical power failure. When fully charged, the battery can maintain more than two hours of continuous use. The scanner is equipped with a thermal printer, which may be locked to prevent tampering.

There are five operating modes on the scanner system: Powered Down, Administration Mode, Election Run Mode, Election Run Mode with Ballot Review, and Ballot Test Mode. The "Powered Down Mode" allows the battery pack to continue to charge if the AC power supply is connected. The "Administration Mode" allows officials to perform administrative functions, such as changing modes, printing reports, and closing the polls. The "Election Run Mode" is used during voting hours and allows the tabulator to process ballots. The "Election Run Mode with Ballot Review" is used during voting hours, and allows the voter to review their choices on the LCD screen before casting the ballot. The "Ballot Test Mode" may be used by officials to test ballots, prior to an election.

Below please find an analysis of the system as it applies to the standards set forth in the General Laws and Regulations.

(1) Simple and Convenient to Use (950 C.M.R. § 50.02(1)):

The system is as simple and as easy to use as paper ballots and requires filling in an oval to indicate the voter's choice. The width of the ballot is 8 ½ inches and the maximum length of the ballot is 19 inches. The ballots may be printed with one, two or three columns. However, unlike current approved optical scanner systems, a ballot can be printed with up to three columns at the top and then printed straight across the entire width at the bottom to accommodate ballot questions.

The vote indicators (ovals) can be filled in with a ballot marking device. The scanner reads blue and black ink, though the ImageCast Ballot Marking Device (BMD) is the only approved marking device for the ImageCast. Red and orange ink is not recommended.

- (a)* A reasonable and average person should be able to operate the equipment after a brief demonstration or explanation. Ballots can be fed through in all four orientations.
- (b)* Voting an average ballot on this equipment should not take an undue length of time. The system seemed to process sample ballots relatively quickly. During the field test, the poll workers commented that the tabulator took longer to process ballots than the equipment they currently used. After careful review by the local election officials and representatives from this Office, it was determined that while the time for processing a ballot was slightly longer than current equipment, it was not significant.
- (c)* After the paper ballot is marked, the voter feeds it through the machine. Only after the voter is ready to insert it into the tabulator is the ballot processed, thereby providing the voter with an opportunity to spoil a ballot and receive a new ballot in accordance with state law. The tabulator can be programmed to notify the voter if it detects certain discrepancies on the ballot such as under-votes or over-votes.
- (d)* As with other optical scanning voting equipment, the ballot is marked in a separate area from the machine. Accordingly, marking units would be necessary with adequate lighting. Otherwise, special lighting would be necessary.

(2) Maximize Accuracy and Prevent Fraud (950 C.M.R. § 50.02(2)):

The ImageCast Precinct Tabulator is designed to maximize accuracy and prevent fraud. When adequate training is given to election officers in the handling of ballots and correct use of the system itself, the system will provide adequate counting accuracy. When correctly programmed and tested, the system registers the number of ballots cast and the number read. Also, the number of votes for each candidate or question(s) are recorded and printed on the paper tape that documents election results.

The ballot is marked by filling in an oval with a black pen beside the candidate's name or voter's yes or no response to a ballot question. This process is similar to marking an "X" beside the voter's selection on a paper ballot.

- (a) There are adequate locks on the compartment sections of the system and the area where the program card is inserted and where the printer tape is located for the end of the night reporting.
- (b) The machine contains electronic components that register votes for candidates and questions electronically as well as a digital display that indicates the number of voters continuously while the machine is in the "Election Run" mode as a public counter. The ImageCast also has a protective counter that registers the total number of times the machine has operated in its lifetime.
- (c) The system receives, registers and cancels each ballot prior to depositing it in a compartment. The system allows for three compartments: one for ballots tabulated by the unit, one for ballots where write-in votes have been detected which must be hand-counted at the close of polls, and one auxiliary compartment for ballots unable to be read by the machine.
- (d) Only when the scanner is in "Election Run" mode and "Election Run with Ballot Review" mode can votes be registered which prevents the machine from being used to register votes before and after the election.
- (e) When marks for an office or question exceed the number to be elected, the tabulator will display a notification to the voter identifying a discrepancy on the ballot and allowing the voter to correct the ballot. If the voter chooses to cast the ballot with mistakes, the tabulator can be programmed to register the vote as a blank to prevent double voting.
- (f) The ImageCast can be programmed to accept multiple ballot styles, including any party ballot for a party primary. As with paper ballots, the election official is responsible for ensuring that the voter is qualified to receive a particular party ballot to vote on.

(3) Secrecy (950 C.M.R. § 50.02(3)):

The voter's choice can be kept from the public view by enclosing it in a secrecy sleeve, placing the top of the secrecy sleeve near the protective cover of the system and feeding the ballot into the scanner.

(4) Must Meet Demands of Average Election (950 C.M.R. § 50.02(4)):

The ImageCast is adequate to demands of average election.

- (a) The programmable cards used for the ImageCast have a great capacity for reading and recording data. The size of the ballots is adequate to print candidates and questions for an average election.

- (b) A recount of votes on the ImageCast is absolutely possible as the actual ballots are retained for a hand recount if necessary.
- (c) Ballots can be printed and the election definition programmed to receive write-in votes.

(5) Absentee Ballots (950 C.M.R. § 50.02(5)):

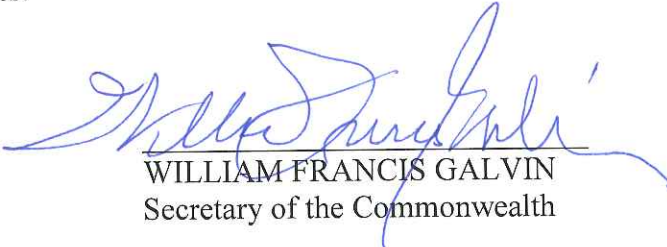
Absentee ballots for use in the ImageCast are optical scanner ballots.

(6) Service by Manufacturer (950 C.M.R. § 50.02(6)):

Service for the ImageCast is provided by LHS.

Conditions for Approval: The Vendor will provide any city or town who purchases or leases the equipment with a sufficient supply of the approved ballot marking devices at no additional charge. The Vendor will include a printing kit and complete instructions to all purchasers of the system. No printer will be required to purchase paper stock from the Vendor. Further, the Vendor will work with any printer with whom the Commonwealth or any city or town contracts for the printing of ballots to assure that all ballots printed will be processed by the system and shall not require any such printer to pay for training or special equipment required to print any ballots for use with the equipment. This includes testing sample ballots sent by a printer as quickly as possible to prevent any delays in the ballot printing process.

Dated: May 7, 2014


WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth