



**Diebold Election Systems, Inc.**  
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August 16, 2006

Cuyahoga County Commissioners  
Administration Building  
1219 Ontario Street  
Cleveland, Ohio 44113

Via email and regular mail

Re: Erroneous Report Posting

Dear Commissioners Hagan, Commissioner Dimora and Commissioner Lawson Jones;

We are surprised and dismayed by the posting of the Election Science Institute-ESI (VoteWatch) inaccurate analysis covering the May 2006 primary election (the "Report"). The Report is inaccurate and the result of an erroneous and misleading investigation that is clearly false.

We have previously pointed out the errors in the Report and the investigation methodology to the County. We have further been made aware that the County also informed ESI of these defects on August 3rd. The Report as posted fails to take our comments into account or correct the defective analysis. Attached is a document reflecting a more accurate description of the issues which were inaccurately portrayed in the Report. Such document is incorporated herein by reference. We would request that the Report be immediately removed from the County's website, and a copy of this letter and the attachment be distributed to all persons who have received the same from the County. Such distribution should at least be by means of posting this letter on such website in lieu of the Report.

We believe that the continued publication of the Report without including our comments can be reasonably interpreted to constitute intentional and willful defamation of Diebold Election Systems.

Given the pre-Report unwillingness of ESI to allow Diebold Election Systems to participate in the analysis of the election specific data prior to the report and the evaluation of the specific election equipment, there would seem to be an apparent weakness in the skills of ESI or the investigatory methodology employed by them in this instance. This is especially true due to the simplistic analytical errors which were discovered independently by both the County's election professionals and Diebold Election Systems. Quite frankly, given the weakness of this analysis, we feel it would be irresponsible for any jurisdiction to rely on the reports such as this by ESI without a very thorough review of their background, the work performed and the analytical methodology utilized.

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Diebold Election Systems equipment is reliable and accurate. This has been demonstrated in not only all other Ohio jurisdictions using the system during the May primary, but also in thousands of elections in hundreds of jurisdictions throughout the nation. One example of independent evidence of the accuracy of our equipment can be found in the parallel monitoring testing conducted by the State of California in actual elections over the past several years.

We look forward to your taking action consistent with the requests found in this letter.

Sincerely,

A handwritten signature in black ink that reads "Michael E. Lindroos". The signature is written in a cursive style with a large, stylized initial "M".

Michael E. Lindroos, Esq.  
Vice President and Counsel

cc: Mr. Michael Vu, Director of Elections, Cuyahoga County  
Mr. Hertzberg, ESI  
Mr. David Byrd, President, Diebold Election System  
Ms. Jessica Hiner, Diebold Election Systems  
Mr. Hugh Shannon, Cuyahoga County Commissioners

August 15, 2006

## **Response from Diebold Election Systems to the Election Science Institute Report to the Cuyahoga County Board of Commissioners re: the May 2006 Primary Election**

*Background: The Cuyahoga County Board of Commissioners contracted with Election Science Institute (ESI) to analyze various aspects of the May 2006 Primary Election. ESI's initial report was presented to Cuyahoga County officials on Friday, August 11, 2006. Diebold Election Systems has reviewed that report along with the Cuyahoga County Board of Elections. The following response can be attributed to Mark Radke, director of marketing, Diebold Election Systems.*

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“The initial review and conclusions reached by ESI concerning the Comparison of Vote Count By Candidate simply are wrong. In their primary areas of focus, ESI failed to take into account Election Day administrative actions that – had a thorough analysis been done and questions asked – would have determined the correct answers. The county provided additional data to ESI on August 3<sup>rd</sup> when ESI was unable to reconcile the two analysis databases. This data from the county was not incorporated into the ESI report and their conclusions within this report are incorrect. The Cuyahoga County Board of Elections and Diebold Election Systems again reviewed the analysis databases on August 12<sup>th</sup>, and confirmed the initial data provided by the county on August 3<sup>rd</sup>. In some cases, it is apparent that ESI itself made mistakes in its own testing procedures.

“The principal issues are the seeming discrepancy between the memory cards and the Voter Verifiable Paper Audit Trail (VVPAT) totals, and the on-the-surface mismatch between the precinct memory cards and the touch screen unit's internal memory totals. However, the actual vote results can be balanced and verified when the Election Day administrative actions are incorporated into the analysis.

“As previous reviews have shown, poll worker training was insufficient. Poll workers in various locations apparently pulled memory cards from one touch screen unit and placed that memory card into another touch screen unit. However, they did not also remove the respective VVPAT paper tape and place it into the second unit. Clearly, removing a memory card from one unit and placing it into another without also relocating the VVPAT records will account for a discrepancy when those results are compared.

“In addition, several precinct locations called the Cuyahoga County election office early on Election Day to report they did not have memory cards for their touch screen units. New memory cards for the precincts were programmed at election center and delivered to the respective precincts. In the meantime, poll workers found the original memory cards and began to use them in the touch screen units. When the new memory cards arrived from election central, the original cards were removed and the new cards were inserted into the touch screen units and used for the remainder of the election. This type of memory card activity will cause totals from the individual memory cards and the touch screen unit not to match.

“ESI's review failed to take into account the procedures for handling curbside voters and 17-year old voters. As a result, the report erroneously concludes that precinct totals from specific precinct or voting center memory cards do not match the totals from the touch screen unit's internal memory located on the unit's motherboard. Cuyahoga County used paper ballots for these special voting cases. The votes were inputted into touch screen units and the totals were placed on separate memory cards. It is apparent that ESI tabulated the memory card totals from the touch screen units used within the precinct for walk-in 18 year and older voters, but did not include the totals from the memory cards for curbside voters or 17-year old voters. This omission caused the variance between the two totals. The Cuyahoga County Board of Elections notified ESI of this omission on August 3<sup>rd</sup>.

“ESI's own testing procedures also were flawed. On several memory cards which were uploaded by ESI from the touch screen unit's internal memory and used for the ESI analysis, zero votes were present;

however, the internal memory of the touch screen units contained between 30 and 50+ votes, respectively. The original memory cards used in these touch screen units during the actual election contained the same number of votes as the internal memory of these units. ESI operator error appears to be the cause of these memory cards used in the ESI analysis not containing any votes, as they should have been uploaded directly from the touch screen's internal memory which did contain the correct number of votes cast. ESI does state in the analysis that "Human error can not be ruled out as the source of the discrepancies reported."

On page 88 of the ESI analysis, it states, "Printer problems were not evenly distributed throughout but rather were clustered in particular voting centers. For example, 18 voting centers experienced 100% of the printer errors (4 vote centers experienced 46% of the printer errors)." Clearly, poll worker training was an issue in these specific precincts, as the VVPAT printer performed admirably in the vast majority of precincts.

"Finally, the ESI report (Page 100) criticized the VVPAT's performance because the ink occasionally ran low, even though the VVPAT does not use ink or an ink cartridge. A thermal printer is used within the VVPAT to eliminate the issues associated with replacing ink cartridges. Thermal printers also require virtually no maintenance and are very reliable, as heat is used in place of ink to mark the VVPAT paper.

"The accuracy and reliability of Diebold's system is proven as the system has been tested by federal and independent laboratories, and has passed a regime of stringent parallel monitoring accuracy tests. Diebold Election Systems will continue to work with the Cuyahoga County Board of Elections staff to address any perceived issues that arise so that the November General Election can be conducted smoothly, as was the case with the August special election."