

APPLICATION TO FILE AN AMICI CURIAE BRIEF IN SUPPORT OF APPELLANTS

TO THE HONORABLE 11th CIRCUIT COURT OF APPEALS:

Pursuant to Federal Rule of Appellate Procedure 29 and 11th Circuit Rules 29-1 and 29-2, amici curiae Electronic Frontier Foundation, Verified Voting.org, Common Cause, People For The American Way Foundation, Center for Constitutional Rights, Computer Professionals for Social Responsibility, and Voters Unite! respectfully request permission to file the accompanying brief amici curiae in support of Petitioners and Appellants Robert Wexler, Addie Greene, Burt Aaronson, and Tony Fransetta. As the individual statements of interest by each amicus explain, each of these nonpartisan, nonprofit membership organizations has long been active in efforts to secure and protect the right to vote. Amici thus have a strong interest in ensuring that Florida conducts elections in a manner that accurately records and counts each vote that is cast.

Amici seek to draw the court's attention to three points. First, we note that Florida's requirement for mandatory manual recounts is an important protection for Florida's voters and that this statutory requirement has been improperly circumvented by the Department of State. Second, amici present evidence of the growing record of malfunction and error during the use of touchscreen voting machines without a paper trail, a record that underscores the need to strictly apply Florida's statutory mandate for manual recounts. Third, we discuss the many technologies that exist today that preserve the legislative mandate for true manual recounts while still allowing modern, convenient voting for Florida voters and election officials.

Amicus Electronic Frontier Foundation (EFF) is a donor-supported membership organization working to protect fundamental rights regardless

of technology; to education the press, policymakers, and the general public about civil liberties issues related to technology; and to act as a defender of those liberties. EFF currently has approximately 1,000 members in Florida. Among its various activities, EFF opposes misguided legislation, initiates and defends court cases preserving individuals' rights, launches global public campaigns, introduces leading edge proposals and papers, hosts frequent educational events, engages the press regularly, and publishes a comprehensive archive of digital civil liberties information at on the most linked-to web sites in the world. Given the constitutional significance of the issues before the Court and the impact an adverse decision would have on EFF's mission, and on the lives of all of Florida's citizens, EFF seeks to have its perspective brought to the Court's attention.

Amicus VerifiedVoting.org is a nonprofit organization championing reliable and publicly verifiable elections. Founded by Stanford University Computer Science Professor David Dill, the organization supports a requirement for voter-verified paper trails on electronic voting machines allowing voters to inspect individual permanent records of their ballots and election officials to conduct meaningful recounts as needed. Over 8,000 computer science professionals and others have signed an informal resolution in support of more secure voting at the organization's website at www.verifiedvoting.org.

Amicus Common Cause is a nonpartisan, nonprofit, citizens' organization whose mission is to ensure open, accountable, and effective government at the federal, state, and local levels. Among Common Cause's goals are promoting fair and honest elections and strengthening public participation and public faith in institutions of self-government. Common Cause has more than 250,000 members and supporters nationwide, with active members and volunteers in every state, including thousands in

California. Common Cause's members are directly and adversely affected by voting systems that are insecure and unreliable.

Amicus People For The American Way Foundation ("People For") is a nonpartisan citizens' organization established to promote and protect civil and constitutional rights, including the fundamental right to vote. Founded in 1980 by a group of religious, civic, and educational leaders devoted to our nation's heritage of tolerance, pluralism, and liberty, People For has over 600,000 members and other supporters nationwide. People For is actively working with organizations across the country on the nonpartisan Election Protection Program, which is aimed at protecting the fundamental right to vote and have that vote be counted. One of People For's primary missions is to promote the integrity and legitimacy of the electoral process and, to that end, it believes that electronic voting machines have the potential to provide accurate, secure, and accessible voting. In light of the problems in California and elsewhere with respect to such technology, however, it believes that true auditability must be demanded in order to prevent irreparable harm to California voters.

Amicus Center for Constitutional Rights ("CCR") is a non-profit legal and educational organization founded in 1966 and based in New York City. CCR is dedicated to the advancement and protection of voting rights and other rights guaranteed by the Constitution of the United States. CCR has long been active in protecting the right to vote and has litigated voting rights cases in Mississippi, *Thornton v. City of Greenville*, *Browder v. Westbrook* and *In re Malone*; in Tennessee, *Muhammad v. City of Memphis* and *Cousins v. Hamilton County*; and New York, *Goosby v. Town Board of Hempstead* and *France v. Pataki*.

Amicus Computer Professionals for Social Responsibility is a public interest alliance of computer scientists and others concerned about the impact of computer technology, including electronic voting, on the public.

Amicus Voters Unite! is a nonpartisan national grassroots network working for fair and accurate elections. Voters Unite!'s Internet website is at <<http://www.votersunite.org>>.

INTRODUCTION

This appeal seeks to ensure that Florida's statutory requirement of a manual recount in the instance of close elections is not circumvented, and that the federal equal protection and due process protections that protect all voters are not swept aside in the rush by some counties to embrace first generation technology. Amici are civil rights, technology advocacy, and grassroots organizations supportive of technology development as well as election integrity and security. Amici urge that the decision of the District Court, allowing the Secretary of State to undermine the manual recount law in Florida, be reversed. We do so based on three arguments:

First, that Appellants' statutory and constitutional analysis are correct. The District Court erred in allowing the Secretary of State to define “manual” recounts in a manner that effectively constitutes only a machine recount, or more properly, a “reprint” of the machine data used for the first count. This redefinition means that Florida voters voting on touchscreen machines have a dramatically different right to a recount than Florida voters voting absentee or on optical scan or other technologies.

Second, the touchscreen electronic voting technology without a paper trail has a long and growing record of malfunction and error that has led to the disruption of elections across the country. This underscores the need for, and reinforces the rationale behind, manual recounts in close elections.

Third, a wide range of election technology alternatives have been and continue to be available that allow for true manual recounts. While it is not normally the Court's role to dictate electoral technology choices, the availability of comparable, compliant technology gives the Court the proper context to evaluate Appellant's Constitutional claims.

ARGUMENT

I. Respondents Have Failed To Comply With Their Constitutional And Statutory Duties Requiring Manual Recounts

A. Mandatory Manual Recount Requirements Play A Critical Role In Ensuring the Accuracy of Elections

In the wake of the 2000 presidential election, the right to vote – and more specifically, the right to have one’s vote counted – came under greater sustained political, legislative, and judicial scrutiny than at any time in recent memory. With the common goal of ensuring that every vote was counted as cast, lawmakers around the country imposed a series of reforms aimed at bringing obsolete technology and porous election law into line with Constitutional requirements and more demanding expectations.

"Every vote counts" only when every vote is counted accurately and in a manner that can be independently verified. The obligation of Florida election officials to ensure the accuracy and verifiability of the methods it provides for casting and counting votes is not some untethered and toothless aspiration it can ignore on a whim; rather it is a Constitutional duty of the highest and most solemn order. The United States Constitution’s equal protection and due process clauses mandate that each voter’s vote must be counted as cast. “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104-105 (2000). That right cannot be denied or ignored under the pressure of close races or in the name of expediency.

To ensure the accurate counting and inclusion of each citizen’s vote, Florida has developed an elaborate statutory scheme that closely dictates the actions local election officials must take before, during, and after an election. Among other purposes, Florida requires these measures in order to make possible accurate election recounts that are capable of confirming

as thoroughly as possible that each vote has been correctly counted and included in the total.

This case requires the Court to apply the clear mandates of the state's election statutes regarding recounts. It presents an issue of great importance that has not just statewide but national implications in light of future elections and the ongoing national debate over electronic voting technology.

**B. Florida's Clear Statutory Regime Demanding Recounts
In Close Elections Was Ignored**

The Florida Election Code specifies how and when Florida election officials must perform recounts. Florida Stat. § 101.141(6) requires that, if the margin of victory is one-half a percent or less, a machine recount of ballots cast in that election be performed. In the event that the margin of victory is one-quarter of a percent or less, "a manual recount of the overvotes and undervotes cast in the entire geographic jurisdiction of such office or ballot measure" shall be conducted. Florida Stat. § 102.166. Inside of this framework, the Florida Department of State is tasked with the responsibility of establishing minimum standards for voting systems and is empowered to approve or disapprove of any voting system as well as to adopt uniform rules for the purchase, use, and sale of voting equipment in the state. *See* Fla. Stat. §§ 101.015, 101.5606, 101.294. While given broad explicit rulemaking authority, the Department of State may not violate its statutory obligations. Nor may county election officials

Respondents make no secret of the fact that they failed to perform the plain and mandatory duties regarding recounts that are set forth above. The Department of State first attempted to abolish the manual recount. *See* Fla. Admin. Code Rule 1S-2.031(7). This action was overturned by administrative process (*see ACLU v. Department of State*, Case No. 04-

2341RX, August 27, 2004). The Department again sought to circumvent the application of the Florida Election Code, this time indirectly. Instead of requiring actual manual recounts, which are aimed at better determining voter intent, the Department attempted to redefine "manual recount" to include a count of printouts of electronic ballot images – a measure that is effectively no more than a "reprint" of the original data used to provide election results.

Ballot images are simply one format for presentation of the data collected by the machine in the first instance. They give no insight into the core question presented by a manual recount – whether the voters intention has been correctly counted. Indeed, in all but the most bizarre situations, a “recount” of ballot images will result in the exact same “count” as the original. The Department of State's interpretation, therefore, reduces a serious check on election processes created by the Florida legislature to not much more than a farce.

II. The Electronic Voting Machines At Issue In This Case Have A History of Malfunctioning

The problem with eliminating a true manual recount process comes into sharp focus when the long track record of errors, irregularities, and other unexplained behavior from paperless DRE (direct recording electronic) voting machines is examined. Florida DRE voting systems – including the ES&S, Sequoia, and Diebold machines identified in this case – have been aggressively marketed and sold to Florida counties and other jurisdictions across the nation as a superior replacement for discredited punch card voting machines and other voting systems. While these machines show promise in eliminating some of the problems created by punch cards, serious problems have arisen in connection with the DRE voting systems used in Florida elections as well as elections nationwide.

Across the country, election officials and voters alike have discovered that DREs introduce a broad range of problems and subject elections to substantial risk of error through machine malfunctions, mistakes, or negligence in the operation of these machines by electoral officials. They also create risks of intentional mischief by malicious persons. The Florida legislature, guided in part by the serious equal protection and due process concerns raised by the shortcomings in its recent electoral past, has imposed a number of substantial requirements designed to ensure the accuracy of ballot tabulation and manual recounts are an important piece of that protective scheme. The history of problems with these new technologies, combined with the state's demonstrated legislative commitment to electoral accuracy, supports a rigorous application of the stringent requirements of existing Florida electoral law to DRE voting systems.

Examples of voting system malfunctions involving the same DRE technology used by Palm Beach County, Indian River County, and other Florida counties include the following:

Broward County, Florida (March 2005)

ES&S touchscreen machines omitted one of the two items that should have appeared on the ballots for 13-14% of voters.¹

Miami-Dade County, Florida (March 2005)

On a one-item ballot, computer errors caused almost 500 votes to be recorded as completely blank – that is, thrown out - because voters failed to press the red “VOTE” button. The machines were supposed to count such votes anyway, but the defective software didn't save the votes. The same software

¹ Ellen H. Brodsky, *First “Grass Roots” Parallel Election Project*, March 8, 2004, at <http://www.ecotalk.org/FirstParallelElection.htm>.

was used in five other municipal elections in the previous year, casting the results of those elections into doubt.²

Mahoning County, Ohio (November 2004)

Twenty to thirty voting machines were recording votes for one candidate as votes for another. The machines had to be recalibrated in the middle of the election. Another twelve machines froze during voting and had to be reset.³

Snohomish County, Washington (November 2004)

Voters in at least four polling precincts in Snohomish County said that they encountered problems with the Sequoia electronic voting machines. When they touched the screen to vote for a candidate, an indicator showed they had selected the opposing candidate. In some instances, it took at least four attempts before the indicator showed the correct candidate.⁴

New Orleans Parish, Louisiana (November 2004)

In Louisiana, state election officials received about 200 complaints of problems with machines, including two confirmed reports of Sequoia AVC Advantage machines in New Orleans Parish that were not working, according to Scott Madere, press secretary for the Louisiana Secretary of State.⁵

Craven County, North Carolina (November 2004)

Votes were counted twice for nine out of 26 precincts in the county. A computer override was supposed to correct such a

² Tere Figueras Negrete and Noaki Schwartz, *Voting Glitches Found In 6 Recent Elections*, Miami Herald, March 31, 2005, at <http://www.miami.com/mld/miamiherald/news/local/11271837.htm>.

³ Vindicator, *Errors plague voting process in Ohio, PA.*, November 3, 2004, at <http://www.vindy.com/basic/news/281829446390855.php>.

⁴ King5 News, *Scattered Reports of Voters Being Blocked and Machine Malfunctions*, November 2, 2004, at http://www.king5.com/topstories/stories/NW_110204ELBelectronicvotingproblemsLJ.1aac5fda.html.

⁵ Paul Roberts, *E-voting Problems Reported As Election Gets Under Way*, IDG News Service, November 2, 2004, at <http://www.itworld.com/Tech/2987/041102evoteprobs/>.

problem, but it failed. When the mistake was corrected, it changed the outcome for one of the races.⁶

Sacramento, California (August 2004)

During a demonstration for state senate staffers, Sequoia's paper-trail-enabled electronic voting system failed to accurately record votes to its internal memory, an error that was only discovered by comparing the electronic data to the paper trail.⁷

Morris County, New Jersey (June 2004)

The Sequoia vote tabulating computer could not read the voting results data recording the votes cast on individual machines off of the removable memory cards that are used to transport the voting results data from individual DRE machines to the vote tabulating computer.⁸

Miami-Dade County, Florida (May 2004)

An election official reported that the audit log from an iVotronic machine failed to show 162 ballots cast on five different machines in the election. Although the manufacturer asserts that the votes were accurately tabulated, this is questionable given the conflicting audit data.⁹

San Bernardino County, California (March 2004)

In San Bernardino County, officials waited three hours for their new Sequoia vote tabulating computer to process the results from individual Sequoia DRE voting machines before resorting to shutting down the computer and starting over.¹⁰

⁶ Sue Book, *Election Problems Due To a Software Glitch*, Sun Journal, November 5, 2004, at <http://www.newbernsj.com/SiteProcessor.cfm?Template=/GlobalTemplates/Details.cfm&StoryID=18297&Section=local>

⁷ Kim Zetter, *Wrong Time For An E-vote Glitch*, Wired News, August 12, 2004, at <http://www.wired.com/news/evote/0,2645,64569,00.html>.

⁸ *Montville and Chatham Mayors Ousted*, NEW JERSEY STAR-LEDGER, June 9, 2004.

⁹ Matthew Haggman, *New Questions Arise About Touch-Screen Voting Machines*, MIAMI DAILY BUSINESS REVIEW, May 27, at <http://nylaywer.com/news/04/05/052704i.html>.

¹⁰ Elise Ackerman, *Election Officials Report Some E-Voting Glitches*, SAN JOSE MERCURY NEWS, March 4, 2004 at

San Diego County, California (March 2004)

Ten votes were inexplicably lost at one polling place using the Diebold TSx DRE. An election inspector in San Carlos said when polls closed at 8 p.m. Tuesday, the number of people who signed the voter log differed from the number of ballots counted by computers. “We lost 10 votes, and the Diebold technician who was there had no explanation,” he said.¹¹

Alameda County, California (March 2004 and October 2003)

A report released on April 12, 2004, by Diebold Election Systems shows that nearly 25% of its ballot encoders, 186 of 763 encoders, failed on election day because of hardware or software problems or both. Local news reported that “no electronic votes could be cast that morning at Anna Yates Elementary School.” Voters were turned away from the polls, losing their opportunity to vote in the primary as well as on other issues. Failures of votercard encoders also occurred on Super Tuesday in Newark, San Leandro, Emeryville, Oakland, and across San Diego County. Diebold also admitted in its April 12, 2004, report that tabulation errors during the October 2003, recall election were due to software bugs.¹²

Broward Counties, Florida (January 2004)

In a special election for the State House District 91 seat, with only one item on the ballot, ES&S electronic voting machines showed a total of 134 undervotes – that is, 134 ballots in which voters did not select a candidate even though it was a

http://www.mercurynews.com/mld/mercurynews/news/special_packages/elec2004/8103056.htm.

¹¹ See also Jeff McDonald and Luis Monteagudo Jr., *Poll Workers, Voters Cite Tied-Up Hotline, Poor Training, Confusion*, *supra*.

¹² March 2 Election Report at 18; Ian Hoffman, *Voters Short Changed At The Polls*, OAKLAND TRIBUNE; March 7, 2004, at <http://www.oaklandtribune.com/Stories/0,1413,82~1865~2002277,00.html>; Ian Hoffman, *Diebold Reports Multiple Problems: Registrar Wants Reason For E-Voting*, TRI-VALLEY HERALD, April 13, 2004, at <http://www.trivalleyherald.com/Stories/0,1413,86~10671~2080327,00.html>

single-race election. The winner, Ellyn Bogdanoff, received 12 more votes than the runner-up.¹³

Boone County, Indiana (November 2003)

Electronic vote-tabulation equipment by vendor Microvote reported that 140,000 votes had been cast in a county of 50,000 residents. Only 19,000 of those residents were registered to vote and only 5,352 voted. The tabulation machine had not been initialized and it was set to give excessive numbers to call attention to the error. The county clerk said it was obvious the numbers were wrong since the county is small, but she wondered if the error would have been noticed in a large county.¹⁴

Fairfax County, Virginia (November 2003)

Some voters using Advanced Voting Solutions DREs watched as the 'X' they put beside the name of Republican School Board Member, Rita Thompson, dimmed out and moved to her Democratic opponent. Ms. Thompson complained and one machine was tested. Surprised officials watched as the machine subtracted approximately 1 out of 100 votes for Ms. Thompson.¹⁵

Muscogee County, Georgia (November 2003)

Allegations of widespread complaints by citizens who voted "no" on a sales tax proposition but saw Diebold machines register "yes" caused county officials to take the machine out of service during the election.¹⁶

Robeson County, North Carolina (November 2002)

¹³ Jeremy Milarsky and Lisa J. Huriash, *Electronic Vote Recount Stumps Broward Officials*, SUN-SENTINEL, January 10, 2004.

¹⁴ Grant Gross, *Voting machine glitch shows thousands of extra votes*, IDG NEWS SERVICE, November 13, 2003, at <http://www.itworld.com/Tech/2987/031113votingglitch/>.

¹⁵ Cho, *Fairfax Judge Orders Logs Of Voting Machines Inspected*, WASHINGTON POST, November 6, 2003, at B01, at <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A6291-2003Nov5¬Found=true>.

¹⁶ Mark Rice, *NAACP disputes sales tax results, DuBose files complaint in Muscogee Superior Court*, LEDGER-ENQUIRER, November 13, 2003.

Ballot tabulating machines by Diebold failed to work properly in 31 of 41 precincts. Local election officials said the problem was the result of a software programming error, and ballots from the individual voting machines had to be retabulated.¹⁷

Bernalillo County, New Mexico (November 2002)

Insufficient memory capacity for the Sequoia software used to tabulate the votes caused about 25% of the votes not to be counted in the initial tally. Although about 48,000 people voted on 212 DREs, the initial tally given to the commissioners indicated that no race—not even for governor—showed a total of more than about 36,000 votes. Apparently, the software program used to report all of the votes had a capacity of only 64 kilobytes of data at a time. If any more data than that was fed to the reporting program in one chunk, it was simply not tallied.¹⁸

Hillsborough County, Florida (April 2002)

The voting results data recording the votes cast on individual machines could not be read off of the removable memory cards that are used to transport the voting results data from individual Sequoia DRE machines to the vote-tabulating computer.¹⁹

Palm Beach County, Florida (March 2002)

In a voting precinct using Sequoia AVC Edge voting machines, Councilman Al Paglia lost by 4 votes on a one-race

¹⁷ The Associated Press, *Voter turnout surprises officials*, SUN NEWS, September 12, 2002, at <http://www.myrtlebeachonline.com/mld/sunnews/news/local/4056664.htm>.

¹⁸ Frank Zoretich, *Election Results Certified After Software Blamed*, ALBUQUERQUE TRIBUNE, November 19, 2002, at http://www.abqtrib.com/archives/news02/111902_news_vote.shtml.

¹⁹ *Officials Still Searching For Election Glitch*, ST. PETERSBURG TIMES, April 6, 2002, at http://www.sptimes.com/2002/04/06/Hillsborough/Officials_still_searc.shtml

ballot, but 78 ballots registered as blank. Voters also reported erratic behavior of the touch screens.²⁰

Riverside County, California (November 2000)

During the 2000 presidential election, a Sequoia vote tabulating computer began dropping votes cast on Sequoia DRE voting machines from the official vote tally.²¹

III. Voting Technology That Permits a Manual Recount Has Been And Continues To Be Readily Available To Florida Election Officials

Bounded by both statutory and Constitutional limits, the administrative discretion granted to the Department of State and local election officials regarding the adoption of voting machine standards, as well as the subsequent selection and purchase of specific technology, is far from open-ended. Both the Equal Protection Clause and the Due Process Clause require that the interests of the state be weighed against the interests of voters in fair and accurate elections. *See Burdick v. Takushi*, 405 U.S. 428, 434, 112 S.Ct. 2059, 2065 (1992); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The availability of Constitutional alternatives remains key to this inquiry.

The development of fair, accurate, accessible, and auditable election machines does not represent an unsolvable technical challenge. Far from it. Indeed, a wide range of cost-efficient technological options are readily available that are capable of complying with Florida's manual recount statutes and federal Constitutional requirements, ranging from traditional

²⁰ Wyatt Olson, *Out of Touch: You press the screen. The machine tells you that your vote has been counted. But how can you be sure?* NEW TIMES, April 24, 2003, at <http://www.newtimesbpb.com/issues/2003-04-24/feature.html/1/index.html>

²¹ Elise Ackerman, *Electronic Voting's Hidden Perils*, SAN JOSE MERCURY NEWS February 1, 2004, at http://www.mercurynews.com/mld/mercurynews/news/special_packages/lection2004/7849090.htm.

optical scan systems to the latest generation of DRE-inspired systems by current state vendors.

Optical scan. Used by over one-third of the national electorate in the 2004 presidential election, optical scan systems (as discussed by Appellants in their Appeals Brief) are designed to permit full implementation of Florida's manual recount requirements.

Ballot marking systems. Electronic ballot markers utilize a DRE-like interface, but instead of storing ballot selections on internal memory, record choices to optical scan ballots. Ballot markers can include all of a DRE's accessibility features (audio interface, sip/puff input, multiple languages, etc.), and every vote can be verified by voters before submission. Examples include:

a. Avante's Optical Vote-Trakker²² is a federally qualified, accessible, electronic ballot-marking system. It was the first system qualified to the FEC's 2002 voting standards, a designation that means, in part, that it produces a 0% error rate even after 1.5 million votes. Certification is pending in several states, including Florida.

b. ES&S, which has provided DREs to counties in Florida and elsewhere, is also in the later stages of attaining federal qualification for its own electronic ballot marking system, the Automark.²³

DREs with Voter-Verified Paper Audit Trails. DREs equipped with a voter-verified paper audit trail (VVPAT) were successfully used during

²² Avante, *First True Pixel-Based Optical Mark-Sense Voting System Achieved 0% Error Rate In 1.5 Million Votes* (May 17, 2004), at <http://www.aitechnology.com/votetrakker2/Optical%20Vote-Trakker%20Press%20Release.PDF>.

²³ ES&S, *New Ballot Marking Device From ES&S, Automark Makes Optical Scan Voting Accessible To Voters With Disabilities* (April 1, 2004), at http://www.essvote.com/index.php?section=press_item&press_id=84.

the 2004 presidential election and are available from a variety of vendors. Examples include:

a. Avante's Vote-Trakker²⁴ is an accessible, VVPAT-equipped DRE that has completed federal testing. It is certified for use in several states and has certifications pending in others.

b. AccuPoll produces a federally qualified, accessible, VVPAT-equipped DRE system.²⁵ The company is actively pursuing state contracts.

c. Sequoia Voting Systems, the country's third-largest election equipment manufacturer, debuted its VVPAT-enabled DRE in 2004, a machine that was employed in every Nevada election jurisdiction in time in the 2004 presidential election.²⁶

No substantial technical, logistical, financial, or administrative barriers stand between state and local election officials and Constitutionally compliant voting technology. Respondents' decision to approve, implement, and administer elections utilizing paperless DRE voting systems incapable of complying with explicit manual recount requirements – merely one technological option among many – cannot be supported.

CONCLUSION

Technology poses no inherent obstacle to the development of transparent, secure, Constitutional voting technology. On the contrary, in many cases, technology offers opportunities to improve voting experiences

²⁴ Avante, Vote-Trakker Product Overview, at <http://www.aitechnology.com/votetrakker2/overview.html>.

²⁵ Accupoll, Accupoll Receives Federal Qualification For Electronic Voting System (March 26, 2004), at <http://www.accupoll.com/News/PressReleases/2004-03-26.html>.

²⁶ Sequoia, *Sequoia Voting Systems Selected To Provide Uniform Statewide Electronic Voting System For Nevada* (2003), at <http://www.sequoiavote.com/article.php?id=55>.

in areas ranging from efficiency to accessibility. However, advancing technology creates no waiver to Constitutional and statutory safeguards. The Florida Election Code requires that manual recounts be performed in close elections, a capacity that is lacking from the first generation of DREs but existing in both current versions of DREs and in various other modern voting technologies currently available. Amici respectfully request that this honorable Court reverse the decision of the trial court.

Respectfully submitted,

Counsel for Amici

CERTIFICATE OF COMPLIANCE

Pursuant to _____, I certify that this brief contains _____
words.
