

There Are Important Standards We Must Have in Tennessee To Protect Our Democracy.  
Those Standards Are Not Now Being Met

For immediate release:  
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Yesterday, the critical debate about whether Tennesseans can look forward to a free, fair and verifiable election in 2010 – insured by full implementation of the Tennessee Voter Confidence Act (TVCA) – or whether the legitimacy of our elections will still be held hostage by slow, expensive and unverifiable voting machines that have been abandoned by most democracies on the planet, moved to yet another level. Two legislative leaders, Representative Gary Odom and Senator Roy Herron, met openly with the press and the general public to outline the false and baseless arguments that Secretary of State Tre Hargett continues to cling to doggedly to keep our elections unsafe. Those legislators took questions openly from anyone in attendance. That open meeting was followed by another press release issued in haste and without an opportunity for questioning by the same press and the same Tennessee voters, by an increasingly isolated and insulated Secretary of State, Tre Hargett, who betrayed once again his disrespect for the law.

Once again, as we have been forced to do continually for the past six months, we will respond point-by-point to Tre Hargett's unfounded reasons for delaying and weakening democracy – for keeping our elections unsafe and tamper-prone – in Tennessee. Although Tre scrambles for any justification that will stick in the minds of Tennessee voters as acceptable for his continued defiance of the legislature who have instructed him not once but twice to implement the TVCA by 2010 so that election (and all to follow) can be trustworthy and verifiable, the truth is becoming abundantly clear.

There are some very important standards that are missing in Tennessee right now, and they are the standards for honesty, intelligence and integrity that we must have within our public officials if our state is to remain a government that derives its power and authority from the consent of the governed. Every Tennessean, regardless of their political persuasion, must speak up now to demand that our critically important 2010 elections be conducted on a level playing field, using paper ballots that all of us support. All of us, that is, except Tre Hargett and Mark Goins, his State Election Coordinator. We cannot trust the future of our state to slow, expensive and unsafe voting machines, or to election officials who support the continued use of those machines.

Yesterday, from his fortress in the Secretary of State's office, Tre Hargett trotted out another press release that regurgitated his old, tired and completely discredited arguments for disrespecting the Voter Confidence Act. The press release also reiterated Tre's newest argument (invented over the past week) that ventures from simple dishonesty to simply delusional. None of Tre's arguments have merit, but then, they never have. What follows is a detailed rebuttal to Tre's continued excuses for why he cannot respect the law in Tennessee.

## Background

### **Tre Says We Don't Have the Money to Implement Safer Elections. Here's the Truth**

In yesterday's press release, Tre once again repeats the lie that implementing the Voter Confidence Act will be too expensive for counties (as if the cost of unsafe elections were not already unbearable.) Tre continues to base his "too expensive" assertions on figures that his office solicited in a February 20, 2009 letter to counties, a letter that instructed those counties what to report in terms of "extra costs" without informing them that the costs of all voting equipment to comply with the TVCA will be covered by the over \$34 million in federal funds we already have on hand and that the operational costs of the new voting systems, with its paper ballots and optical scan equipment, will be 30-40% cheaper than the current slow, expensive and unverifiable touch-screen machines, a savings that has been well-documented in multiple states that have already made this transformation to paper ballots/optical scan equipment.

For Tennessee voters to believe that the newer, safer voting systems will cost \$11.7 million "extra" to implement, as Tre continues to say, we would also be forced to believe the following:

- It will cost \$434,572 "extra" statewide to service and maintain 70% fewer voting machines.
- It will cost \$211,640 "extra" statewide to deliver 70% fewer voting machines.
- It will cost \$342,144 "extra" to conduct a single pre-election training session for poll workers.

In addition to believing these bogus statewide "extra costs" estimates, voters would also have to believe that:

- It will cost Smith, Hawkins, Dyer and Tipton counties \$50/ ballot to audit a few hundred ballots. (In Nevada and Missouri, the real audit costs are under 10 cents per ballot).
- It will cost Wayne and Sumner counties more than \$20,000 "extra" to deliver 70% fewer machines.
- It will cost Putnam and Cannon counties over \$700 apiece for privacy screens, when Haywood, Meigs and Blount counties can get privacy screens for under \$20 apiece.
- It will cost Williamson, Blount and Putnam counties over \$2,800 apiece for security containers, when Haywood and Johnson counties can obtain security containers for \$25 apiece.
- It will cost Williamson county \$38,739 "extra" to conduct one poll-worker training session.
- It will cost Campbell county \$70,000 "extra" to store one filing cabinet's worth of ballots.
- It will cost Shelby county \$4.1 million "extra" to implement the TVCA when that county has never spent that much money for its total annual election-related expenses in its history.

No Tennessee voter in their right mind would believe the numbers that underlie Tre's "extra cost" fantasy, and yet he keeps feeding these bogus numbers to us. Here's the truth. Implementing the TVCA will be cheaper than continuing to vote on the non-verifiable DREs we wasted over \$30 million to purchase -- voting machines that now have a resale value of \$0 (because no other democracy on the planet is fool-hardy enough to want them). That is because multi-year studies in North Carolina, Maryland and Florida have proven that voting with paper ballots (counted by optical scan machines) is 30-40% cheaper than voting on DREs, primarily because of the reduction in programming, software, maintenance, storage and transportation costs that is achieved when we are able to reduce our voting equipment needs by 70%. **Fewer voting machines = real cost savings.**

Our group, Gathering To Save Our Democracy, has looked in depth at the numbers that Tre solicited from counties, something that the General Assembly's Fiscal Review staff admitted that they did not do before issuing the bogus \$11.7 million "fiscal impact" of the TVCA. They also admitted that they had not looked at the 30-40% reductions in costs experienced in other states that implemented paper ballots counted by optical scan machines. Here is what we found in just two counties:

In **Sumner County**, local officials estimated (with Tre's coaching) that it would cost \$311,935 "extra" to implement the TVCA. By looking line-by-line at that estimate, we determined that the real "new costs" for switching to paper ballots/opscan would be somewhere between \$18,710 and \$64,369, not \$311,925. Those "new costs" would be more than offset by the considerable real savings associated with needing up to 70% less voting equipment. In fact, if we apply the 30%-40% savings that other states have obtained by dropping DREs for paper ballots/opscan to the last available annual election-related cost figure for Sumner County, **that county actually stands to save between \$155,280-\$207,042 per year in local costs by implementing the TVCA.**

In **Maury County**, which already voted on paper ballots counted by optical scan equipment before we were pressured to switch to unverifiable touch-screen machines, **our annual election costs went up an astounding 374% after the switch**, an increase that is documented by figures submitted annually by counties to the Tennessee Comptroller's office. Thus, in Maury County, we not only went to slower and less safe voting equipment when we abandoned paper ballots and optical scan equipment for touch-screens, but we had to pay almost four times as much to conduct our elections. Maury County voters can understand that we made a serious mistake that can be corrected by a return to paper ballots and optical scan – why can't Tre Hargett?

### **Tre Hargett Says We Don't Have The Time To Implement Safer Elections. Here's The Truth**

Right now, we have almost seventeen months left before the November, 2010 elections. Every other state that has made the switch from unverifiable touch-screen machines to paper ballots and optical scan machines has done so statewide in seven months or less. The way Tennessee voters who live in the reality-based world count time, seventeen months is more than seven months.

So if other states could get the job done in seven months or less, why can't Tre get the same job done when he has ten extra months in which to accomplish it? The short answer is that a competent Secretary of State who is committed to elections we can trust and verify could easily implement the Voter Confidence Act in the time we have left. Perhaps it is time for Tennessee to recruit one of those other Secretaries of State from states that now have safer and more trustworthy elections than we do, and it is time for Tre Hargett to become Secretary of State of some place that more nearly mirrors his view of what trustworthy and verifiable elections should look like – say, some place like Iran.

### **Tre Hargett Says There's No Equipment Available For Safer Elections. Here's the Truth.**

This latest ploy that Tre has trotted out in the last week is perhaps the most unfounded excuse yet for why he can't bring himself to respect the law. Tre wants Tennessee voters to believe that the Voter Confidence Act requires that our new voting machines must meet 2005 federal certification standards, something that no equipment now meets. In truth (and in the reality-based world), Tennessee voters

who take the time to read the TVCA from beginning to end will not find the number "2005" anywhere. What they will find instead in this sentence:

"All electronic voting systems in use on or after the effective date of this act (January 1, 2009) shall ... have been certified by the (federal) election assistance commission as having met the **applicable voluntary** voting systems **guidelines.**" (emphasis added for Tre's benefit).

By creating a requirement that our new equipment must meet "2005" standards, a requirement that appears nowhere in the TVCA, Tre conveniently invents a "catch-22" (his words) as his latest reason for failing to respect Tennessee law. The truth is that **none** of the voting equipment now in place in Tennessee meets his new (and unique to him) 2005 mandate, and yet Tre is not working to de-certify all that equipment. He is perfectly satisfied for Tennessee voters to vote on equipment that doesn't meet his "catch-22" 2005 standards, as long as that equipment is slow, expensive and unverifiable.

The absence of any legitimate substance in Tre's latest excuse is well-stated by Pamela Smith, Director of the national Verified Voting Foundation:

"A good retort for the 'settling for less than the best' comment from Secretary of State Hargett's office is that voting system vendors were given the choice of whether to have systems tested to the 2002 or 2005 standards, for systems submitted up until December 13, 2007. That means for vendors which opted for 2002, those standards are the applicable standards as long as their voting system was submitted for testing prior to that date. Currently there are five systems in the pipeline which were submitted prior to December 13, 2007 that opted for 2002, and have not yet received certification. There are only three systems pending being tested for 2005 compliance, for a total of eight pending systems.

"More importantly, the first and only system to be certified under 2005 standards to date is a paperless DRE system used primarily in one state. That system is completely un-auditable and cannot be recounted, and nothing in the 2005 standards to which it was tested qualifies it to be considered "better" -- i.e. more secure -- than any optical scan system currently in use in any of the 40+ states now using them. If a 2002 (or earlier) certified optical scan system is lined up next to the 2005 DRE system on security, reliability and cost-savings; the scanner is going to win hands down every time.

"It may be useful to note that it is not the 2005 "voluntary voting system guidelines" that sought to address security issues, as Mr. Hargett has stated in his press release yesterday, but the 2007 draft "voluntary voting system guidelines". The most important of the security provisions discussed in those draft 2007 standards is the concept of "software independence" (i.e., one with a voter-verified paper ballot). Those guidelines are not yet adopted, so it will be a Very.Long.Time. before anything is tested to anything in that version."

Once again, Tre Hargett is happy for voters to use equipment that does not meet his new (and absent in the reality-based world) "2005 standards" hurdle, just so long as that equipment is slow, expensive and completely unverifiable. For someone who was so loudly a proponent of states-rights when he was a legislator, it is very telling that Tre would suddenly defer to federal "**voluntary** voting system **guidelines**" and frame those guidelines as immovable mandates to prevent safe elections in Tennessee.

In truth, there is only one standard that matters right now, and that is the “Tennessee standard” established by the TVCA – that, beginning in 2010, our elections must be conducted using paper ballots counted by optical scan machines and that are then hand-counted in randomly selected precincts to verify the accuracy of the optical scans. There are multiple optical scan voting machines in existence today that can be purchased (with the federal money we already have on hand) for use in our 2010 elections, systems that have been approved and are in use in 40+ other states right now. Instead, Tre insists that we keep voting on touch-screen voting equipment that has been abandoned by almost all other states (as well as by foreign countries like Ireland, Germany and the Netherlands, to name just a few) – machines that are only three years old in Tennessee but that now have a resale value of “0”. It doesn’t take a Tullahoma or Oak Ridge rocket scientist to figure out what the correct (the less expensive, the more efficient, the trustworthy) path is. But it might just take another Secretary of State.

### **Tre Hargett Says Our Current Voting Equipment Is “Safe and Reliable”. Here’s the Truth.**

In 2009, there are only a handful of election officials remaining anywhere in this country (or on this earth) who believe that slow, expensive and unverifiable touch-screen voting equipment is “safe and reliable”. Unfortunately, Tennessee is burdened by two of them – Tre Hargett and the source of the “safe and reliable” quote – Tre’s State Election Coordinator, Mark Goins.

Paperless touch-screen voting machines have now been proven conclusively to be inefficient, expensive, insecure, inaccurate and incapable of being audited. By using them, we have effectively privatized one of the most sacred public duties in our country – the responsibility to completely and accurately measure and transfer the power inherent in the “consent of the governed” to our elected leaders. We now know that these machines perform two vital functions very poorly: they record each voter’s choices, functioning much like \$3,000 pens that use disappearing ink, and they total those votes, as if they were \$5,000 abacuses that use invisible beads. If Ronald Reagan were here today, he would laugh out loud and ask us, “Just what part of ‘Trust but Verify’ do you not understand?” This is the bedrock legitimacy of our government we are talking about. Though the past few years, and the thousands of examples of voting machine malfunctions that we have witnessed, have been difficult ones for maintaining the trust of America’s voters, it is time to regain that trust.

Touch-screen voting machine malfunctions and other election-related problems associated with this equipment that have occurred in literally dozens of states are now common knowledge to Tennessee voters. In 2006, 25% of all calls to national hot-lines to report voting problems involved reports of machine malfunctions. In Tennessee, the reports of machine malfunctions represented 30% of all hot-line calls in that year. In 2006, touch-screen voting machine problems were reported in one out of every six Tennessee counties.

In 2008, Tennessee voters witnessed and reported touch-screens flipping their votes from the Presidential candidate of their choice to another candidate right before their eyes, or erasing their vote entirely. In two Tennessee counties (Decatur and Greene), the voters said votes flipped from McCain to Obama; in Davidson county (and others), votes flipped from Obama to McCain or to another party’s candidate or the votes were erased entirely. In all instances, there was no paper ballot to verify the voters’ true choices. Those voters were cheated, and so was our democracy.

Tennessee voters are no different from other voters around the country in knowing that touch-screen voting equipment is unsafe. In 2006, a national survey demonstrated over 60% of voters knew that these machines are easily vulnerable to accidental problems or intentional tampering that can affect the outcome of an election; 80% believed that the way that votes are counted on these machines (without any possibility for public oversight) is unacceptable; and over 90% believed citizens have a right to view and obtain information on how election officials count votes. This level of knowledge of the risks of touch-screen voting has increased everywhere in this country since then, everywhere but between Tre Hargett's and Mark Goins' ears.

Every independent study of the vulnerabilities in these machines (at Johns Hopkins, Princeton, Cal, Rice, Florida State and other universities and research institutes) has demonstrated that they can be hacked with a minimum of effort and computer sophistication, and the American public now knows it. Faced with this mountain of evidence, Tennessee voters believe, as Dr. Jeffrey Chase at Duke University believes, that "**DREs are a threat to democracy**" and that they should be replaced now, regardless of what it takes to do that. Tre Hargett and Mark Goins believe there's nothing wrong with DREs. Who are we to believe, Tre and Mark or the intelligence, good sense and concern for the safety and security of our democracy that is shared by millions of Tennessee voters and hundreds of millions of our fellow American voters? In the words of one legal scholar, "To ask that question is to answer it."

### **Tre Hargett Says He Doesn't Have to Respect the Law. Here is What the Truth Should Be.**

Tre Hargett has demonstrated that his only commitment right now is to keep our elections unsafe and unverifiable in Tennessee and that he will do and say anything to accomplish that goal. That commitment is completely out-of-step with Tennessee voters, including rank-and-file Republicans in this state who know that a safe and healthy democracy demands that our elections be conducted on a level playing field – that nothing should stand in the way of an accurate and verifiable measurement of the "consent of the governed".

What kind of person would stoop to lies, half-truths, false information and pig-headed refusal to face the facts in order to keep our elections unsafe at any cost? What kind of person would stoop to filing false charges with the Tennessee Bureau of Investigation (TBI) that I had made a "terrorist threat" against his office, a charge that the TBI immediately announced was "unwarranted" and which every Tennessean who knows that story agrees was just a clumsy and sinister attempt at political intimidation?

Perhaps it is the kind of person who would dispatch his State Election Coordinator, Mark Goins, to Memphis two weeks ago to instruct Tennessee's county election officials to openly and aggressively defy the Voter Confidence Act and to do anything they could to drag their feet another six months in hopes that, when the General Assembly reconvenes, they will provide cover for this un-American stance to keep our elections unsafe that the assembly has demonstrated not once but twice they are unwilling to do. (For the sake of democracy, we cannot afford the third go-round with the General Assembly to be the fatal charm for Tre Hargett's anti-democratic intentions.)

What kind of person would do anything, say anything, charge anything to keep our elections unsafe? That kind of person would be Tre Hargett. On behalf of all Tennessee voters, regardless of political party and political persuasion who only want our votes to be counted as they are cast, it is time to

implement the Tennessee Voter Confidence Act. Any further effort at delay betrays the true intentions of the opponents of free, fair and verifiable elections – and those intentions cannot be allowed to stand here any more than they should be allowed to stand in Iran or any place else that freedom-loving people are called on to protect their right to vote and to have their votes counted.

At this critical moment, Tennessee is just such a place. In truth, it always has been (just ask the ghosts of the Battle of Athens) and it always will be.