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SEQUOIA VOTING SYSTEMS, INC. USES VOTE-COUNTING SOFTWARE DEVELOPED, OWNED, AND LICENSED BY FOREIGN-OWNED SMARTMATIC, A COMPANY LINKED TO THE VENEZUELAN GOVERNMENT OF HUGO CHÁVEZ

U.S. national security is potentially at risk because software used to count votes in 20% of the country during U.S. elections is owned and controlled by a Venezuelan-run company with ties to the Venezuelan government of Hugo Chávez,¹ which has been described as “the foremost meddler in foreign elections in the Western hemisphere.”² Foreign-owned and foreign-run Smartmatic’s control over vote-counting software used in the voting machines of Sequoia Voting Systems, Inc. (“Sequoia” or “SVS”) presents a potential national security risk now just as it did in 2006 when the U.S. Committee on Foreign Investment in the United States (“CFIUS”) opened an investigation of Smartmatic’s ownership of Sequoia.³ CFIUS is a U.S. government inter-agency committee led by the U.S. Department of Treasury that addresses national security risks posed by foreign ownership of or influence over U.S. business, including companies providing the means by which voters in the U.S. elect their President and Congressional Representatives.⁴ Rather than answer to CFIUS

¹ Richard Brand, *Why is Hugo Chávez Involved with U.S. Voting Machines?*, REAL CLEAR POLITICS, Mar. 28, 2006,

http://www.realclearpolitics.com/articles/2006/03/forget_dubai_worry_about_smart.html; Brad Friedman, *Voting Machine Company Chief Lied to Chicago Officials About Ownership, Control of Company*, (May 21, 2008), <http://www.braddblog.com/?p=6005&print=1>;

² Richard Brand, *Hugo Wants Your Vote*, INVESTOR’S BUSINESS DAILY, Apr. 6, 2006, available at <http://www.investors.com/editorial/editorialcontent.asp?secid=1501&status=article&id=155832&secure=2496>.

³ In 2006, the Wall Street Journal reported that Smartmatic “would sell its U.S. subsidiary [Sequoia] to end a review by the Committee on Foreign Investment in the U.S. into whether Smartmatic is partially owned by the Venezuelan government.” Bob Davis, *Smartmatic to Shed U.S. Unit, End Probe Into Venezuelan Links*, WALL ST. J., Dec. 22, 2006, at A6, article available for purchase at <http://www.wsj.com>. The Wall Street Journal also reported a Department of Justice investigation into whether Smartmatic had engaged in bribery or tax fraud. *Id. see also* Bob Davis and Glenn Simpson, *U.S. Authorities Probe How Smartmatic Won Venezuela Election Pact*, WALL ST. J., Dec. 1, 2006, at A9, article available for purchase at <http://www.wsj.com> (“The company says it paid \$1.5 million to a Venezuelan consultant who is close to the Chavez government and helped to win Smartmatic business. The allegation being investigated is that Smartmatic actually paid as much as \$4 million to the consultant, then deleted a substantial portion of those payments from its corporate records to hide the extent of its payments to a friend of the Chavez regime.”).

⁴ 50 U.S.C. App. § 2170(a) available at

regarding the ultimate owners of the Smartmatic conglomerate⁵ and its ties to the Chávez government, an investment group led by Sequoia management reportedly bought Sequoia from Smartmatic in late 2007 under terms that were not made public.⁶ Since then, however, it has come to light that Smartmatic continues to own the software that counts the votes on Sequoia voting machines and licenses to Sequoia that software, which Smartmatic develops in Venezuela.⁷ Concern, now, is that Smartmatic's sale of Sequoia "was fraudulent",⁸ "a sham transaction designed to fool regulators."⁹

Efforts to date have not succeeded in determining the ultimate owners of Smartmatic or the extent to which Smartmatic and the Chávez government of Venezuela have influence over U.S. elections through Smartmatic's control of the software that counts votes for Sequoia voting machines. Sequoia steadfastly maintains that the 2007 Sequoia management buy-out "completely eliminates Smartmatic's ownership, control and operational rights of any kind in Sequoia"¹⁰ when

idx?c=ecfr&sid=cd91543f2cfccfc56d8f4c187217c3d8&rgn=div9&view=text&node=31:3.1.4.1.1.7.1.3.11&idno=31; *see also* Foreign Investment and National Security Act of 2007, Pub. L. No. 110-49, 121 Stat. 246 (amending CFIUS law) *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ049.110 and 73 Fed. Reg. 21861-21880 (Apr. 23, 2008) (proposed regulations the final version of which is to be codified at 31 C.F.R. pt. 800) *may be accessed at* <http://www.gpoaccess.gov/fr/retrieve.html>.

⁵ Smartmatic Corporation, is a U.S. unit of Smartmatic International Holding, B.V., a Netherlands-based business, which itself is a unit of Smartmatic International Group, N.V., Curaçao. Marc Lifsher, *Ballot Firm's Ties to Venezuela Criticized; Some American officials worry that Sequoia Voting Systems' foreign link could compromise the integrity of the U.S. election process*, L.A. TIMES, Jun. 3, 2006, at C1, *available at* <http://earc.berkeley.edu/news/2006/June/BallotFirmsTies.php>.

⁶ Press Release, Sequoia Voting Systems, U.S. Voting Technology Leader Sequoia Voting Systems Announces New Corporate Ownership (Nov. 8, 2007), <http://www.sequoiavote.com/press.php?ID=41>. (While the terms of the sale are not public, the Sequoia press release states that the sale transaction includes a loan and an earn-out from Smartmatic.); Brad Friedman, *Smartmatic Co-Founder, Employee, and Shareholder Dead After Both Engines on Small Plane Reportedly Failed Just After Takeoff* (May 2, 2008), <http://www.bradblogger.com/?p=5947> (describing \$2 million loan to Sequoia from Smartmatic).

⁷ Letter Opinion of Apr. 4, 2008, *Smartmatic Corp. v. SVS Holdings, Inc. and Sequoia Voting Systems, Inc.*; and *SVS Holdings, Inc. and Sequoia Voting Systems, Inc. v. Smartmatic Corp. and Hart InterCivic, Inc.*, Civil Action No. 3585-VCL, pages 13-14, *available at*

http://www.bradblogger.com/Docs/SVSSequoia_v_Hart_Smartmatic_LambDecision_040408.pdf. While about ten Smartmatic employees work in the company's Boca Raton, Florida, office, the vast majority of its employees, indeed more than a hundred of them, work in Venezuela, including members of Smartmatic's computer design and research and development staff. *See* Dun & Bradstreet Report on Smartmatic (2008), *report available for purchase at* <http://www.dnb.com/us/>.

⁸ Gerardo Reyes, *Vote machine firm ties to Venezuela questioned; A Chicago Alderman is not satisfied that a voting-systems company is free of influence from Venezuela President Hugo Chavez*, MIAMI HERALD, Mar. 19, 2008, at 3 (article available for purchase at <http://www.miamiherald.com>).

⁹ Letter from Edward M. Burke, Chairman of the Chicago City Council Committee on Finance to Langdon D. Neal, Chairman, Chicago Board of Election Commissioners (Jan. 11, 2008), *available at* http://www.bradblogger.com/Docs/SequoiaSmartmaticLetter_Chicago_EdBurkeToLangdonNeal_011108.pdf.

¹⁰ *See* Brad Friedman, *Voting Machine Company Chief Lied to Chicago Officials About Ownership, Control of Company*, (May 21, 2008), <http://www.bradblogger.com/?p=6005&print=1>; Press Release, Sequoia Voting Systems, U.S. Voting Technology Leader Sequoia Voting Systems Announces New Corporate Ownership (Nov. 8, 2007) *available at* <http://www.sequoiavote.com/press.php?ID=41>.

- a court decision in April 2008 reported that Smartmatic owns and licenses to Sequoia the vote-counting software used in Sequoia voting machines;
- Sequoia owes Smartmatic \$2 million in a loan/earn-out that is part of the 2007 management buy-out;
- Smartmatic seeks through a proposed purchase of the Sequoia loan/earn-out by Hart InterCivic to control the world market for Sequoia voting machines in exchange for licensing Smartmatic's vote-counting software to Hart, an arrangement which Sequoia claims would violate agreements made with CFIUS and other federal government agencies.

I. City Council of Chicago Efforts to Understand the Influence of Smartmatic and the Venezuelan Government over U.S. Elections

In January 2008, representatives of Chicago, Illinois, which suffered from malfunctions in Smartmatic-developed software that delayed by a week the tabulation of the vote in the 2006 mid-term federal primary and that led to 15 or more Smartmatic agents coming from Venezuela to Chicago to help the city complete vote tabulation, wrote to Sequoia President and Chief Executive Officer (“CEO”) Jack Blaine for information in an effort to confirm that “Smartmatic and the government of Venezuela have no ability to influence or control the new owners of Sequoia.”¹¹ Sequoia’s letter response dated January 18, 2008 has been described in the media as “deceptive,” “knowingly false,” and a continuation of “evasive” and “troublesome” sworn testimony provided in 2006 by Jack Blaine, then-President of both Sequoia and Smartmatic Corporation.¹²

In April 2006, the City Council of Chicago held hearings after election results were delayed a week due to problems using Smartmatic’s Hybrid Activator Accumulator Transmitter (“HAAT”) software to count the March 21, 2006 primary vote.¹³ Fifteen or so Smartmatic personnel, including Smartmatic senior executive and

¹¹ See Letter from Edward M. Burke, Chairman of the Chicago City Council Committee on Finance to Langdon D. Neal, Chairman, Chicago Board of Election Commissioners (Jan. 11, 2008), *available at* http://www.bradblog.com/Docs/SequoiaSmartmaticLetter_Chicago_EdBurkeToLangdonNeal_011108.pdf.

¹² See Brad Friedman, *Voting Machine Company Chief Lied to Chicago Officials About Ownership, Control of Company*, (May 21, 2008), <http://www.bradblog.com/?p=6005&print=1>.

¹³ See, e.g., Fran Spielman, *Aldermen: Halt payments to voting machine company*, CHICAGO SUN-TIMES, Mar. 28, 2006, at 12, *article available for purchase at* <http://www.suntimes.com/search/index.html>; Jerome L. Sherman, *Chicago Voting Machines Stumble*, PITTSBURGH POST-GAZETTE, Mar. 28, 2006, at A-1, *article available for purchase at* <http://www.lexis.com>; Hearing Transcript of Joint Committee on Finance, Committee on Budget and Government Operations and Committee on Committees, Rules and Ethics (“Joint Committee”), City Council of Chicago, Apr. 7, 2006, at 104-05 (bottom page) (*Excerpts of this transcript are available at _____.) Also in 2006, Cook County, Illinois, had problems with the software used to count votes in Sequoia voting machines in their 2006 primary and general elections. A Cook County report by retired federal Judge Abner Mikva concluded that “[t]echnology failures in multiple areas” was a “primary

shareholder, Roger Pinate, flew in from Venezuela to staff a behind-the-scenes war room at the City of Chicago's election headquarters where votes from all over the city were being counted.¹⁴ Jack Blaine also then professed not to know who ultimately owned Smartmatic and confirmed that Venezuelans working for Smartmatic have access to the Sequoia voting machine software, including the source code.¹⁵

In 2008, Alderman Edward Burke, who chaired Chicago's 2006 investigation into the national security threat posed by Smartmatic's access to voting systems software used to count votes in U.S. elections, raised concern that Smartmatic's 2007 sale of Sequoia was "a sham."¹⁶ In a letter dated January 11, 2008, to the Chicago Board of Elections Chairman Langdon D. Neal, Alderman Burke is reported to have "expressed surprise" that Jack Blaine testified under oath in the 2006 Chicago hearings that "software components from the Sequoia system, [sic] were developed in Venezuela [including the critical component of the Sequoia systems – the HAAT] and that 'the Venezuelans have access to the Sequoia code.'"¹⁷ Burke reiterated his dismay that Jack Blaine furthermore admitted that he could not answer whether or not Hugo Chávez was a Smartmatic shareholder.¹⁸ "The entire Smartmatic episode has served as a reminder of how important it is to know and trust who is counting the votes in our elections and to protect the integrity of our elections," wrote Burke in his January 11,

cause" of the delayed vote-tabulation in the 2006 general election and that there exist flaws with Sequoia's software and design. COOK COUNTY CLERK'S ELECTION REVIEW PANEL, REPORT ON DELAYS IN ELECTION RESULTS REPORTING IN THE NOV. 7TH, 2006 ELECTION, at 4-5, 12, 17, Jan. 8, 2007 (*A copy of this document is located at _____.)

¹⁴ See, Letter from Edward M. Burke, Chairman of the Chicago City Council Committee on Finance to Langdon D. Neal, Chairman, Chicago Board of Election Commissioners (Jan. 11, 2008), *available at* http://www.bradblog.com/Docs/SequoiaSmartmaticLetter_Chicago_EdBurkeToLangdonNeal_011108.pdf.and COOK COUNTY CLERK'S ELECTION REVIEW PANEL, REPORT ON DELAYS IN ELECTION RESULTS REPORTING IN THE NOV. 7TH, 2006 ELECTION, at 18-20, Jan. 8, 2007 (*A copy of this document is located at _____.) .

¹⁵ See Hearing Transcript of Joint Committee on Finance, Committee on Budget and Government Operations and Committee on Committees, Rules and Ethics ("Joint Committee"), City Council of Chicago, Apr. 7, 2006, at 16, 18-20, 71-73, and 104-106. (bottom page) (*Excerpts of the transcript are available at _____.) , and Letter from Jack Blaine, President of Sequoia Voting Systems Inc. and Smartmatic Corporation, to the Honorable Edward Burke, William Beavers, Richard Mell, Joint Committee on Finance; Committee on Budget and Government Operations; Committee on Committees, Rules and Ethics (Apr. 12, 2006) (*A copy of this document is located at _____.) .

¹⁶ Letter from Edward M. Burke, Chairman of the Chicago City Council Committee on Finance to Langdon D. Neal, Chairman, Chicago Board of Election Commissioners (Jan. 11, 2008), *available at* http://www.bradblog.com/Docs/SequoiaSmartmaticLetter_Chicago_EdBurkeToLangdonNeal_011108.pdf.

¹⁷ Gerardo Reyes, *Vote machine firm ties to Venezuela questioned; A Chicago Alderman is not satisfied that a voting-systems company is free of influence from Venezuela President Hugo Chavez*, MIAMI HERALD, Mar. 19, 2008, at 3, *article available for purchase at* <http://www.miamiherald.com/>; see also Hearing Transcript of Joint Committee on Finance, Committee on Budget and Government Operations and Committee on Committees, Rules and Ethics ("Joint Committee"), City Council of Chicago, Apr. 7, 2006, at 105-06 (bottom page) (*A copy of this document is located at _____.) .

¹⁸ *Id.* Hearing Transcript of Joint Committee on Finance, Committee on Budget and Government Operations and Committee on Committees, Rules and Ethics ("Joint Committee"), City Council of Chicago, Apr. 7, 2006, at 20-23 (*Excerpts of the transcript are available at _____.) .

2008 letter.¹⁹ Burke then implored Neal that “[i]t is therefore important to confirm that the sale of Sequoia by Smartmatic is not a sham transaction designed to fool regulators and to further confirm that Smartmatic and the government of Venezuela have no ability to influence or control the new owners of Sequoia.”²⁰ Burke requested answers to ten questions probing the bona fides of Smartmatic’s sale of Sequoia to its management.

By letter dated January 18, 2008 to Chairman Neal, and purporting to respond to each of Alderman Burke’s individual questions, Jack Blaine, Sequoia President and CEO, confirmed in writing that Sequoia continues to use the Venezuelan developed “Edge2Plus and HAAT” in the City of Chicago and Cook County, Illinois.²¹ Blaine added that “Sequoia will continue to provide products, upgrades and accessories to the U.S. market based on products the company developed in cooperation with Smartmatic during the time the company owned Sequoia.”²² What Blaine did not say is that the Edge2Plus and HAAT are owned by Smartmatic and licensed by Smartmatic to Sequoia. The implication of Blaine’s statement, which characterizes the software in Sequoia voting machines as having been “developed in cooperation with Smartmatic during the time the company owned Sequoia,” is that Smartmatic’s input into the software used to count votes on Sequoia voting machines is purely historical. In fact, Smartmatic has an ongoing role as Smartmatic - not Sequoia - owns this very software and continues to determine its development and application in the U.S. Blaine’s omission is particularly significant given that Alderman Burke in his January 11, 2008 letter specifically requested “any license, royalty and/or other intellectual property agreements between Sequoia and Smartmatic and/or their affiliates,” which request Blaine ignored.²³

¹⁹Letter from Edward M. Burke, Chairman of the Chicago City Council Committee on Finance to Langdon D. Neal, Chairman, Chicago Board of Election Commissioners (Jan. 11, 2008), *available at* http://www.bradsblog.com/Docs/SequoiaSmartmaticLetter_Chicago_EdBurkeToLangdonNeal_011108.pdf.

²⁰ *Id.*

²¹ Letter from Jack A. Blaine, CEO, Sequoia Voting Systems, to Langdon Neal, Chairman, Chicago Board of Elections (Jan. 18, 2008) at 2, *available at* <http://www.bradsblog.com/?p=6005#more-6005>.

²² *Id.*

²³ *Compare* Letter from Edward M. Burke, Chairman of the Chicago City Council Committee on Finance to Langdon D. Neal, Chairman, Chicago Board of Election Commissioners, at 4 (Jan. 11, 2008), *available at* http://www.bradsblog.com/Docs/SequoiaSmartmaticLetter_Chicago_EdBurkeToLangdonNeal_011108.pdf. *with* Letter from Jack A. Blaine, CEO, Sequoia Voting Systems, to Langdon Neal, Chairman, Chicago Board of Elections (Jan. 18, 2008) at 2, *available at* <http://www.bradsblog.com/?p=6005#more-6005>; Brad Friedman, *Voting Machine Company Chief Lied to Chicago Officials About Ownership, Control of Company*, (May 21, 2008), <http://www.bradsblog.com/?p=6005&print=1>;

II. Court Fight Between Smartmatic and Sequoia over Proposed Hart InterCivic Take-over of Sequoia Reveals Smartmatic Ownership of Vote-Counting Software in Sequoia Voting Machines

Smartmatic's ownership of the voting-counting software in Sequoia voting machines came to light in litigation over an offer by Hart InterCivic to "purchase the outstanding loan and earn-out provision agreement that Sequoia Voting Systems maintains with its former parent company," Smartmatic.²⁴ Counsel for Hart InterCivic represented in court that Smartmatic still owned the software used in Sequoia voting machines and would license that software to Hart InterCivic upon its take-over of Sequoia. According to the court, counsel for Hart InterCivic declared that "Sequoia currently uses [Smartmatic's] intellectual property [currently found in Sequoia's machines] pursuant to certain license agreements."²⁵

Furthermore, Sequoia takes the position that Smartmatic's ownership of the Sequoia voting machines software, and any "indirect control" by Smartmatic over Sequoia is inconsistent with agreements made with the federal government. Sequoia points out in litigation over the Hart proposed take-over of Sequoia that "Hart promises not to compete with Smartmatic in Latin America, the Philippines, and Belgium. In return, Smartmatic promises to grant to Hart a license to use its intellectual property currently found in Sequoia's machines."²⁶ Sequoia maintains that this Smartmatic-Hart agreement would "breach [Sequoia's] agreements with the Committee on Foreign Investment in the United States and other government agencies. Specifically, SVS maintains that if Hart's agreement not to compete in Latin America, the Philippines, and Belgium is honored, Smartmatic has exercised 'indirect control' over Sequoia in violation of agreements with the government. Similarly, SVS maintains that the proposal that Smartmatic have co-ownership rights in all intellectual property owned by Smartmatic with respect to Sequoia products certified in the United States compels the post-sale Sequoia to breach its agreements with the government."²⁷ Thus, according to Sequoia, Smartmatic currently owns the software in Sequoia voting machines and Smartmatic's (1) "indirect control" over Sequoia and (2) continued ownership of software used to count votes in Sequoia voting machines, would violate Sequoia's agreements with the federal government.

²⁴ Press Release, Sequoia Voting Systems, Sequoia Voting Systems Responds to Questions on Future Ownership Direction (Apr. 13, 2008), available at <http://www.sequoiavote.com/press.php?ID=56>; As one company, Sequoia and Hart InterCivic would control almost 30% of the election industry in the United States. Brad Friedman, *Smartmatic Co-Founder, Employee, and Shareholder Dead After Both Engines on Small Plane Reportedly Failed Just After Takeoff* (May 2, 2008), available at <http://www.bradblog.com/?p=5947>.

²⁵ Letter Opinion of Apr. 4, 2008, *Smartmatic Corp. v. SVS Holdings, Inc. and Sequoia Voting Systems, Inc.; and SVS Holdings, Inc. and Sequoia Voting Systems, Inc. v. Smartmatic Corp. and Hart InterCivic, Inc.*, Civil Action No. 3585-VCL, pages 13-14, available at http://www.bradblog.com/Docs/SVSSequoia_v_Hart_Smartmatic_LambDecision_040408.pdf.

²⁶ *Id.* at pages 13-14.

²⁷ *Id.* at pages 21-22.

III. Sequoia Voting Machine Software Is Vulnerable to Tampering

Insiders pose the greatest threat to election integrity because they have direct access to the voting machines on which votes are cast and counted. James Baker, III, a Republican, and President Jimmy Carter, as co-chairs of the National Election Commission, have warned of a serious risk of insider fraud whenever software-driven electronic voting machines are used. They say:

[t]he greater threat to most systems comes not from external hackers, but from insiders who have direct access to the machines. Software can be modified maliciously before being installed into individual voting machines. There is no reason to trust insiders in the election industry any more than in other industries, such as gambling, where sophisticated insider fraud has occurred despite extraordinary measures to prevent it.²⁸

Sequoia voting machine software poses serious risks of tampering. Princeton Professor of Computer Science, Andrew Appel, testified as an expert in litigation in New Jersey involving the Sequoia Advantage voting machines that “[i]t’s very easy to replace the software inside a computerized machine so it tells the voter it is voting for one candidate but really puts the vote in the wrong column,” and “You can even program it to do that only on election day.”²⁹ Later this year as part of the same litigation, Professors Edward Felton and Andrew Appel of Princeton University will examine Sequoia Advantage voting machine software to determine why the voting machines registered ghost voters in the 2008 presidential primary election in New Jersey.³⁰

In 2007, the California Secretary of State decertified use of the Sequoia AVC Edge voting machines in that state. In doing so, the Secretary reported that independent experts found that the software in Sequoia voting machines could be made to “shift[] votes from one candidate to another and [the shift] was not detectable

²⁸ Building Confidence in U.S. Elections, Report of the Commission on Federal Election Reform (September 2005), at 28, available at <http://www.american.edu/ia/cfer/report/report.html>. Other national authorities agree that electronic voting machines create a serious risk of insider fraud, including the General Accounting Office, the non-partisan investigative arm of Congress, <http://www.gao.gov/new.items/d05956.pdf>; the National Academy of Science’s Committee on a Framework for Understanding Electronic Voting, co-chaired by former Governors Richard Celeste and Dick Thornburgh (the “Governors’ Report”), http://www.nap.edu/catalog.php?record_id=11704; the National Institute for Standards and Technology (“NIST”), <http://www.vote.nist.gov/DraftWhitePaperOnSlinVMSG2007-20061120.pdf>; the Brennan Center for Justice, http://www.brennancenter.org/content/section/category/voting_technology; and leading computer security experts who, funded by the National Science Foundation, formed ACCURATE, <http://accurate-voting.org/pubs/reports/> (the ACCURATE Report).

²⁹ Elizabeth Dwoskin, *Judge Gives New Jersey a Week to Fix Voting Machines*, N.Y. TIMES, Sept. 6, 2007, at 3, available at http://www.nytimes.com/2007/09/06/nyregion/06vote.html?_r=1&oref=slogin.

³⁰ Diane C. Walsh, *Judge Allows Review of Voting Machines With Discrepancies*, THE STAR-LEDGER (Newark, New Jersey), Apr. 26, 2008, article available for purchase at <http://www.lexis.com>.

on the voter verifiable paper audit trail (VVPAT).³¹ The California examination also found, among other risks, that the Sequoia voting machines

- “[A]llow the insertion of a Trojan program via a malicious USB removable storage media device that could modify ballot definitions and results. . . .”³²
- Are “designed to conduct Logic and Accuracy testing in a mode distinct from Election Day mode, which enables malicious firmware . . . to avoid operating in an incorrect manner while in testing mode.”³³
- Contain “a shell-like scripting language in the firmware . . . that could be coerced into performing malicious actions, in apparent violation of 2002 Voting System Standards . . . [and that] includes, among others, a command to set the protective counter of the machine . . . ; a command that can be used to overwrite . . . the system firmware or audit trail; and a command to reboot the machine at will.”³⁴
- Permit “corrupted or malicious data injected into removable media . . . with potentially serious consequences including alteration of recorded votes, adding false results, and, under some conditions, causing damage to the election management system when the corrupted or malicious data is loaded for vote counting.”³⁵

On December 17, 2007, Colorado decertified the Sequoia Edge II and Edge II Plus for security reasons, which decision was effective immediately.³⁶

Litigation in New Mexico after the 2004 presidential election produced an expert assessment of Sequoia and other brands of touch-screen voting systems which identified “undervotes” and “phantom votes,” in such numbers as to cast “serious doubt” on the 2004 presidential election result.³⁷ In 2006, during Pennsylvania state certification testing, thousands of votes changed on Sequoia Advantage voting

³¹ Withdrawal of Approval/Conditional Reapproval – October 25, 2007 Revision for Sequoia, available at http://www.sos.ca.gov/elections/elections_vsr.htm, hyperlink to Withdrawal of Approval/Conditional Reapproval - October 25, 2007 Revision for Sequoia, at 4.

³² *Id.* at 4.

³³ *Id.* at 3.

³⁴ *Id.* at 3.

³⁵ *Id.* at 2.

³⁶ Letter from Mike Coffman, Secretary of State to Ed Smith, Compliance Manager, Sequoia Voting Systems (December 17, 2007), available at <http://www.elections.colorado.gov/DDefault.aspx?tid=501> (regarding DRE: Edge II (including VeriVote; Edge Audio Unit; and Card Activator), Version Number 5.0.31/4.3/5.0 Rev. C and Edge II Plus (including HAAT Model 50, Version Number 1.2.33) (hyperlink “Certification results-Sequoia-12/17/07”). The Colorado Secretary of State subsequently reversed this decision and conditionally certified the Sequoia Edge II and Edge II Plus systems; *see* Letter from Mike Coffman, Secretary of State to Ed Smith, Compliance Manager, Sequoia Voting Systems (February 25, 2008), available at <http://www.elections.colorado.gov/DDefault.aspx?tid=998>.

³⁷ *Lopategui, et al., v. Vigil-Giron, et al.*, CV No. 2005 00433, 2d Jud. Dist., Bernalillo Cty., N.M., Affidavit of John Skelly, at ¶¶ 5-12 (Jan. 14, 2005) (*A copy of this document is available from the court.).

machines, resulting in the examiner's refusal to certify the voting machines' software.³⁸

IV. Smartmatic Ties to the Venezuelan Government of Hugo Chávez

Hugo Chávez has led Venezuela since February 2, 1999,³⁹ and has been described as a “dictator.”⁴⁰ The Washington Post has reported on “the hostile relationship between the Bush administration and the government of Venezuelan President Hugo Chavez,”⁴¹ and in a speech before the United Nations General Assembly, Chávez called President Bush “the devil.”⁴² In May 2008, Chávez and his senior aides, including Venezuelan Interior and Justice Minister Ramón Rodríguez Chacín, were implicated in supplying heavy arms to the Revolutionary Armed Forces of Columbia (“FARC”), which the U.S. has listed as a terrorist group.⁴³ Furthermore, Chávez has nationalized businesses and otherwise pressured Venezuelan businesses and their managers to do as he says.⁴⁴ Moreover, as previously noted, Chávez has been described as “the foremost meddler in foreign elections in the Western hemisphere.”⁴⁵

³⁸Tracie Mauriello, *More glitches trigger halt in testing of new county voting machines*, PITTSBURGH POST-GAZETTE, Mar. 30, 2006, available at <http://www.post-gazette.com/pg/06089/678087-85.stm>.

³⁹ Timeline: Hugo Chavez, <http://news.bbc.co.uk/1/hi/world/americas/6133732.stm>.

⁴⁰ David Gonzalez, *In Venezuela's Capital, the 2 Faces of a Bitter Divide*, N.Y. TIMES, Nov. 25, 2002, available at

<http://query.nytimes.com/gst/fullpage.html?res=9E0CE3D71139F936A15752C1A9649C8B63>; *The Dictator of Caracas*, WALL ST. J., Dec. 5, 2005, article available for purchase at <http://www.wsj.com>.

⁴¹ Pamela Constable, *For Venezuela, U.S., a (Very) Little Civility*, WASH. POST, Feb. 10, 2006, at A14, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/09/AR2006020902261.html>.

⁴² Ed Pilkington, *Chavez attacks 'devil' Bush in fiery UN Speech*, THE GUARDIAN, (London), Sept. 21, 2006, at 18, available at <http://www.guardian.co.uk/world/2006/sep/21/usa.venezuela>.

⁴³ Juan Forero, *Venezuela Offered Aid to Colombian Rebels: Officials Served as Middlemen With Arms Dealers, Files Show*, WASH. POST, May 15, 2008, at A11, available at

<http://www.washingtonpost.com/wp-dyn/content/article/2008/05/14/AR2008051403785.html> and Juan Forero, *FARC Computer Files Are Authentic, Interpol Probe Finds*, WASH. POST, May 16, 2006,

available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/15/AR2008051504153.html> (both articles describing records of FARC

commanders meeting with Venezuelan Interior and Justice Minister Ramón Rodríguez Chacín); Brian Orsak, *Bush administration considering sanctions against Venezuela*, MONEY LAUNDERING ALERT (Apr. 2008) (“The Bush Administration may blacklist Venezuela as a state sponsor of terror . . . [for

among other reasons] U.S. investigators discovered \$600 billion from Venezuelan controlled accounts tied to terror groups blacklisted by the U.S. government [including] . . . Hizballah, Hamas and

FARC.”), article available for purchase at

<http://www.moneylaundering.com/ArticleDisplay.aspx?id=3529>.

⁴⁴ See, e.g., Simon Romero, *Venezuelan Leader Seizes Greater Economic Power*, N.Y. TIMES, May 18, 2008, at 14, available at

<http://www.nytimes.com/2008/05/18/world/americas/18venez.html?partner=rssnyt&emc=rss>.

⁴⁵ See Richard Brand, *Hugo Wants Your Vote*, INVESTOR'S BUSINESS DAILY, Apr. 6, 2006, available at <http://www.investors.com/editorial/editorialcontent.asp?secid=1501&status=article&id=155832&secure=2496>.

At the end of 2007, the U.S. indicted several Venezuelans, including a lawyer who apparently has worked for Smartmatic, Moisés Maiónica, in a case that “has highlighted the alleged interference of the government of Venezuela's leftist President Hugo Chavez in the politics of neighboring countries.”⁴⁶ In December 2007, a U.S. grand jury in Miami, Florida, charged Maiónica and two other Venezuelan men with crimes in connection with alleged financing by Venezuelan President Hugo Chávez of the campaign of now-President Christina Fernandez de Kirchner of Argentina.⁴⁷ Maiónica pleaded guilty in January 2008 and apparently admitted to having been working for then Vice President of Venezuela, Jorge Rodríguez, in offering \$2 million to an FBI informant for his silence.⁴⁸ Jorge Rodríguez is reported to have stepped down as Vice President of Venezuela in January 2008, after Maiónica's public indictment, due to his “close relationship” with Maiónica.⁴⁹

The relationship between Rodríguez and Maiónica is reported to have been instrumental in the Smartmatic-led SBC consortium securing the contract from the Chávez controlled Venezuelan National Electoral Council (“CNE”) to run the 2004 Venezuelan presidential recall election. According to a press report, “[i]n February 2004, the Venezuelan electoral authorities selected the company Smartmatic to provide technology that automates the process of voting . . . The lawyer Moisés Maiónica would have acted as a proxy [for] Smartmatic and made all the legal and financial engineering with the approval of then member of the CNE and former [V]ice [P]resident of the Nation, Jorge Rodríguez.”⁵⁰ Chávez won the 2004 presidential recall

⁴⁶ Agence France Presse, *Indictment ties Caracas intelligence to Argentine funds case*, Dec. 21, 2007, available at, http://rawstory.com/news/afp/Indictment_ties_Caracas_intelligenc_12212007.html; *United States v. Maionica, et al.*, Indictment, Case Number 07-20999-CR-Lenard/Torres (Dec. 20, 2007) (*A copy of this document is available from the court).

⁴⁷ *Id.*; *United States v. Maionica, et al.*, Criminal Complaint, Case Number 07-3513-Dubé, with affidavit of Michael J. Lasiewicki, Special Agent with the FBI (Dec. 12, 2007) (*A copy of this document is available from the court.).

⁴⁸ *Id.* *United States v. Maionica, et al.*, Case Number 07-20999-CR-Lenard/Torres, Docket Sheet. (Plea Jan. 25, 2008) (*A copy of this document is available from the court).

⁴⁹ Valijero arrastró al vice de Chávez (*Valijero dragged the vice Chavez*), www.totalnews.com.ar/politica/valijero-arrastr-al-vice-de-ch-vez.html (“estrecha relación”). After the CNE awarded business to Smartmatic, Smartmatic reportedly paid for “vice president Rodríguez[?] . . . trip to a luxury resort in Boca Raton.” Irina Hauser, *Maionica, el bien conectado (Maionica, well connected)*, PAGINA/12, Mar. 2, 2008, <http://www.pagina12.com.ar/diario/elpais/1-100012-2008-03-02.html> (“le pagó al ex vicepresidente Rodríguez un viaje a un lujoso resort de Boca Raton”). Smartmatic's U.S. operations are located in Boca Raton, Florida. Exhibit 10, *supra*, footnote 8. Jorge Rodríguez served as Vice President of Venezuela from January 2007 until January 2008. Clodovaldo Hernández, *Chávez Designates Former Electoral Director As Vice-President*, EL UNIVERSAL, Jan. 4, 2007, available at http://english.eluniversal.com/2007/01/04/en_pol_art_04A821081.shtml; *Chavez Appoints New Vice President*, WTOP NEWS.COM, Jan. 3, 2008, available at <http://www.wtopnews.com/?nid=105&sid=1320452>.

⁵⁰ Valijero arrastró al vice de Chávez (*Valijero dragged the vice Chavez*), www.totalnews.com.ar/politica/valijero-arrastr-al-vice-de-ch-vez.html (“En febrero de 2004, las autoridades electorales venezolanas seleccionaron a la empresa Smartmatic para suministrar la tecnología que automatizara los procesos de votación . . . El abogado Moisés Maiónica habría actuado como apoderado de Smartmatic y realizado toda la ingeniería legal y financiera con el visto bueno del entonces titular de la CNE y ex vicepresidente de la Nación, Jorge Rodríguez.”)

election amidst controversy arising in part from the difference between the election day voter polls favoring Chávez' opponent and the announced election results.⁵¹

Prior to 2004, however, Smartmatic had no election experience and otherwise was a fledgling business.⁵² Reportedly critical to the SBC consortium's award of the \$91 million 2004 recall election contract from the Chávez-dominated CNE was a \$150,000 plus investment by the Venezuelan government in Bizta R&D Software, C.A. ("Bizta R&D Software"),⁵³ the SBC consortium member focused on voting machine software.⁵⁴ The Venezuelan government secured this 28% stake in Bizta R&D Software and then Bizta R&D Software gave power to a Venezuelan government official and software engineer with the Venezuelan Ministry of Science and Technology, Omar Montilla Castillo, by making him a Bizta R&D Software director.⁵⁵ Bizta promised to repay the Venezuelan government for its investment and remove the government official from its board of directors after the Miami Herald revealed the consortium's ties to the Chávez government.⁵⁶

The Smartmatic-led SBC consortium continues to receive substantial financial support from the Chávez-led Venezuelan government through contracts to run

⁵¹ Steve Dudley and Nancy San Martin, *Chavez Foes To Check The Vote Tallies*, MIAMI HERALD, at 1A, Aug. 18, 2004, *article available for purchase at* <http://www.miamiherald.com>.

⁵² Richard Brand and Alfonso Chardy, *Venezuela Owns Stake In Ballots*, MIAMI HERALD, May 28, 2004, at 1A, *article available for purchase at*, <http://www.miamiherald.com> Alexandra Olson, *Doubts over touchscreen tech choice for Venezuela recall*, USA TODAY, Feb. 24, 2006, *available at* http://www.usatoday.com/tech/world/2004-07-12-venezuela-evote_x.htm.

⁵³ Minutes of the Extraordinary Shareholders Meeting of the Bizta R&D Software C.A. Company (Jun. 10, 2003), Venezuela (*A copy of this document is located at _____); Alexandra Olson, *Doubts over touchscreen tech choice for Venezuela recall*, USA TODAY, Feb. 24, 2006, *available at* http://www.usatoday.com/tech/world/2004-07-12-venezuela-evote_x.htm.

⁵⁴ See, e.g., Jim Ash and John Lantigua, *Venezuelan Opposition Scrutinizes Touch-Screen Voting*, PALM BEACH POST, Jun. 19, 2004, at 16A, *article available for purchase at* <http://www.palmbeachpost.com/>. The third member of the SBC consortium is CANTV, a Venezuelan government sponsored television company. *Id.*

⁵⁵ Minutes of the Extraordinary Shareholders Meeting of the Commercial Corporation 'Bizta R&D Software, C.A.' (Dec. 15, 2003), signed and notarized by Alfredo Anzola Jaumotte and bearing the stamp of the Republica De Venezuela (*A copy of this document is located at _____.) Howard Gleckman, *One Man, One Vote, One Conspiracy Theory*, BUSINESS WEEK, June 5, 2006, *available at* http://www.businessweek.com/magazine/content/06_23/b3987042.htm?campaign_id=rss_magzn. Hugo's Revenge, INVESTOR'S BUSINESS DAILY, Nov. 6, 2006, at A18, *available at* <http://www.investors.com/editorial/editorialcontent.asp?secid=1501&status=article&id=247450590171629&secure=1877>.

⁵⁶ Richard Brand, *Voting-System Firm Drops Venezuela As An Investor*, MIAMI HERALD, June 12, 2004, at 12A, *article available for purchase at* <http://www.miamiherald.com>; Richard Brand, *Venezuela Investment In Smartmatic Was No Routine Loan*, May 3, 2006, <http://www.vcrisis.com/index.php?content=letters/200605031734>; Aleksander Boyd, *Smartmatic: All Things Connected*, <http://www.vcrisis.com/print.php?content=letters/200508141135>; Press Release, Bizta, *Bizta Buys Out Foncrei Share, Venezuela State Investment Fund to be Repaid in Full, Omar Montilla to Leave Bizta Board of Directors* (June 11, 2004) (*A copy of this document is located at _____.)

elections there.⁵⁷ The closeness of Smartmatic's relationship with the Chávez government is further reinforced by the response of aides close to Chávez to the hospitalization of a Smartmatic founder, shareholder and Chief Financial Officer, Alfredo José Anzola Jaumotte, after a small plane crash in late April 2008. Anzola, a Venezuelan software engineer, not only was a central player in Smartmatic. Anzola was President and part-owner of Bizta R&D Software when the Venezuelan government became Bizta R&D Software's 28% owner, when the Venezuelan government official and software engineer, Montilla, joined the Bizta R&D Software board of directors, and presumably when the Venezuelan CNE awarded the SBC consortium the contract to run the voting systems for the 2004 election to recall Hugo Chávez as president of Venezuela.⁵⁸ After the plane crash, the Governor of the State of Miranda, Diosdado Cabello Rondón, arranged for Anzola's transfer from a local hospital to one in Caracas.⁵⁹ Rondón is so close to the Venezuelan President Chávez that Rondón is reported to have taken on the duties of the presidency on a temporary basis during an attempted coup of Chávez in 2002.⁶⁰ Chávez "aide-de-camp" Jorge Rodríguez, who as previously noted is a former Vice-President of Venezuela, a former member of the Venezuelan National Electoral Council when it awarded the SBC consortium the 2004 presidential recall election contract, and now is implicated in Venezuelan government financing of the election of the new president of neighboring Argentina;⁶¹ and Venezuela's current Interior and Justice Minister, Ramón Rodríguez

⁵⁷ See Smartmatic Press Releases, Parliamentary elections in Venezuela reaffirm success of Smartmatic technology, Dec. 5, 2005, <http://www.smartmatic.com/pressroom/article/article/parliamentary-elections-in-venezuela-reaffirm-success-of-smartmatic-technology/>; 99.5% of voting centers in Venezuela to be automated with SAES3300, Nov. 8, 2006, <http://www.smartmatic.com/pressroom/article/article/995-of-voting-centers-in-venezuela-to-be-automated-with-saes3300/>; Zero error in pre-election audit of SAES voting machines, Nov. 26, 2007, <http://www.smartmatic.com/pressroom/article/article/zero-error-in-pre-election-audit-of-saes-voting-machines/>; Smartmatic Voting System functions at full capacity during Regional Election, Nov. 1, 2004, <http://www.smartmatic.com/pressroom/article/article/smartmatic-voting-system-functions-at-full-capacity-during-regional-election/>.

⁵⁸ Richard Brand, *Why is Hugo Chávez Involved with U.S. Voting Machines*, REAL CLEAR POLITICS, Mar. 28, 2006, http://www.realclearpolitics.com/articles/2006/03/forget_dubai_worry_about_smart.html; Alexandra Olson, *Doubts over touchscreen tech choice for Venezuela recall*, USA TODAY, Feb. 24, 2006, available at http://www.usatoday.com/tech/world/2004-07-12-venezuela-evote_x.htm.

⁵⁹ Gerardo Reyes, *Perece en un accidente aéreo fundador de firma Smartmatic (Perished in a plane crash founder of signing Smartmatic)*, EL NUEVO HERALD, Apr. 30, 2008, at A4, article available for purchase at <http://www.elnuevoherald.com>; States of Venezuela since 1990, http://www.worldstatesmen.org/Venezuela_states.html.

⁶⁰ <http://www.economicexpert.com/a/Diosdado:Cabello.html>, ECONOMICEXPERT.COM.

⁶¹ Karem Racines Arévalo, *5 muertos y 4 heridos por accidente aéreo en Catia La Mar (Five dead, four injured because of airplane accident in Catia La Mar)*, EL NACIONAL (Venezuela) Apr. 28, 2008 ("[e]n los predios del hospital se confirmó la presencia del ex vicepresidente Jorge Rodríguez, quien acudió al lugar a constatar el estado de salud de[] [Alfredo José Anzola].")("[I]n the hospital area it was confirmed the presence of the former vice president Jorge Rodríguez, who went to the place to verify the state of health of [Alfredo José Anzola]"); Gustavo Coronel, *The Impact of Alan Garcia's Victory On The Latin American Political Scenario*, June 6, 2006, <http://www.vcrisis.com/index.php?content=letters/200606060730> (referring to "Jorge Rodríguez, former President of the Venezuelan National Electoral Council" as Chávez' "aide de camp"); Brad Friedman, *Smartmatic Co-Founder, Employee, and Shareholder Dead After Both Engines on Small Plane Reportedly Failed Just After Takeoff* (May 2, 2008), available at

Chacín,⁶² who as previously noted is implicated in Venezuela's provision of weapons to U.S. blacklisted FARC in neighboring Columbia and who may be related to Anzola,⁶³ attended Anzola at his death bed.⁶⁴

<http://www.bradblog.com/?p=5947>; *United States v. Maionica, et al.*, Indictment, Case Number 07-20999-CR-Lenard/Torres (Dec. 20, 2007) (*A copy of this document is available from the court); *United States v. Maionica, et al.*, Criminal Complaint, Case Number 07-3513-Dubé, with affidavit of Michael J. Lasiewicki, Special Agent with the FBI (Dec. 12, 2007) (*A copy of this document is available from the court); *United States v. Maionica, et al.*, Case Number 07-20999-CR-Lenard/Torres, Docket Sheet. (Plea Jan. 25, 2008) (*A copy of this document is available from the court).

⁶² Anthony Rangel and Nadeska Noriega Ávila, *Avioneta cae sobre vivienda en Vargas (Small Plane Falls On House In Vargas)* (Apr. 29, 2008),

http://www.eluniversal.com/2008/04/29/sucgc_art_avioneta-cae-sobre-v_840399.shtml.

⁶³ *Id. see* Juan Forero, *Venezuela Offered Aid to Colombian Rebels: Officials Served as Middlemen With Arms Dealers, Files Show*, WASH. POST, May 15, 2008, at A11, available at

<http://www.washingtonpost.com/wp-dyn/content/article/2008/05/14/AR2008051403785.html>; Juan

Forero, *FARC Computer Files Are Authentic, Interpol Probe Finds*, WASH. POST, May 16, 2006, available at [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2008/05/15/AR2008051504153.html)

<http://www.washingtonpost.com/wp-dyn/content/article/2008/05/15/AR2008051504153.html> (both articles describing records of FARC commanders meeting with Venezuelan Interior and Justice Minister Ramón Rodríguez Chacín).

⁶⁴ *See*. Karem Racines Arévalo, *5 muertos y 4 heridos por accidente aéreo en Catia La Mar (Five dead, four injured because of airplane accident in Catia La Mar)*, EL NACIONAL (Venezuela) Apr. 28, 2008, article available for purchase at <http://www.lexis.com>; Anthony Rangel and Nadeska Noriega Ávila,

Avioneta cae sobre vivienda en Vargas (Small Plane Falls On House In Vargas) (Apr. 29, 2008),

http://www.eluniversal.com/2008/04/29/sucgc_art_avioneta-cae-sobre-v_840399.shtml.