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## **RE: OFFICIAL COMPLAINT**

Board Members:

We are submitting this official complaint regarding the circumstances surrounding the official certification of Georgia's electronic voting system by the Elections Assistance Commission (hereinafter "EAC"). Our investigation has uncovered evidence which calls in to question, not only the validity of Georgia's voting system certification, but the accreditation of the Voting System Testing Laboratory, and the credibility of the EAC itself.

While the actions and deficiencies of the EAC are beyond the purview of this board, Georgia law required the purchase of an EAC certified electronic voting system.<sup>1</sup>

When the Georgia State legislature passed such a requirement, they did so with the implicit expectation that such an EAC certified voting system would meet standards in accordance with federal law.

Unfortunately, that certification is but an empty shell as the EAC's outdated voting system guidelines, requirements, rules, and methods of measuring compliance as promulgated by federal law have been effectively ignored, circumvented, and dismissed. The EAC has failed to maintain oversight and accreditation of the Voting System Testing Labs as required by the Help America Vote Act (HAVA).<sup>2</sup> Efforts to conceal this fact have only magnified the damage, perpetuated a fraud upon the American people, and prevented correction or

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<sup>1</sup> Ga. Code § 21-2-300 ("(3) The state shall furnish a uniform system of electronic ballot markers and ballot scanners for use in each county as soon as possible. Such equipment shall be certified by the United States Election Assistance Commission prior to purchase, lease, or acquisition.")

<sup>2</sup> [Help America Vote Act | U.S. Election Assistance Commission](#)

remedy. Specifically:

1. Pro V&V's EAC Voting System Testing Lab Accreditation expired in 2017.
2. EAC officials have falsely misrepresented the accreditation status of Pro V&V and have gone to extraordinary lengths to conceal the fact that Pro V&V's accreditation was expired for an extended period of time.
  - A. Records and analysis strongly suggest that the EAC fabricated documents on behalf of Pro V&V then posted those documents on the EAC website. Seemingly this was done in an effort to make it appear as though the required documents had been timely submitted.
  - B. Following the 2020 General Election, the EAC falsely claimed that the reason Pro V&V's accreditation certificate(s) had not been issued was because of:
    1. Delays caused by COVID-19
    2. Administrative Error
    3. Accreditation wasn't Revoked
3. Georgia's current voting system was not certified in accordance with the Help America Vote Act. The voting system Georgia purchased was not tested by an EAC accredited Voting System Testing Lab as required thereby rendering the EAC certification invalid based upon the established requirements.

## **BACKGROUND**

The issues presented in this complaint are governed by the rules and regulations of the Election Assistance Commission (EAC). The EAC's authority is derived from the Help America Vote Act (HAVA) which was passed by the U.S. Congress in 2002.<sup>3</sup> HAVA requires that the EAC provide for the accreditation and revocation of accreditation of independent, non-federal laboratories qualified to test voting systems to Federal standards.<sup>4</sup> The EAC is also charged with establishing those Federal Standards.<sup>5</sup>

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<sup>3</sup> HAVA is codified at 52 U.S.C. 20901 to 21145

<sup>4</sup> Help America Vote Act (HAVA) of 2002 ([42 U.S.C. 15371\(b\)](#)) requires that the EAC provide for the accreditation and revocation of accreditation of independent, non-federal laboratories qualified to test voting systems to Federal standards.

<sup>5</sup> Section 311 of the Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to periodically adopt standards for voting systems in the form of Voluntary Voting System Guidelines

From the EAC's website:

*HAVA creates new mandatory minimum standards for states to follow in several key areas of election administration. The law provides funding to help states meet these new standards, replace voting systems and improve election administration. HAVA also established the Election Assistance Commission (EAC) to assist the states regarding HAVA compliance and to distribute HAVA funds to the states. EAC is also charged with creating voting system guidelines and operating the federal government's first voting system certification program.*

The EAC is responsible for creating voting system testing guidelines which are standards and rules that voting machines must comply with to be certified. The EAC accredits third-party companies to test whether voting systems meet the requirements of the voting system guidelines. These companies are called Voting System Testing Labs (VSTLs). Although this complaint centers on the accreditation of one VSTL, it's important to understand the following facts:

1. **Every** voting machine certified by the EAC used in the United States today has not been tested beyond a 2005 standard (Pre-iPhone).<sup>6</sup>
2. Voting system certification does not include testing for penetration, intrusion or system manipulation (doesn't test if the machines can be used to cheat).<sup>7</sup>
3. The Voting System Testing Labs (VSTLs) responsible for testing the voting systems for the EAC are not paid by the EAC but by the voting system manufacturers (Dominion, ES&S, Hart); therefore, an inherent conflict of interest exists.<sup>8</sup>
4. The VSTLs are not qualified nor are they accredited by the EAC to perform any type of forensic audits of the voting systems like those they were paid to perform in many locales following the 2020 general election (Maricopa, Georgia, Michigan, etc.).<sup>9</sup>
5. There are only 2 VSTLs currently recognized by the EAC; Pro V&V and SLI Compliance.<sup>10</sup>

## **1. PRO V&V'S ACCREDITATION EXPIRED IN 2017**

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<sup>6</sup> [Certified Voting Systems | U.S. Election Assistance Commission \(eac.gov\)](#)

<sup>7</sup> [Voluntary Voting System Guidelines | U.S. Election Assistance Commission \(eac.gov\)](#)

<sup>8</sup> [Frequently Asked Questions | U.S. Election Assistance Commission \(eac.gov\)](#)

<sup>9</sup> [Chain of Custody Best Practices \(eac.gov\)](#)

<sup>10</sup> [Voting System Test Laboratories \(VSTL\) | U.S. Election Assistance Commission \(eac.gov\)](#)

The VSTL Program Manual<sup>11</sup> explicitly states:

*3.8. Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending.*

The fact is that Pro V&V was not in good standing. The first Certificate of Accreditation issued to Pro V&V is below:



The Certificate of Accreditation clearly delineates the beginning date of February 24, 2015 and is “Effective Through” February 24, 2017. There are simply no submissions by Pro V&V as required to renew their accreditation (save those filed in 2015) until after the 2020 general election. The fact is that Pro V&V’s accreditation expired on February 24, 2017. Even so, Pro V&V continued as though they remained accredited. It was during this time when Pro V&V tested Dominion’s Democracy Suite 5.5A(G), which was subsequently and erroneously certified by the EAC.

## 2. EAC FALSELY MISREPRESENTED PRO V&V’S ACCREDITATION

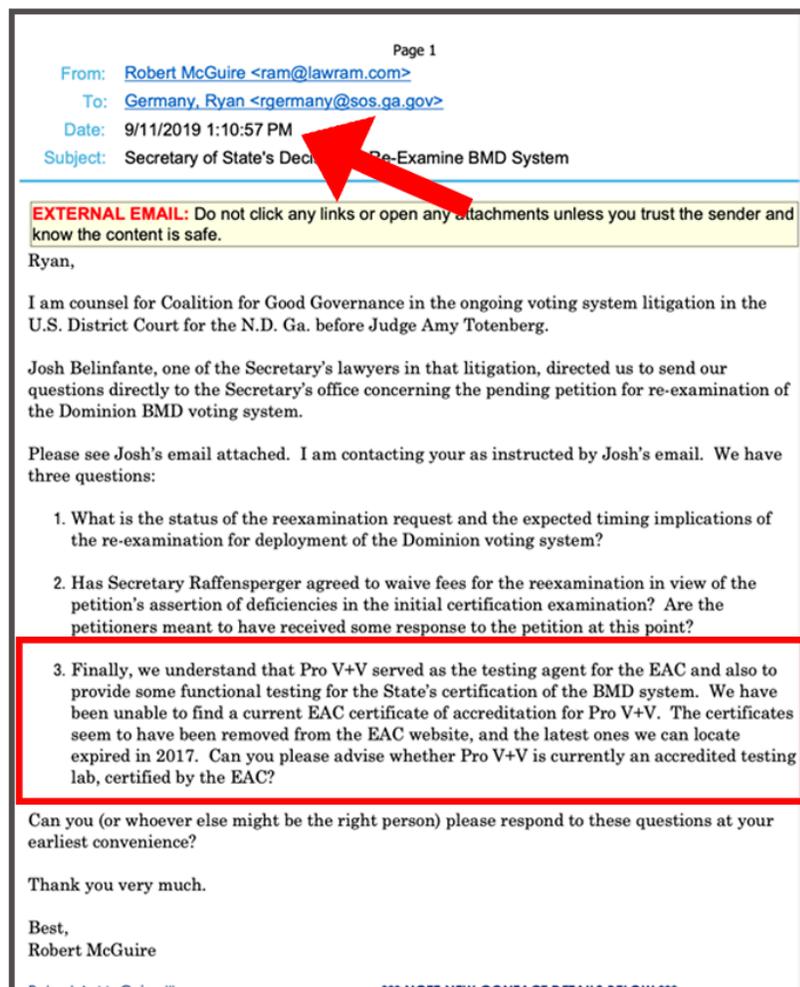
<sup>11</sup> VSTL Program Manual, Version 1, effective July 2008, and Version 2, effective May 2015, approved by vote of the EAC Commission

Through a series of fraudulent acts and extraordinary statements, the EAC has engaged in a practice of subterfuge and deceit to conceal the fact that Pro V&V was not an accredited laboratory for an extended period of time.

### A. FABRICATION OF DOCUMENTS

On September 11, 2019, an attorney representing the Coalition for Good Governance in a pending federal lawsuit (Curling v. Raffensperger) sent an email to Ryan Germany, General Counsel for the Georgia Secretary of State. The email inquired about the accreditation status of Pro V&V who had tested Georgia's Dominion Democracy Suite 5.5A(G) voting system that the EAC had subsequently certified. Specifically, the email states in part:

*“3. Finally, we understand that Pro V+V served as the testing agent for the EAC and also to provide some functional testing for the State's certification of the BMD system. We have been unable to find a current EAC certificate of accreditation for Pro V+V. The certificates seem to have been removed from the EAC website, and the latest ones we can locate expired in 2017. Can you please advise whether Pro V+V is an accredited testing lab, certified by the EAC?”*



As Mr. McGuire states in the email above, the EAC website showed only one certificate of accreditation for Pro V&V which was issued in February of 2015 and expired in February of 2017.

A review of Pro V&V's records posted on the EAC's website revealed a document which was not posted until *after* the inquiry noted above. Complainants downloaded the document with the filename "Pro V&V Letter of Agreement.pdf" which is posted below (An electronic copy is also attached for your independent review):



*Pro V&V, Inc.  
700 Boulevards South, Suite 102  
Huntsville, AL 35802*

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U.S Election Assistance Commission  
1201 New York Avenue, N.W.  
Suite 300  
Washington DC 20005

Attention: Mr. Brian J. Hancock, Director Voting System Certification

Subject: Letter of Agreement for Voting System Test Laboratory Accreditation

Dear Mr. Hancock:

The undersigned representative of Pro V&V, Inc. (hereinafter "Laboratory"), being lawfully authorized to bind Laboratory and having read the EAC Voting System Test Laboratory Program Manual, accepts and agrees on behalf of Laboratory to follow the program requirements as laid out in Chapter 2 of the Manual. Laboratory shall meet all program requirements as they relate to NVLAP accreditation; conflict of interest and prohibited practices; personnel policies; notification of changes; resources; site visits, notice of law suits; testing, technical practices and reporting; laboratory independence; authority to do business in the United States; VSTL communications; financial stability; and recordkeeping. Laboratory further recognizes that meeting these program requirements is a continuing responsibility. Failure to meet each of the requirements may result in the denial of an application for accreditation, a suspension of accreditation or a revocation of accreditation.

Sincerely,

Pro V&V, Inc.

Jack Cobb  
Laboratory Director

Pro V&V's "Letter of Agreement" was addressed to Mr. Brian J. Hancock, the former Director of Voting System Certification for the EAC. Interestingly, there is no date nor signature which the rules adopted by the EAC specifically require:

*Submission of Documents. Any documents submitted pursuant to the requirements of this Manual shall be submitted:*

*with a proper signature when required by this Manual. Documents that require an authorized signature may be signed with an electronic representation or image of the signature of an authorized management representative.*

*3.4.2. Letter of Agreement. The applicant laboratory must submit a signed letter of agreement as part of its application. To that end, applicant laboratories are required to submit a Letter of Application requesting accreditation. The letter shall be addressed to the Testing and Certification Program Director and attach (in either hard copy or on CD/DVD) (1) all required information and documentation; (2) a signed letter of agreement; and (3) a signed certification of conditions and practices.*

Due to the suspect circumstances surrounding the document, we decided to view the file's metadata. This shows the document posted on the EAC's website was created six (6) days after the email seeking the status of Pro V&V's accreditation.



What's more, the Letter of Agreement that Mr. Lovato seemingly created on September 17, 2019, was addressed to Mr. Brian J. Hancock. The problem is that Mr. Hancock had retired in February of 2019, or nearly seven months before the letter was created.

Additionally, the file’s metadata shows that the document was not authored by Jack Cobb of Pro V&V, but by the EAC’s own Testing and Certification Director, Jerome Lovato. Perhaps there’s a good explanation, or at least a plausible one; however, there are other problems. When the document was opened in Photoshop, it revealed that the letterhead was not one image as one would expect, but images that had been cut and pasted:

**Document Header from the Letter of Agreement added by Jerome Lovato as shown in Adobe Photoshop:**



**Document Header from the 2020 Letter of Agreement as shown in Adobe Photoshop using the same process:**



If the Letter of Agreement was in-fact created by Pro V&V, they didn’t include their phone number, email, and misspelled their own address on their “letterhead”:



Also, the EAC’s address changed from that of the letter (1201 New York Ave, DC) to 1335 East West Highway, MD on October 22, 2013, or before the date to which the letter was attributed.

No matter the provenance of the Letter of Agreement, without a date or signature it fails to meet any acceptable standard. The same is acknowledged by the fact that the document was not publicly posted as required until 6 days after the email cited above inquiring about Pro V&V's accreditation status. Lastly, the EAC never issued a Certificate of Accreditation for 2017 when Pro V&V's 2015 accreditation expired.

## **B. EAC MISREPRESENTED STATUS OF PRO V&V**

After the 2020 General election the EAC went so far as to surreptitiously cover-up the fact that Pro V&V was not accredited and had not been for years. Pro V&V was granted EAC accreditation as a Voting Systems Testing Laboratory (VSTL) on February 24, 2015 and was effective through February 24, 2017. From the Voting System Test Laboratory Program Manual, Version 2.0

*3.8 Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending. VSTLs in good standing shall also retain their accreditation should circumstances leave the EAC without a quorum to conduct the vote required under Section 3.5.5.*

There is no record whatsoever of Pro V&V renewing their accreditation in 2017, despite the requirement that all associated documents *shall* be posted on the EAC's website:

*3.6.2. Post Information on Web Site. The Program Director shall make information pertaining to each accredited laboratory available to the public on EAC's Web site. This information shall include (but is not limited to):*

- 3.6.2.1. NIST's Recommendation Letter;*
- 3.6.2.2. The VSTL's Letter of Agreement;*
- 3.6.2.3. The VSTL's Certification of Conditions and Practices;*
- 3.6.2.4. The Commissioner's Decision on Accreditation; and 3.6.2.5. The Certificate of Accreditation.*

There is also no record of Pro V&V renewing their accreditation in 2019. It isn't until after the 2020 general election that Pro V&V's accreditation is renewed.

## **1. PANDEMIC EXCUSE**

On January 27, 2021, Jerome Lovato of the EAC issued the following memo attempting to use the pandemic somehow as cause for Pro V&V’s “questionable” accreditation status:



U.S. ELECTION ASSISTANCE COMMISSION  
633 3rd St. NW, Suite 200  
Washington, DC 20001

**FROM:** Jerome Lovato, Voting System Testing and Certification Director  
**SUBJECT:** Pro V&V EAC VSTL Accreditation  
**DATE:** 1/27/2021

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Pro V&V has completed all requirements to remain in good standing with the EAC’s Testing and Certification program per section 3.8 of the Voting System Test Laboratory Manual, version 2.0:

*Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years. A VSTL’s accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall renew their accreditation by submitting an application package to the Program Director, consistent with the procedures of Section 3.4 of this Chapter, no earlier than 60 days before the accreditation expiration date and no later than 30 days before that date. Laboratories that timely file the renewal application package shall retain their accreditation while the review and processing of their application is pending. VSTLs in good standing shall also retain their accreditation should circumstances leave the EAC without a quorum to conduct the vote required under Section 3.5.5.*

Due to the outstanding circumstances posed by COVID-19, the renewal process for EAC laboratories has been delayed for an extended period. While this process continues, Pro V&V retains its EAC VSTL accreditation.

Lovato states:

*Pro V&V has completed all requirements to remain in good standing with the EAC’s Testing and Certification program per section 3.8 of the Voting System Test Laboratory Manual, version 2.0:*

The statement above is false by any metric. Lovato would have us believe that Pro V&V’s accreditation was somehow current despite the required submissions and Certificates of Accreditation missing from the EAC’s website (The EAC is required to post the documents). Then Lovato claims that the pandemic is the cause of any accreditation deficiency:

*Due to the outstanding circumstances posed by COVID-19, the renewal process for EAC laboratories has been delayed for an extended period. While this process continues, Pro V&V retains its EAC VSTL accreditation.*

Interestingly, Lovato specifically names Pro V&V and doesn’t mention the other VSTL, SLI

Compliance. Furthermore, the EAC’s pandemic excuse is refuted simply by referencing a calendar. Pro V&V’s accreditation expired in February of 2017, three years before the pandemic. Even if we were to accept the cryptic, undated and unsigned Letter of Agreement of questionable origin and attribute it to 2017, the accreditation would have expired in 2019, a year before COVID-19 was deemed a national emergency.

## **2. CLERICAL ERROR EXCUSE**

The pandemic excuse is not retroactive to a time before the pandemic, a fact which was evidently brought to the attention of the EAC and what precipitated the release of the next memo (attached hereto as “Exhibit C”) which states:

*Due to administrative error during 2017-2019, the EAC did not issue an updated certificate to Pro V&V causing confusion with some people concerning their good standing status. Even though the EAC failed to reissue the certificate, Pro V&V’s audit was completed in 2018 and again in early 2021 as the scheduled audit of Pro V&V in 2020 was postponed due to COVID-19 travel restrictions. Despite the challenges outlined above, throughout this period, Pro V&V and SLI Compliance remained in good standing with the requirements of our program and retained their accreditation. In addition, the EAC has placed appropriate procedures and qualified staff to oversee this aspect of the program ensuring the continued quality monitoring of the Testing and Certification program is robust and in place.*

Again, even if we were to accept the highly suspect Letter of Agreement and attribute it to 2017, along with the EAC’s explanation of administrative error in failing to issue a Certificate of Accreditation in 2017, the accreditation would have expired in February of 2019 without exception (3.8. *Expiration and Renewal of Accreditation. A grant of accreditation is valid for a period not to exceed two years.*). The EAC conveniently ignores the irrefutable fact that Pro V&V is lacking **two** Certificates for Accreditation- one for 2017 and another for 2019. Also missing from the record and the EAC’s website are Pro V&V’s filings for accreditation renewal for both 2017 and 2019.

## **3. REVOCATION EXCUSE**

In the same memo cited above, Mr. Lovato disingenuously attempts to address the concerns of *expiration* with the prospect of *revocation*. From the memo:

The VSTL accreditation does not get revoked unless the commission votes to revoke accreditation; and by that same token, EAC generated certificates or lack thereof do not determine the validity of a VSTL's accreditation status.

Pro V&V was accredited by the EAC on February 24, 2015, and SLI Compliance was accredited by the EAC on February 28, 2007. Federal law provides that EAC accreditation of a voting system test laboratory cannot be revoked unless the EAC Commissioners vote to revoke the accreditation: "The accreditation of a laboratory for purposes of this section may not be revoked unless the revocation is approved by a vote of the Commission." 52 U.S. Code § 20971(c)(2). The EAC has never voted to revoke the accreditation of Pro V&V. Pro V&V has undergone continuing accreditation assessments and had new accreditation certificate issued on February 1, 2021.

The EAC raises the matter of revocation and that such action requires a "vote of the Commission". It goes on to say "*The EAC has never voted to revoke the accreditation of Pro V&V*". The EAC is conflating the matters of *revocation* with that of *expiration*. Suggesting that simply because the Commission has never voted to revoke Pro V&V's accreditation, then it remains active by default. The prospect defies logic. The term "Expired" is defined as:

***Expired-*** cease to be valid after a fixed period of time.

The term "Revocation" is defined as:

***Revoked-*** put an end to the validity or operation of.

Expiration is automatic, as in when the term is up. Revocation requires an affirmative act to end something. Like a driver's license can be expired or revoked, the two are different and have different causes and meanings. A driver's license can be expired and therefore invalid without being revoked. Mr. Lovato's assertion is analogous to claiming that your expired driver's license is valid simply because it's not revoked. This rationale is ludicrous. Furthermore, to accept such a prospect would require ignoring the clearly defined prescription of time "...not to exceed two years."

The bright lines of the rules regarding accreditation renewal and expiration are clear; therefore, this is an effort of either deception or ignorance. Considering that Mr. Lovato cites the plain language detailing expiration in his January 21, 2021 memo (above), the possibility of ignorance is removed.

Also removed is a page from the EAC's website with the heading, "Labs with Expired Accreditation" that can be found archived here:

[Voting System Test Laboratories \(VSTL\) - Voting Equipment | US Election Assistance Commission \(archive.org\)](https://www.federalevoting.com/Voting-System-Test-Laboratories-VSTL-Voting-Equipment-US-Election-Assistance-Commission-2021-01-21)

The fact that the category, “Labs with Expired Accreditation” existed on the EAC’s website is damning to Lovato’s assertion as it establishes the EAC’s own acknowledgement that VSTL accreditations do expire *without* revocation. The removal of the page suggests that the EAC realized the same and acted to conceal that which would lift the thin veil of plausible deniability.

What’s more, we know from the email to the Georgia Secretary of State’s general counsel that the Secretary of State and the EAC were both made aware of Pro V&V’s long-expired accreditation over a year before the 2020 general election. Instead of properly addressing the deficiency at the time, the EAC presumably elected to create a fraudulent record on behalf of Pro V&V. Regardless, they knowingly chose to fraudulently misrepresent Pro V&V’s accreditation status and attempted to cover-up the facts with a litany of excuses that just don’t hold water.

### **3. GEORGIA’S VOTING SYSTEM WAS NEVER PROPERLY CERTIFIED**

Pro V&V performed the testing on Georgia’s Dominion Democracy Suite 5.5A(G) system and submitted the final report to the EAC on August 7, 2019. Because Pro V&V’s VSTL accreditation expired in February of 2017 (or February of 2019 if we accept the EAC’s flawed excuses) and system certification requires testing by an EAC accredited VSTL, the EAC certification of Georgia’s voting system is not valid.

#### **SUMMARY**

As we mark the EAC’s 20<sup>th</sup> year, we must acknowledge that the EAC has failed to develop and maintain voting system testing guidelines, failed to oversee the accreditation of testing labs, and failed to test our country’s voting systems to a remotely reasonable standard. The fact is that EAC has miserably failed to perform not only its core mission, but all missions for its entire existence.

The actions of the EAC as detailed herein extend far beyond mere *failure*. The EAC has fabricated a fraudulent record for Pro V&V and has repeatedly, knowingly, and intentionally misrepresented the expired accreditation status of a Voting Systems Testing Laboratory to the American people. The EAC’s deceptive practices have fostered a false sense of security and materially violated their responsibilities under the HAVA in both letter and spirit of the law.

The inherit standard of any established institution or industry does not exist with voting systems in the United States. There is no benchmark, no independent method of testing, no oversight, and therefore there is no alternative but for the States to perform their own due

diligence in testing our voting systems.

Wherefore, the Georgia State Election Board must immediately suspend use of the Dominion voting systems until a thorough, review by a panel of independent experts can be performed.



