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15 THOMAS SMITH

16 UNITED STATES DISTRICT COURT  
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 ONLINE POLICY GROUP, NELSON CHU )  
PAVLOSKY, and LUKE THOMAS SMITH, )  
19 Plaintiffs, )

20 v. )

21 DIEBOLD, INCORPORATED, and DIEBOLD )  
22 ELECTION SYSTEMS, INCORPORATED, )  
23 Defendants. )  
24 \_\_\_\_\_ )

No. C-03-04913 JF

DECLARATION OF CINDY A. COHN IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT

Date: February 9, 2004  
Time: 9:00 a.m.  
Courtroom: 3

I, Cindy A. Cohn, hereby declare as follows.

2           1.       I am an attorney with the Electronic Frontier Foundation, counsel to Plaintiff Online  
3 Policy Group. I make this Declaration in support of Plaintiffs' Motion for Summary Judgment.  
4 The facts stated here are known to me of my own personal knowledge, except where otherwise  
5 stated. If called upon to testify thereto I could and would competently do so.

6           2.       Attached hereto as Exhibit A is a printout of what I am informed and believe to be  
7 an e-mail from Ken Clark, dated September 13, 2000, that appears on the Diebold e-mail archive  
8 that was posted on the Swarthmore Coalition for the Digital Commons website and that was linked  
9 to from the San Francisco IndyMedia website.

10          3.       Attached hereto as Exhibit B is a printout of what I am informed and believe to be  
11 an e-mail from Pat Green, dated January 24, 2003, that appears on the Diebold e-mail archive that  
12 was posted on the Swarthmore Coalition for the Digital Commons website and that was linked to  
13 from the San Francisco IndyMedia website.

14          4.       Attached hereto as Exhibit C is a printout of what I am informed and believe to be  
15 an e-mail from Jeffrey W. Dean, dated February 23, 2001, that appears on the Diebold e-mail  
16 archive that was posted on the Swarthmore Coalition for the Digital Commons website and that  
17 was linked to from the San Francisco IndyMedia website.

18          5.       Attached hereto as Exhibit D is a printout of what I am informed and believe to be  
19 an e-mail from Ken Clark, dated July 6, 1999, that appears on the Diebold e-mail archive that was  
20 posted on the Swarthmore Coalition for the Digital Commons website and that was linked to from  
21 the San Francisco IndyMedia website.

22          6.       Attached hereto as Exhibit E is a printout of what I am informed and believe to be  
23 an e-mail from owner-support@dieboldes.com, dated January 3, 2003, that appears on the Diebold  
24 e-mail archive that was posted on the Swarthmore Coalition for the Digital Commons website and  
25 that was linked to from the San Francisco IndyMedia website.

26          7.       Attached hereto as Exhibit F is a printout of what I am informed and believe to be  
27 an e-mail from ken@dieboldes.com, dated January 3, 2003, that appears on the Diebold e-mail  
28 archive that was posted on the Swarthmore Coalition for the Digital Commons website and that

1 was linked to from the San Francisco IndyMedia website.

2 I declare under penalty of perjury under the laws of the State of California that the  
3 foregoing is true and correct and that this declaration was executed in San Francisco, California.

4 Date: January 9, 2003

  
CINDY A. COHN

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# **EXHIBIT A**

From: "Ken Clark" ken@gesn.com

Subject: RE: Central count doesn't stop for write-ins - Pima 1-11-2

Date: Wed, 13 Sep 2000 13:21:41 -0700

*Pima (County) is going to use a hacked 1.11 for their upcoming election for this, as they have in the past.*

## **EXHIBIT B**

From: "Green, Pat" GreenP@diebold.com  
Subject: RE: GEMS-1-18-17  
Date: Fri, 24 Jan 2003 06:41:29 -0800

*You make a very good point here. There are times we will need to release things for customers which do not choose to wait for ITA approval, but we want to move toward a system where we do a pre-release for certification purposes and then have a real release which sticks for a while. Today's system of doing a release and then having to do 2 or 3 more during the certification process causes a lot of confusion. Sometimes this is a necessary evil, but not always. We will try to start with pre-releases whenever possible...*

# **EXHIBIT C**

From: "Jeffrey W. Dean" jwdean@spectrumltd.com  
Subject: AVOS 1.96  
Date: Fri, 23 Feb 2001 17:16:25 -0800

*Thought I should clear the air on the 17" ballot traffic. What we are doing is certifying a firmware release that*

*1) Is backward compatible with the 1.94, 1.95 spider's web of uncertified features currently in use...*

## **EXHIBIT D**

From: "Ken Clark" ken@gesn.com  
Subject: RE: AVTS - Diagnostics & Installation  
Date: Tue, 6 Jul 1999 15:40:55 -0700

*We, the manufacturer, are supposed to set the procedures to follow for this equipment since we build it. I hate more than anyone else in the company to bring up a certification issue with this, but a number of jurisdictions require a "system test" before every election. I just helped Knecht yesterday with an RFP from Riverside that required this. That is why the AccuVote displays the silly \*\*\*System Test Passed\*\*\* message on boot up instead of "memory test passed", which is all it actually tests. No argument from me that it is pointless. You could probably get away with a batch file that prints "system test passed" for all I know. We will do something along those lines with the new unit after a memory test or whatever.*

# **EXHIBIT E**

From: owner-support@dieboldes.com [mailto:owner-support@dieboldes.com] On  
Behalf Of Ken  
Subject: RE: sunspot.net - maryland news.htm  
Date: Friday, January 03, 2003 12:47 PM

*There is an important point that seems to be missed by all these articles: they  
already bought the system. At this point they are just closing the barn door.  
Let's just hope that as a company we are smart enough to charge out the yin if  
they try to change the rules now and legislate voter receipts.*

## **EXHIBIT F**

From: "Ken" ken@dieboldes.com  
Subject: RE: sunspot.net - maryland news.htm  
Date: Fri, 3 Jan 2003 14:17:54 -0800

*Short for "out the yin-yang." Perhaps a little too colloquial; apologies for that.  
In my defense, google turns up 694 references to the phrase.*

*Any after-sale changes should be prohibitively expensive. Much more expensive  
than, for example, a university research grant*