From: Commissioner Jerdonek, April 14, 2023

Subject: DVSorder privacy flaw and CA Elections Code Sec. 19215

The purpose of this memo is to let the Commission and the public know about a California law I recently came across that pertains to our recent discussions of the DVSorder privacy flaw in San Francisco's Dominion voting system. It appears from this law that Dominion should have notified the Department of Elections about DVSorder before the November 2022 election.

To review, the Elections Commission discussed DVSorder at its January, February, and March Commission meetings. As described at those meetings and in more detail in the agenda packet documents of those meetings, DVSorder is a privacy flaw in the Dominion voting system used by San Francisco. At the March meeting, the Commission voted to send a letter to Dominion and other entities asking why San Francisco wasn't notified about the vulnerability.

A couple weeks ago, I discovered that it looks as if Dominion may have been legally required to notify the Department of Elections within 30 days of them being notified of the vulnerability. Specifically, California Elections Code Sec. 19215 says—[1]

> **19215.** (a) If a voting system or a part of a voting system has been certified or conditionally approved by the Secretary of State or has been federally qualified, the vendor or, in cases where the system is publicly owned, the jurisdiction shall notify the Secretary of State and all local elections officials who use the system in writing of any defect, fault, or failure of the hardware, software, or firmware of the voting system or a part of the voting system within 30 calendar days after the vendor learns of the defect, fault, or failure.

Since Dr. Halderman wrote in the attachment to his email to us[2] that his team notified Dominion on August 23, 2022, it appears that Dominion should have notified the Department by September 22, 2022.

California Elections Code Sec. 19210(c) defines "defect," "failure," and "fault."[3] Relevant to these definitions, the attachment to Dr. Halderman's email to the Commission cites how Dominion's documentation for its voting system says its system preserves voter privacy. In addition, my draft letter to the California Secretary of State from the March meeting cites how California's voting system standards require voting systems to preserve voter privacy.[4]

For convenience, I've attached to this memo PDF versions of Elections Code Sections 19215 and 19210. Thank you.

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[1] CA Elections Code Sec. 19215:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=ELEC&sectionNum=19215.
[2] Jan. 9, 2023 email and attachment from Dr. Halderman to Commission: https://sf.gov/sites/default/files/2023-02/Halderman_Email_to_Commission.pdf
[3] CA Elections Code Sec. 19210:
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=ELEC&sectionNum=19210.
[4] Draft letter to CA Sec. of State: https://sf.gov/sites/default/files/2023-03/DVSorder_Letters_DRAFT_v3.pdf

State of California

ELECTIONS CODE

Section 19215

19215. (a) If a voting system or a part of a voting system has been certified or conditionally approved by the Secretary of State or has been federally qualified, the vendor or, in cases where the system is publicly owned, the jurisdiction shall notify the Secretary of State and all local elections officials who use the system in writing of any defect, fault, or failure of the hardware, software, or firmware of the voting system or a part of the voting system within 30 calendar days after the vendor learns of the defect, fault, or failure.

 (b) After receiving written notification of a defect, fault, or failure pursuant to subdivision (a), the Secretary of State shall notify the United States Election Assistance Commission or its successor agency of the problem as soon as practicable so as to present a reasonably complete description of the problem. The Secretary of State shall subsequently submit a report regarding the problem to the United States Election Assistance Commission or its successor agency. The report shall include any report regarding the problem submitted to the Secretary of State.

State of California

ELECTIONS CODE

Section 19210

19210. (a) A person, corporation, or public agency owning or having an interest in the sale or acquisition of a voting system or a part of a voting system may apply to the Secretary of State for certification that includes testing and examination of the applicant's system by a state-approved testing agency or expert technicians and a report on the findings, which shall include the accuracy and efficiency of the voting system. As part of its application, the applicant shall notify the Secretary of State in writing of any known defect, fault, or failure of the version of the hardware, software, or firmware of the voting system or a part of the voting system submitted. The Secretary of State shall not begin his or her certification process until he or she receives a completed application. The applicant shall also notify the Secretary of State in writing of any defect, fault, or failure of the version of the hardware, software, or firmware of the voting system or a part of the voting system submitted that is discovered after the application is submitted and before the Secretary of State submits the report required by Section 19213. The Secretary of State shall complete his or her certification process without undue delay.

(b) The Secretary of State shall publish and make publicly available on his or her Internet Web site a quarterly report of regulatory activities related to voting systems.

(c) As used in this article:

(1) "Defect" means any flaw in the hardware or documentation of a voting system that could result in a state of unfitness for use or nonconformance to the manufacturer's specifications or applicable law.

(2) "Failure" means a discrepancy between the external results of the operation of any software or firmware in a voting system and the manufacturer's product requirements for that software or firmware or applicable law.

(3) "Fault" means a step, process, or data definition in any software or firmware in a voting system that is incorrect under the manufacturer's program specification or applicable law.

(Added by renumbering Section 19202 by Stats. 2013, Ch. 602, Sec. 14. (SB 360) Effective January 1, 2014.)