

To:

Joe Brazil
Matt Swanson
Mike Elam
Nancy Schneider
David Hammond
Terry Hollander
Tim Baker
Steve Ehlmann
Kurt Bahr

Re: Responses to Monday's council meeting

The gaslighting by the St. Charles Co election director Kurt Bahr at the council meeting January 29th, 2024 and in his follow up email was astounding. However, this is simple. Here in Missouri, rule of law prevails, - and NOT Director Kurt Bahr's erroneous, unfounded rendition of it.

There's a lot to dissect here, and unfortunately all of Director Bahr's rhetoric word-salad given at the council meeting and in this email to the council can only be countered with the law. So, bear with me, I'm providing a lot of information here. All of which your understanding is fundamental to our elections. Clearly the St. Charles County Director of elections isn't familiar with these fundamental requirements, so it's imperative that you are.

The Help America Vote Act (HAVA) was codified into law in MO in HB511 (2003). Making adherence to the program's procedural requirements mandatory for participants.

In response to HAVA, the EAC has developed the voting system standards in the form of the [Voluntary Voting System Guidelines](#) (VVSG), a voting system certification program in the form of the [Voting System Testing and Certification Program Manual](#) (TCPM), and the [Voting System Test Laboratory Manual](#) (VSTL). Making compliance to ALL mandatory.

Once Missouri codified HAVA into law it began receiving Federal HAVA funds for federal elections and electronic voting systems.

1) I'd like to first address the fact Director Kurt Bahr says Henry Adkins & Sons is NOT a voting system test laboratory (VSTL) "*Neither the vendor Henry M. Adkins & Son or Unisyn, the manufacturer, are laboratories and thus they do not have these certifications.*"

However, in his own words in the bid presented by Director Bahr he states Henry M. Adkins & Son will be testing.

Description (product/service, justification and use):

Provide Election Services prior to and including election dates. Print Ballots. Provide operational support and maintenance of voting equipment. **Assist in testing and programming the software necessary to administer elections.** Provide support for Public Testing and on Election Day. Assist in the tabulation of ballots using voting equipment and tabulation flash drives. Troubleshoot and provide remedies to voting equipment issues. Provide election results and canvassing documentation for Election Night Reporting website and SOS reporting. This is a continuation of existing services.

Director Bahr also states he "does not know why members of the public thought that the vender, Henry M. Adkins & Son should" have accreditations. Here's why Director Bahr, because the MANDATORY guidelines of the EAC Testing and Certification Program Manual say so. THAT'S WHY.

[Cert Manual 7 8 15 FINAL.pdf \(eac.gov\)](#)

2.19.1 Testing Independence. "

Consistent with the requirements of this Manual, only the lead VSTL identified on a voting system's application form may test or oversee the testing of that system. Under no circumstances may a Manufacturer perform or participate in any testing which will serve as the basis of an EAC certification. Participation includes but is not limited to the observation of testing by the Manufacturer. Additionally, lead VSTL's shall ensure that manufactures' do not have access to a system under test unless accompanied and monitored by a VSTL representative. The EAC recognizes that in some cases there is value in allowing manufacturers to witness a particular test or a re-creation of a test in order to allow them to comment on the proper system set up or operation. However, any such participation must be (1) at the discretion of the VSTL, (2) supervised by the VSTL and (3) clearly documented in order to maintain laboratory independence."

Director Bahr pointed out that Henry Adkins & Sons is not a laboratory, but is a vendor hired by the manufacturer Unisyn, who in turn, is being allowed access to our voting systems which is in direct violation of EAC policy 2.19.8 for Improper Influence.

2.19.8. Improper Influence.

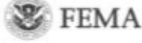
"Any attempt by a Manufacturer to unduly influence the test process shall be immediately reported to the EAC's Certification and Testing Program Director."

The Help America Vote Act (HAVA) of 2002 requires all voting systems only be tested by a "federally accredited laboratory." The Election Assistance Commission (EAC) is responsible for accrediting such laboratories. If non-federal entities that conduct Independent Verification and Validation (IV&V) have not received EAC accreditation, it could be seen as a failure of the state to uphold federally regulated standards.

2) Secondly, Director Bahr's email stated, "I talked about the issue of the EAC not doing their paperwork correctly between 2017-2019". Bahr then attached a "[memo](#)" from the EAC. This is a letter from the EAC asserting Covid-19 as the reason Pro V&V failed to maintain accreditation, even though their accreditation expired in 2017. Yet, our election director views this as acceptable?

To further not pass the sniff test, the CDC reported the first case of COVID-19 in the United States on January 20, 2020. FEMA announces President Trump declared a national emergency March 13, 2020. This could not have hampered, interfered, or delayed the re-certification accreditation of any EAC Laboratories. Yet this is blindly accepted also, because someone else said it was ok.

An official website of the United States government
[Here's how you know](#)



1 Archived Content. This page contains information that may not reflect current policy or programs. [Learn more](#)

President Donald J. Trump Directs FEMA Support Under Emergency Declaration for COVID-19

English Español

Release Date	Release Number
March 13, 2020	HQ-20-017

Release Date: March 13, 2020

The federal government continues to take aggressive and proactive steps to address the COVID-19 threat as the health and safety of the American people remain a top priority.

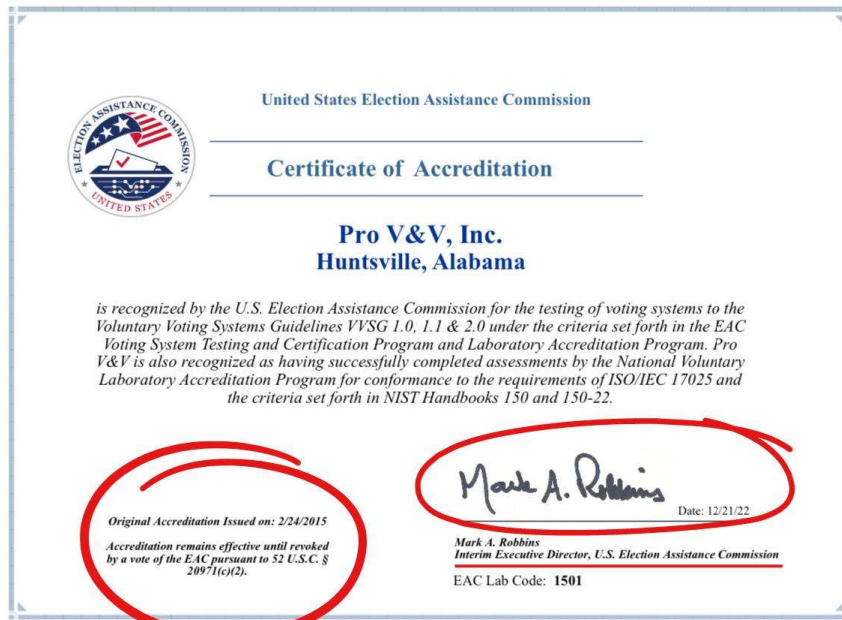
Today, President Trump declared a nationwide emergency pursuant to Sec. 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"). This increases federal support to the Department of Health and Human Services (HHS) in its role as the lead federal agency for the ongoing COVID-19 pandemic response. As a result of the President's decisive, unprecedented action, FEMA is directed to assist state, local, tribal, territorial governments and other eligible entities with the health and safety actions they take on behalf of the American public. Today's declaration does not make direct financial assistance available to individuals.

Exhibit 18

In paragraph (4) of the "memo" provided by Director Bahr, the EAC reports "the Testing & Certification program has been fully staffed since May 2019, and we are confident that the integrity of the labs and our voting system certification programs has remained strong throughout." "Confidence" does not equate to a valid Certification of Accreditation for election security and integrity, and should not be acceptable to anyone that is actually looking into this. Much less the director of our elections.

3) Lastly, Director Bahr also provided in the email to the Council this link to Pro V&V stating this was the laboratory used for testing/certifying Unisyn voting systems used in St. Charles County.

<https://www.eac.gov/voting-equipment/voting-system-test-laboratories-vstl/pro-vv#:~:text=Pro%20V%26V%20was%20accredited%20by%20the%20EAC%20on%20February%2024%2C%202015>



So again, going back to the rule of law, this isn't a valid certificate of accreditation. Why is it being accepted as such?

(VSTL MANUAL) ver. 2.0 (Voting System Test Laboratory Program Manual)

3.6.1. Certificate of Accreditation: "A Certificate of Accreditation shall be issued to each laboratory by vote of the Commissioners. The certificate **shall** be signed by the **CHAIR of the Commission** and state:"

3.6.1.3. The effective date of the certification, which shall not exceed a period of two (2) years;" (emphasis added)

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."

As you can see, this accreditation is NOT compliant with the voting system standards that are MANDATORY in Missouri because we codified HAVA into law.

Although the EAC claims the laboratories have received accreditation and provided certificates, the latest certificate of accreditation for Pro V & V is not signed by the CHAIR of the Commission per EAC policy.

On the above certificate for Pro V & V, Mark A. Robbins, Interim Executive Director, signed the accreditation, NOT the Chairman of the EAC as mandated.

Additionally, **3.8. Expiration and Renewal of Accreditation.**

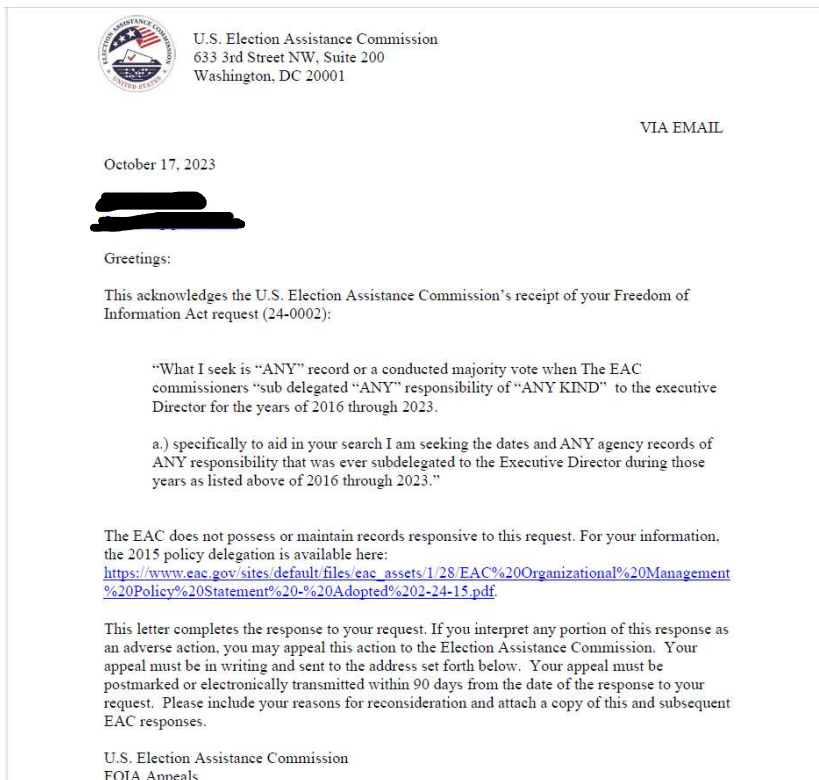
"A grant of accreditation is valid for a period not to exceed two years. A VSTL's accreditation expires on the date annotated on the Certificate of Accreditation. VSTLs in good standing shall

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.”

This significant departure from strict adherence to their administrative policy (two-year expiry of accreditation) was not covered by any press release, memo or opinion posted to their website or the Federal Register prior to the November 2020 election. I also could not find any documented notice and comment process for this change from the original implementation of the 2-year expiry policy. Which would be required in a legal rule change.

Another change that was made without legal rule-making authority being the signature. It was not signed by the Chairman of the Commission, but the Executive Director. It is important to note none of the VSTL manual requirements have changed. Sec. 3.6.1.3 **still states**, “The effective date of the certification, which shall not exceed a period of two (2) years;” and Sec. 3.6.1. **still states**, “A Certificate of Accreditation shall be issued to each laboratory accredited by vote of the Commissioners. The certificate shall be signed by the Chair of the Commission.” However, it somehow became acceptable to bypass the commission all together, much less meet their own requirements of the Chairman signing specifically.

A recent FOIA request to the EAC confirms that there was never any chairman duties ever subdelegated to the executive director.



Additionally, the rules in the manual that clearly define expiration as every two years, and the Chairman as the only signing authority, has been published on August 25, 2008, in the Federal Register (<https://www.federalregister.gov/documents/2008/08/25/E8-19064/procedural-manual-for-the-election-assistance-commissions-voting-system-test-laboratory-program>) and underwent the public notice and comment process. After the 2020 election, when it surfaced that VSTL accreditation's had expired - the EAC issued opinions and memos about the VSTL accreditations being just fine (nothing to see here, move along) and according to the Chevron deference doctrine, a court needs to give higher priority to the manual, over the later issued opinions and memos which did not undergo any notice and comment process and has no force of law. The EAC purported to change the rules and delete the expiration concept via issuance of "[Notice of Clarification NOC 21-01](#)"

The Notice of Clarification NOC 21-01 is unsatisfactory under the law to suffice as a rule change. However, the EAC continues to use it to manufacture justifiable reasoning for not renewing a VSTLs accreditation and essentially removing them from public accountability.

This clarification, made by the EAC, boldly replaces pertinent aspects of the rules regarding VSTLs. These are not a de minimis change. This "edit" as well as any changes this agency makes, must go through the proper oversight required by law.

5 U.S.C. § 553 (2012) Rule Making (b) "General notice of proposed rulemaking shall be published in the Federal Register..."

(b) "General notice of proposed rulemaking shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice;"

This NOC 21-01 letter is neither a clarification nor an interpretation of a current rule. By the EAC's own words, it's a replacement. They change the foundation of the expiration rule and replace it with "reassessment" and insert the revocation excuse that Congress intended to be regarding a NIST recommendation, as it very specifically states in HAVA 2002. 52 U.S.C. Title II, Subtitle B, § 20971 (c)

This impromptu rule change was not rendered under any formal process, in fact, there has not been an official publication on the Federal Register for a Voting System Test Laboratory Program Manual since the original version was posted in 2008. Therefore, nothing has legally changed, including the REQUIREMENTS for the labs to have a certificate of accreditation signed by the Chairman of the Commission, with a two-year expiry date.

5 U.S.C. § 552 (a)(1) (C)(D)(E) "Public information; agency rules, opinions, orders, records, and proceedings

- (a) Each agency shall make available to the public information as follows:
- (1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public;
 - (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
 - (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and
 - (E) each amendment, revision, or repeal of the foregoing.”

The “Effective Through” date was also removed altogether from the accreditation certificates. Then, after the public became aware of this massive discrepancy, and under “color of law,” the EAC began adding **52 U.S.C. § 20971 (c) (2)**, to the accreditation certificates to obfuscate these discrepancies. Stating that “an accreditation remains effective until revoked by a vote of the Commissioners pursuant to 52 U.S.C. § 20971 (c) (2)”. This is referring to a revocation process. Furthermore, one cannot “revoke” something that is expired, or not legal to begin with. It must be a valid certificate to revoke.

52 U.S. Code § 20971(c)(2) is not applicable to VSTL v. 2.0 Manual 3.6.1.3 and the effective date of the accreditation EXCEEDED the period of two (2) years. Further, as I have previously shown, in HAVA, 52 U.S.C. § 20971 (c) (2) is for the express purpose of requiring a vote be taken by the Commission to REVOKE a NIST recommendation. It is not (to be twisted into an authoritarian use of the law to violate the law as well as their own policies.) Nor is it to be used to continue re-dating accreditation certifications as many times as they would like or avoid reviewing applications for renewal. Words matter. There is a difference between “revoked” and “expired” accreditation. (Expiration of the laboratory accreditations occurred far before the EAC invoked 52 U.S.C § 20971 (c) (2)).

Consider a driver's license. It has a definite expiration date. Separate from that expiration date, it can also be revoked. A revocation, however, is a separate action from the renewal of any license.

In an expiration situation, there's a valid agreement between the parties, or a license of sorts that has an automatic termination or cessation date. Expiration automatically ends the relationship after a certain date, but revocation would happen before any expiration date, normally due to some kind of violation.

“Words do have a limited range of meaning, and no interpretation that goes beyond that range is permissible.” --Antonin Scalia, From 1995 speech at Stanford University

MO law assigns all decision-making authority governing the administration of the SCC election to the county election authority. Kurt Bahr is our election director.

What level of confidence can the SCC voters place in him as qualified to carry out this most critical job?

Bahr continues to demonstrate he is uneducated about MO laws governing elections, unaware of the scope of his duties as SCC election authority, and extremely careless and thoughtless in his communications.

Now, you have approved another \$650k to aide Director Bahr in continuing to administer SCC elections outside of the scope of law.

In addition, I would point out that by the county executive's own admission, the bid in question was already signed by him prior to council's approval. Is this the way we do business in St. Charles County? I'd like to add this to the agenda at the next council meeting.

What else is being hid from the people of St. Charles County?

Sincerely,

Ali Graeff

NoMOfraud.com

cc: A copy of this has been sent via certified mail to all recipients