New York State Senate Standing Committee on Elections
Senator Joseph Addabbo, Jr., Chair
Hearing, Friday October 9, 2009, New York City

Statement by Teresa Hommel, Chairwoman,
Task Force on Election Integrity, Community Church of New York

Paper Ballots – Promise or Peril?

On July 4, 1962, the New York Times reported that New York City's Board of Estimate would decide soon whether to appropriate the $4 million needed by the Board of Elections to purchase new voting machines. James M. Power, president of the Board of Elections, had previously declared that if the money were not appropriated on June 30, it would force the use of paper ballots.[1]

Money was appropriated, and on August 11, the New York Times reported that although none of the new machines would be delivered in time for the Sept. 6 primary, Mr. Power had reassured Mayor Wagner that Shoup would lend the city 800 voting machines for use in the primary. The Mayor reiterated his demand that sufficient voting machines be available to avoid any use of paper ballots. Mr. Power emphasized that "paper ballots, if used at all, will be used only in a few emergency situations, and it is our real hope that paper ballots will not be used."[2]

Paper ballots are not a magical totem that ensures proper elections. Rather, paper ballots can invite fraud or prevent it, depending on how they are used. The deciding factors are openly-conducted, fair procedures and continuous presence of observers who represent all stakeholders.[3]

Aimee Allaud, Elections Specialist, New York State League of Women Voters, stated recently[4]:

"We advocated for the paper ballot-ballot marker-scanner system because with rigorous procedures and citizen oversight it is effective in ensuring both access and accuracy."

The problem New York State faces now, in regard to paper ballots, is that our law does not mandate rigorous procedures and the openness needed to allow citizen oversight. This problem is related to our state's current economic crisis, our forecasted $2 billion deficit this year, and $18 billion deficit in 3 years. The problem is also related to the increased burdens that rigorous procedures and openness would place on election officials, political campaigns and parties.

---

[1] "Board of Estimate to Act Friday On Buying 2750 Vote Machines," By Paul Crowell, The New York Times, July 4, 1962, page 29. Available at http://www.wheresthepaper.org/NYT1962_07_04.pdf
[2] "Vote Machines Bought by City," The New York Times, August 11, 1962, page 42. Available at http://www.wheresthepaper.org/NYT1962_08_11.pdf
[3] "Voting on Paper Ballots", Part of the Voting and Elections web pages by Douglas W. Jones, The University of Iowa, Department of Computer Science.http://www.cs.uiowa.edu/~jones/voting/paper.html
[4] Statement made at a forum conducted by the New York State Association of Counties on September 17, 2009.

If New York could offer every county a stipend of $2 or $3 for every paper ballot cast, along with the requirement that all voted ballots be hand-counted immediately upon close-of-polls before observers, we would have no problem at all. The cost of hand-counting is somewhat less than $2 or $3 per ballot, so counties would make a modest profit on their hand-count operations. The stipend would pay for overhead projectors and screens at each poll site so observers could see each ballot as it was counted. The stipend would pay for microphones to be worn by each of the counters, so that observers could hear their conversation as they proceeded with the count.

Instead, our counties say they cannot afford to hand-count more than the minimum, state-required, flat 3% audit, and no county is inviting observers to stay with the paper ballots to prevent opportunity for tampering, or actual tampering, or suspicion and allegations of tampering.

Our paper ballots will be removed from public view at close-of-polls just like in dictatorships or boss-run jurisdictions such as Tammany Hall. After as many as fifteen days some ballots will reappear for a 3% hand-count. As other witnesses at this hearing have explained, even if the ballots will be continuously observed between close-of-polls and the hand-count audit, the flat 3% hand-count will not be sufficient to confirm that scanner-identified winners are actually the winners.

Why did citizens lobby for paper ballots and optical scanners?

New York passed ERMA, the Election Reform and Modernization Act, in July, 2005. ERMA required our counties to choose between DREs ("Direct Recording Electronic" voting machines, sometimes called "touchscreens") and voter-marked paper ballots with precinct-based optical scanners. Many people expected New York to become a "DRE state." Given ERMA's requirement, many citizens, including me, lobbied hard for the paper ballot and scanner choice.

We lobbied for paper ballots and scanners because with touchscreen-style electronic voting, no one can ever know if the votes are recorded correctly or not. The screen display, and the paper trail[5] if there is one, do not guarantee that the votes are accurately recorded in computer memory. At least with voter-marked paper ballots there is an authentic record of the voters' intent -- at least it's authentic until the ballots leave observers' view.

> *Josef Stalin: "It's not who votes that counts, it's who counts the votes!"*
> *Anastasio Samoza, Nicaragua: "You won the vote, but I won the count."*
> *Boss Tweed, New York: "As long as I count the votes, what are you going to do about it?"*

Paper ballots that leave public view, and unobservable vote-counts, have a long, well-known history of use by dictators and political bosses. Methods of preventing fraud via public procedures and citizen oversight are also well known. This is why New York's current inadequate laws concerning the handling of paper ballots are a red flag.

---

[5] Paper trails were a theoretical solution to the problems with DREs, but in practical reality the idea failed for several reasons. http://www.wheresthepaper.org/VVPAT_Idea_Failed.pdf The use of DREs nationwide fell from almost 50% in 2004 to 33% in 2008. [5] http://www.electiondataservices.com/images/File/NR_VoteEquip_Nov-2008wAppendix2.pdf

Aimee Allaud, speaking for the League of Women Voters, also said on September 17 that ...newer technology can provide better verifiability..." Yes, potentially it can, but it is clear that in fact it will not -- because of New York's economic difficulties and our law's current inadequacies. We should not replace our lever voting machines, which are easily, simply, and inexpensively secured, based on a potential that will not be realized.

Some people have urged that we should replace our lever machines now, and worry about securing the paper ballots, and adequately auditing the scanners, in a few years. This is like getting on a ship that has holes in the bottom, because the skipper says in a few years he'll be able to afford to fix them. If and when that ship sails, we can expect a tragedy.

Computers need software-independent audits.
Lever machines need somebody to look in the back.
Electronic and mechanical systems have different vulnerabilities & security requirements.

New Yorkers for Verified Voting (NYVV) and the League of Women Voters of New York State have claimed that lever machines "do not meet current standards for voting systems" and do not have the "higher level of … accountability " that optical scanners offer.[6]

They are wrong. By "current standards" they simply mean "computer standards"[7] but it is inappropriate to apply computer standards to non-computerized machines, whether we are talking about voting machines or any other.

---

[6] "Do Lever Machines Provide a Better Voting System for Democracy? February 9, 2009 www.nyvv.org/newdoc/2009/LWVNYVV_LeverStatement020909.pdf

[7] The issue of "current standards" is problematic for the League of Women Voters of the United States ("National League"). Their position on electronic voting was approved by their 2006 national convention, but more recently the National League simply, without proper procedure required by their own rules, selectively quoted--*and changed the meaning of*--that position, which was written to oppose touchscreen voting machines without a paper trail. The 2006 convention approved the following language:

> . . .
>
> Whereas: Paperless electronic voting systems are not inherently secure, can malfunction, and do not provide a recountable audit trail,
>
> Therefore be it resolved that: The position on the Citizens' Right to Vote be interpreted to affirm that LWVUS supports only voting systems that are designed so that:
>
> 1. they employ a voter-verifiable paper ballot or other paper record, said paper being the official record of the voter's intent; and
>
> . . .

This wording was in reaction to the National League's 2004 and pre-2004 positions supporting unauditable touchscreen voting machines without a paper trail. By dropping the "Whereas" clause in a publication in January, 2009, the National League improperly changed the meaning of the 2006 convention's work and made it appear to demand a paper trail or paper ballot for all voting.

I myself was a member of the groups that worked in 2004 and 2006 to wean the League of Women Voters of the United States away from their support for paperless touchscreen voting machines. I attest from my personal, direct knowledge that no one foresaw or intended that the 2006 position would be applied to non-electronic voting systems such as mechanical lever machines.

- Computers are controlled by software, which no one can see. Unlike lever voting machines, which have large, easily-visible rods and gears, you can't just look in the back of a computer and see whether it is programmed correctly.

- Unlike mechanical programming, software programming can produce unexpected errors, even after it passes all its tests prior to elections. That's why computer results require "software independent" verification - in other words, that's why paper ballots counted by scanners need to be audited by hand-counts after each election.

- Lever machines can be "audited" more simply than computers, since programming errors and tampering can be detected by looking inside a lever machine, and by simple mechanical tests.

Let's Apply Lever Machine Standards To Scanners

1. We can't open the back of a scanner and see that the ballot programming is correct.

2. Our counties can't afford the statistically-significant hand-count audits that scanners need, and don't want citizen observers to remain with the ballots to secure them between close-of-polls and the state-mandated 3% audit.

3. The scanners won't last another 100 years with low-cost maintenance, and scanner replacement will probably begin soon after the state-mandated 5-year warrantee expires.

Conclusion

This is the wrong time to switch to expensive new equipment that our state and our counties cannot afford.

New York should not begin to use new technology before our laws and county procedures are in place to secure the paper ballots via continuous observation, and secure the vote-count via statistically-significant audits.

I urge this committee to work for the easiest and most affordable solution available to us at this time – keep our lever voting machines.

# # #