BOARD OF ELECTIONS
IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004–1609
(212) 487–5300
FAX (212) 487–5349
www.vote.nyc.ny.us

AGENDA
COMMISSIONERS' MEETING
TUESDAY, DECEMBER 1, 2009
AT 1:30 P.M.

1. Minutes
   a) 11/17/09

2. Marcus Cederqvist
   a) HAVA Update
   b) LAP Advisory Group Meeting – Monday, December 7, 2009 at 1:30 PM

3. Steven H. Richman
   a) Discussion of Proposed Petition Rules Modifications

4. John Ward
   a) Comparative Expenditures

For Your Information

- Demos.org: News Alert – Federal Court Lawsuit Settlement Brings Ohio Into Compliance with National Voter Registration Act
- HAVA Weekly Status Report, Week Ending November 26, 2009
- Prepared Testimony at New York State Assembly Election Law Committee Hearing – October 22, 2009

News Items of Interest

- *Ithacajournal.com:* New N.Y. Voting System Raises Privacy Concerns
- *Gouverneur Times:* First the Impossible, Now the Improbable, in NY-23
- *Gouverneur Times:* Hoffman Will Not Challenge Election
- *New York Newsday:* Nassau Needs Machines for Election
- *New York Newsday:* Mangano Ahead by 213
- *New York Newsday:* Suozzi Trails Mangano by 160
- *New York Newsday:* Suozzi Narrows Mangano's Lead to 122

Board of Elections
in the City of New York
32 Broadway, 7th Floor
New York, NY
10004-1609

MEDIA ADVISORY

FOR IMMEDIATE RELEASE

For more information, contact:

Valerie Vazquez, Director of Communications and Public Affairs
(212)-487-5404; FAX (212) 487-2426 vvazquez@boe.nyc.ny.us

Board of Elections in the City of New York to hold a meeting of the Chinese and Korean Language Assistance Program Advisory Groups

What:

The Board of Elections in the City of New York has created Advisory Groups to determine how most effectively to provide election materials, information, and assistance to Chinese and Korean American voters and to publicize the City's language assistance programs. Individuals or groups interested in joining the Chinese Advisory Group should call Joanne Liu at 212-487-5462 and those interested in joining the Korean Advisory Group should call Rose Ham at 212-487-5318.

When:

Monday, December 7th, 2009 at 1:30 P.M.

Where:

6th Floor Hearing Room, 42 Broadway, New York, NY 10004

紐約市選舉局
紐約州，紐約市
百老匯街32號，7樓

媒體通告

即時發佈

若需更多信息，請聯係：

公關主任：Valerie Vazquez
電話：(212)-487-5404；傳眞：(212) 487-2426
電郵：vvazquez@boe.nyc.ny.us

紐約市選舉局將舉行中文/韓文語言協助計劃協商團體會議

內容：

紐約市選舉局設立協商團體來確定如何最有效地向華人選民和韓裔選民提供選舉資料、信息、和幫助，以及宣傳紐約市的語言協助計劃。有興趣參加中文語言協助計劃協商團體的個人和團體請聯係 Joanne Liu。電話： 212-487-5462。有興趣參加韓文語言協助計劃協商團體的個人和團體請聯係 Rose Ham。電話：212-487-5318。

時間：

2009年12月7日，星期一下午1:30

地點：

百老匯42號6樓，紐約，紐約10004

자문단 홍보

뉴욕시
선거 관리 위원회
32 Broadway, 7th Floor
New York, NY 10004

즉시 공고할 것

더 자세한 내용은 아래로 연락 하십시오:

홍보 업무 국장, 발레리 바스케즈 (Valerie Vazquez)
(212)-487-5404; FAX (212) 487-2426 vvazquez@boe.nyc.ny.us

뉴욕시 선거 관리 위원회는 아래와 같이 중국어 와 한국어 보조 프로그램 자문단 모임을 실시 합니다

취지

언어 보조 프로그램 자문 구룹 의 목적은 미국의 중국인 과 한국인 유권자 들에게 모든 선거 자료, 정보 와 보조를 최고로 효율적으로 전달하자는 취지 와 뉴욕시의 언어 보조 프로그램 을 널리 선포 하자는데 있습니다. 중국어 자문 구룹에 참가를 원하시는 개인이나 단체는 죠앤 류(Joanne Liu) 의 (212) 487-5462 로 전화 하시고, 한국어 자문 구룹에 참가를 원하시면 로즈 함 (Rose Ham) 의 (212) 487-5318 로 전화 하십시오.

날짜

2009 년 12 월 7 일, 월요일 오후 1 시 30 분

장소

42 브로드웨이(Broadway), 6 층 히어링 룸(hearing room), 뉴욕, 뉴욕 10004

BOARD OF ELECTIONS
IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004–1609
(212) 487–5300
www.vote.nyc.ny.us

DATE: December 1, 2009
TO: Commissioners

FROM: John J. Ward
Finance Officer

RE: Comparative Expenditures

FY10	P.S. Projection through 11/27/09 Payroll:	$ 7,918,000
FY10	P.S. Actual through 11/27/09 Payroll:	$13,459,495
	Difference	($ 5,541,495)

Overtime pays two weeks ending 11/13/09

OVERTIME USAGE

General Office		85,079
Brooklyn		123,470
Queens		81,506
Bronx		56,675
New York		106,011
Staten Island		13,973
	Total	$466,713

Respectfully submitted,

Finance Officer

Com Mty Fyi

Steven H. Richman

From: demosmail@bonded4.cooleremail.net on behalf of Democracy Dispatches [updates@demos.org]
Sent: Monday, November 30, 2009 3:10 PM
To: Steven H. Richman
Subject: Lawsuit Settlement Brings Ohio Into Compliance with Federal Voter Registration Law

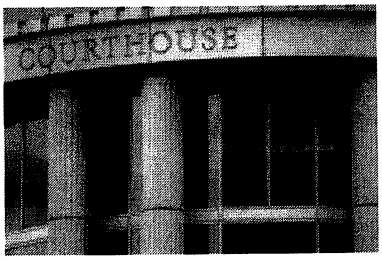
Demos DEMOCRACY DISPATCHES

DEMOS.ORG | PAST UPDATES | CONTACT | SUPPORT | SUBSCRIBE | VIEW ONLINE NOVEMBER 30, 2009

NEWS ALERT

Federal Court Lawsuit Settlement Brings Ohio Into Compliance with National Voter Registration Act

Hundreds of Thousands of Low-Income Ohioans to Benefit



Cleveland, OH--Low-income Ohio citizens will be ensured access to voter registration at Ohio public assistance offices as a result of a **settlement agreement** submitted to Federal District Court Judge Patricia A. Gaughan over this past holiday weekend.

The settlement successfully resolves a three-year old lawsuit filed against the Ohio Secretary of State (SOS) and the Director of the Ohio Department of Job and Family Services (ODJFS) in September 2006 by Lorain resident Carrie Harkless, Cleveland resident Tameca Mardis, and the Association of Community Organizations for Reform Now (ACORN) charging widespread violations of the federal National Voter Registration Act (NVRA). Section 7 of the NVRA requires public assistance agencies to provide voter registration opportunities to their clients.

"As a result of the steps the Secretary of State and ODJFS Director will take, we expect hundreds of thousands of voting-eligible low-income Ohioans to be registered to vote," said **Lisa Danetz**, Senior Counsel in the **Democracy Program** at Demos and co-lead counsel for the plaintiffs.

"We applaud the integration of voter registration into agency processes as well as the planned monitoring of the county public assistance offices."

The case was filed in the United States District Court for the Northern District of Ohio, and after a decision by the Sixth Circuit Court of Appeals, the case returned to the district court where it settled after extensive fact discovery. The Court of Appeals decision established an important precedent that state officials have ultimate responsibility for compliance with this federal law, even when local agencies also have day-to-day responsibility for administering public benefits programs.

"This settlement is good news for all citizens in Ohio and especially the low income communities we serve. The fact that the state of Ohio will honor its duty under the law by assisting people to register to vote when they are in government offices will help more citizens become voters," said Mary Keith, a member of Ohio ACORN's Board of Directors.

"Across the country, the people least likely to be registered to vote are those from low-income households," said Teresa James, Election Counsel for Project Vote. "Our hope is that other states that have been ignoring the NVRA will not wait to be sued to fulfill their obligations to these millions of unregistered Americans."

"We are delighted to have worked with our co-counsel and Ohio officials to ensure that Ohio citizens receiving public

assistance will be afforded a greater opportunity to register to vote and participate in the democratic process," said Neil Steiner, a partner at Dechert LLP.

The groups have filed similar lawsuits in Indiana and New Mexico, and in 2008 **successfully settled a lawsuit** in Missouri that has led to a vast increase in voter registration applications submitted at the state's public assistance offices. In fact, agency-based registrations in Missouri skyrocketed from 8,000 a year to more than 100,000 in just eight months after the court-ordered settlement. It is estimated that proper implementation of the NVRA's public assistance provisions nationwide could result in 2-3 million additional voter registrations per year.

The plaintiffs in the Ohio case are represented by Demos, the Lawyers' Committee for Civil Rights Under Law, Project Vote, Dechert LLP and Cleveland attorney Donna Taylor Kolis of Freedman, Domiano & Smith.

Read More...

For news, research, and on-going litigation on the National Voter Registration Act, click here.

State of New York
STATE BOARD OF ELECTIONS

40 STEUBEN STREET
ALBANY, N.Y. 12207
Phone: 518/474-6367 Fax: 518/486-4546
website: www.elections.state.ny.us

November 27, 2009

Honorable Gary L. Sharpe
United States District Court
for the Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, New York 12207

Re: *United States v. New York State Board of Elections, et al.*
Civil Action No. 06-CV-0263 (GLS)

Dear Judge Sharpe,

We enclose herewith Status Report of the Defendant New York State Board of Elections for the week ending November 26, 2009.

Respectfully submitted,

s/_____
Kimberly A. Galvin (505011)
Special Counsel

s/_____
Paul M. Collins (101384)
Deputy Special Counsel

HAVA COMPLIANCE UPDATE
Activities & Progress for the Week of 11/20/09 -11/26/09

Following is a detailed report concerning the previous week's progress in implementing the terms of the Court's Orders.

PLAN A

Overall Compliance Status Summary

Overall, activities and progress toward HAVA compliance are on schedule with the revised timeline.

Contracting with Voting System Vendors

Status of tasks in this category: on schedule

- OGS is working with Dominion and ES&S on their most recent regular add requests.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: on schedule

- Overall progress of testing :
  - NYSTEC & SBOE had a meeting to set the schedule for the final stages required for certification, so that at the December 15th Board Meeting the Board has all the information it needs tovote on certification.
  - SysTest delivered it final test report and testing documents to SBOE. SBOE, SysTest and NYSTEC spent the week reviewing the final test reports.
  - SBOE, SysTest and NYSTEC met with Dominion this week to discuss the reports. Similar meetings are scheduled for ES&S at the beginning of next week.
  - Reports will be provided to CEMAC on December 4, and they will be meeting with SBOE and NYSTEC on December 7th to review the testing documents and reports.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: on schedule

- Acceptance Testing is continuing on the balance of Dominion machines.
- SBOE and the DOJ have discussed the fact that there are still two counties that have not ordered the balance of machines required for 2010 compliance.

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

NYCBOE responded to the SBOE inquiry. SBOE is formulating a strategy to move forward and has advised the Department of Justice of the City Board's response and will be discussing the matter with the DOJ on their next status call.

Comm Mts
PY1

ASSEMBLY STANDING COMMITTEE ON ELECTION LAW
ASSEMBLY STANDING COMMITTEE ON EDUCATION
ASSEMBLY STANDING COMMITTEE ON LIBRARIES AND EDUCATION TECHNOLOGY
SUBCOMMITTEE ON ELECTION DAY OPERATIONS AND VOTER DISENFRANCHISEMENT

PUBLIC HEARING
NEW YORK CITY
THURSDAY
OCTOBER 22, 2009
10:30 AM
ASSEMBLY HEARING ROOM
250 BROADWAY
ROOM 1923, 19TH FLOOR

WITNESS LIST

1.	Mr. Robert Brehm	Co. Executive Director	NYS Board of Elections
2.	Ms. Virginia Martin	Democratic Commissioner	Columbia County BOE
3.	**PANEL**		
	Mr. Marcus Cederqvist	Executive Director	NYC Board of Elections
	Mr. George Gonzalez	Deputy Executive Director	NYC Board of Elections
	Ms. Pamela Perkins	Administrative Manager	NYC Board of Elections
	Mr. Steven Richman	General Counsel	NYC Board of Elections
4.	Mr. Bernard Margolis	State Librarian	NYS Library
5.	Ms. Adrienne Kivelson	Election Specialist	League of Woman Voters
6.	**PANEL**		
	Ms. Andrea Novick	Attorney	Election Transparency
	Ms. Nina Reznick	Attorney	
	Mr. Howard Stanislevic	Founder	E-Voter Education Project
	Ms. Teresa Hommel	Chairwoman	Task Force on Election Integ.
	Ms. Marjorie Gersten		Wheresthepaper.org
	Ms. Allegra Dengler	Chair	Citizens for Voting Integrity
	Ms.Catherine Skopic	Private Citizen	Activist

ASSEMBLY STANDING COMMITTEE ON ELECTION LAW
ASSEMBLY STANDING COMMITTEE ON EDUCATION
ASSEMBLY STANDING COMMITTEE ON LIBRARIES AND EDUCATION TECHNOLOGY
SUBCOMMITTEE ON ELECTION DAY OPERATIONS AND VOTER DISENFRANCHISEMENT

NOTICE OF PUBLIC HEARING

SUBJECT: Administration of Elections in New York State in compliance with the federal Help America Vote Act.

PURPOSE: To examine the impact of the enacted 2009-10 State Budget on New York State's implementation of the Help America Vote Act on the State Board of Elections, local boards of elections and other public entities that conduct elections, such as school districts, public and association libraries and fire districts.

NEW YORK CITY
Thursday
October 22, 2009
10:30 AM
Assembly Hearing Room
250 Broadway
Room 1923, 19th Floor

In 2005, New York enacted legislation implementing the federal Help America Vote Act (HAVA). Since then, among other actions taken, the State Board of Elections (BOE) has: (1) created a statewide database of registered voters; (2) overseen local boards of elections' placement of one handicap accessible voting system in each poll site; (3) established a program to distribute funds to counties for improving poll site accessibility; (4) promulgated various regulations to implement HAVA, including voting machine regulations for acceptance testing and certification testing; and (5) created a statewide core curriculum for training poll workers and educating the public about the transition to and use of new voting machines and systems that meet HAVA requirements. The BOE is also currently testing the optical scan voting machines that counties have selected to replace the current lever machines.

In September, 2009, many counties outside of the New York City metropolitan area participated in a pilot program testing the optical scan voting machines that will be used statewide beginning in September, 2010. This pilot program will provide information as to how the new voting systems will impact poll site configuration, the number of poll workers needed and other issues relevant to the administration of elections. Of particular concern to boards of elections are the fiscal and human resources necessary to run an election with the new voting systems.

Upon statewide implementation of the new voting systems, the use of lever machines will be banned in New York State, affecting the administration of elections in school districts which currently use these voting machines. School districts across the State, where voters annually approve a budget, propositions, and elect school board members, have asked the State Education Department whether they will be allowed to continue using lever voting machines following the statewide transition to the optical scan machines. Currently, there is no consensus among board of election commissioners to allow the continued use of lever voting machines, and it is unclear whether school districts will be able to use the new optical scan machines. Localities, public and association libraries and fire districts that currently use lever machines face the same issue.

Persons wishing to present pertinent testimony to the Committees at this public hearing should complete and return the enclosed reply form as soon as possible. It is important that the reply form be fully completed and returned so that persons may be notified in the event of emergency postponement or cancellation.

Oral testimony will be limited to 10 minutes' duration. In preparing the order of witnesses, the Committees will attempt to accommodate individual requests to speak at particular times in view of special circumstances. These requests should be made on the attached reply form or communicated to Committee staff as early as possible. In the absence of a request, witnesses will be scheduled in the order in which reply forms are postmarked.

Ten copies of any prepared testimony should be submitted at the hearing registration desk. The Committees would appreciate advance receipt of prepared statements.

In order to meet the needs of those who may have a disability, the Assembly, in accordance with its policy of non-discrimination on the basis of disability, as well as the 1990 Americans with Disabilities Act (ADA), has made its facilities and services available to all individuals with disabilities. For individuals with disabilities, accommodations will be provided, upon reasonable request, to afford such individuals access and admission to Assembly facilities and activities.

Joan L. Millman

Member of Assembly
Chair
Committee on Election Law

Catherine Nolan

Member of Assembly
Chair
Committee on Education

Barbara Lifton

Member of Assembly
Chair
Committee on Libraries and Education Technology

Brian Kavanagh

Member of Assembly
Chair
Subcommittee on Election Day Operations
And Voter Disenfranchisement

NEW YORK STATE BOARD OF ELECTIONS
40 STEUBEN STREET
ALBANY, N.Y. 12207-2108
Phone: 518/474-6220
www.elections.state.ny.us

TESTIMONY BEFORE THE NEW YORK STATE ASSEMBLY COMMITTEE ON ELECTION LAW COMMITTEE ON EDUCATION COMMITTEE ON LIBRARIES AND EDUCATION TECHNOLOGY

DOUGLAS A. KELLNER
Co-Chair, New York State Board of Elections
ROBERT A. BREHM
Co-Executive Director, New York State Board of Elections
October 22, 2009

Congress adopted the Help America Vote Act in 2002. The law, passed in reaction to the debacle that occurred in Florida in 2000, was filled with good intentions including the modernization of accessible voting systems; funding to replace lever and punch card voting systems; and the creation of state-wide voter registration databases, accompanied by the obligation of identity verification for newly registering voters. HAVA also provided for provisional ballots, based on the affidavit ballot system already used in New York and several other states, and finally, HAVA established the U.S. Election Assistance Commission charged with providing assistance to state and local election officials, and monitoring the distribution of federal funds made available to states for compliance purposes.

In 2005, New York State enacted the Election Reform and Modernization Act[1] and other legislation to implement HAVA in New York State. New York

[1] 2005 Laws of New York, c. 181.

should be proud of that legislation that promotes transparency, accuracy and verifiability of voting systems:

- New York requires that every voting system produce a voter verifiable paper audit trail (NY Election Law § 7-202(1)(j))
- New York requires that there be an audit of the paper trail of at least 3% of the voting machines in each county, and authorizes the escalation of the audit to a greater number of machines where errors or the closeness of the results warrant. (NY Election Law § 9-211)
- New York prohibits any device or functionality potentially capable of externally transmitting or receiving data via the Internet or radio waves or other wireless means. (NY Election Law § 7-202(1)(t));
- New York requires that the manufacturer and/or vendor of each voting machine, system or equipment place into escrow a complete copy of all programming, source coding and software. (NY Election Law § 7-208).

The regulations adopted by the New York State Board of Elections to implement the New York Election Modernization and Reform Act also contain a number of positive features that have formed a model for other states:[2]

- New York was the first state to require compliance with the 2005 Voluntary Voting System Guidelines adopted by the US Election Assistance Commission;
- New York provides for public access to observe usability testing of the voting systems in the certification process and provides public access to all test plans and test results, except where disclosure would compromise the security features of the voting system;
- New York requires that vendors disclose all litigation and any problems experienced by the voting system in other jurisdictions, so we can learn from those problems and not repeat them here.
- New York requires that vendors disclose any pecuniary interest in the laboratories that test their products.

New York was the first state in the nation to require that voting system vendors comply with the Voluntary Voting System Guidelines (VVSG) adopted by the US Election Assistance Commission in December 2005. New York election officials, both at the state and county levels, have maintained a bi-partisan consensus that New York would not follow the path taken by so many other states that hastily implemented HAVA by purchasing whatever equipment was

[2] The New York Voting Systems Standards are found at 7 NYCRR 6209, http://www.elections.state.ny.us/NYSBOE/hava/voting_systems_standards-4-20.pdf

available before rigorous certification testing to assure that the new equipment met all of the current standards. As a consequence, more than 35 states suffered major problems in implementing HAVA, and many states have discovered that they have to replace the equipment initially acquired in order to assure that their voting systems meet the current standards to assure accuracy, transparency and verifiability.

New York committed itself to full testing of each voting system before certifying compliance with the VVSG. Although New York has encountered delays in bringing new, fully compliant voting systems into use, we have had our commitment to our groundbreaking testing initiatives reaffirmed, as those delays uncovered major flaws in the certification testing process previously used by the national certification authorities. New York's exposure of the inadequacies of the old process has led to major reforms at the Election Assistance Commission. Indeed, New York should be proud that its standards have become the gold standard for certification testing. Both ES&S and Dominion Voting Systems, the two companies that have submitted voting systems for certification to New York's high standards deserve praise for their commitment to the process, and the recognition that if they obtain certification from New York, they will have met the highest industry standards that will enhance their ability to market their systems nationally and internationally.

The certification process is almost complete, but there are still numerous tests that we expect will be completed in the next month. We are advised that to date, there are no "showstopper" issues, and we remain committed to full compliance with the standards, as provided in our contracts with the vendors. We anticipate that if all goes well, we will be certifying the ES&S DS-200 and the Dominion ImageCast precinct based voting systems in December. On the other hand, if we do identify a problem in the testing that remains outstanding, we will still insist on the modifications necessary to achieve compliance with the New York State regulations and the VVSG.

The Pilot Project

The State Board of Elections concluded that there would be substantial advantages using the new voting systems in selected jurisdictions as a pilot project. In recognition that we are using equipment that is not fully certified, the State Board imposed additional security and verification procedures in order to assure the accuracy of the results.

Forty-seven counties opted to participate in a 2009 pilot project. Thirteen of those counties did not have primaries, leaving thirty-four counties in the Primary Pilot Project. Attached is a list of the jurisdictions participating in the Pilot Project. All machines used were subject to functional testing to validate the logic and accuracy of the systems, and each machine was subject to thorough acceptance testing. As a further safeguard the State Board required:

- Full compliance with the audit provisions contained in Election Law §9-211 and the audit provisions contained in the proposed regulation 6210.18.

- Conduct a 100% hand audit of all ballots in election districts when the difference in the result of the election between the potential winning and losing candidates in any contested election on the ballots is 1% or less AND,

- Randomly select 3 % from all the devices used in each county, or, borough within NYC, and hand audit all of the ballots tabulated by that device. If the outcome does not match the canvass report, then a 100% hand audit is to be conducted.

We are happy to report that the Pilot Project for the 2009 Primary successfully accomplished our goals of introducing the new voting systems and identifying election administration issues that will require greater attention both for our county boards of elections and the State Board.

The good news is that there were no significant scanner malfunctions. Indeed, it is worth noting that there were significantly more problems with lever machines, minor breakdowns to which we have become accustomed, than there were problems with the new scanners.

Nevertheless, our on-site inspections and review of comments from county boards and unofficial observers have helped us to identify areas that require greater attention and training. The most widespread comment is that more needs to be done to assure voter privacy. This means training inspectors on the proper placement of the voter privacy booths where voters mark their ballots and proper use of the privacy sleeves.

Another key issue is the need for increased training for inspectors and watchers on the new ballot security issues that arise when the election is conducted with paper ballots. It is essential that election officials maintain complete records to establish the chain of custody of the ballots. The State Board has already published guidelines for the use of security seals and other security-related protocols, but it is important to reinforce the need for county boards and inspectors to follow those guidelines in order to provide a secure election process and an auditable paper trail of the ballots cast by the voters.

There is a huge learning curve with this new technology and the best remedy is more training including hands-on training sessions where inspectors can get a feel for the new equipment, procedures and related documents. The State Board conducted on-site visits on Primary Day, underscoring the overall successful implementation of this new technology. Our ongoing evaluation of the pilot project will include the review of various forms and certificates provided to county boards, to better define the purpose and path of travel of those documents.

The State Board has redistributed security seal procedures, to once again highlight one of our Best Practices which was successfully implemented by a number of our county boards. By way of example, it is easy to adopt the use of color-coded tamper-evident seals in which red seals should be used in those areas where seals are confirmed only and are not removed or replaced during Election Day. Blue seals are placed in those areas where once confirmed and logged, must be removed and/or replaced, in order to use the voting system.

The State Board expects that the General Election Pilot Program will provide a broader opportunity to speak with voters and inspectors, as well as county boards of elections, to gather helpful suggestions as well as criticisms, and we will prepare a corresponding report.

Additional Legislation

Now that it is clear that all New York jurisdictions will be using poll site based ballot scanning, it has become apparent that there are significant revisions to New York's rules governing poll sites, election districts and election staffing that would better take advantage of the features of the new scanning systems.

The law currently provides for the division of each town or city into election districts. Election Law 4-100 contains strict rules for the formation of

election districts that were based on the features of lever voting machines and the need to have all voters in the election district voting on the same ballot style form. Particularly in densely populated urban and suburban areas, it is not unusual to locate multiple election districts at the same poll site.

Scanners allow the use of multiple ballot styles. Therefore, it is no longer necessary that all of the voters have the same ballot form (although it is essential that election officials give each voter the correct ballot form). Most other states, therefore, do not restrict the number of voters at a voting precinct and organize each poll site to accommodate the number of voters at that site.

New York's current law that provides for four inspectors assigned to each election district at a poll site is inefficient. Instead, New York should look to the model in other states and should appoint and organize election workers based on the *poll site* not on the *election district*. The Election Commissioners Association of the State of New York has been considering proposals to address this issue, and I urge that the Election Committees of the Senate and Assembly also focus on this issue—which could lead to substantial economies for the counties, and the more efficient operation of poll sites.

Lever Voting Machines

New York enacted the Election Reform and Modernization Act of 2005. (L. 2005, c. 181 amended L.2007, c. 506.) Section 11 of the law prohibits the use of lever voting machines once the State Board of Elections certifies precinct based ballot scanners or direct recording electronic machines that comply with Election Law § 7-202.

Section 301(a) of the federal Help America Vote Act sets forth minimal standards for all voting systems used in federal elections. The Federal Election Commission issued an advisory opinion, No. 5 of 2005, that concluded that lever voting machines failed to meet four standards contained in HAVA § 301(a).

1. Audit Capacity (HAVA §301(a)(2)(B)(i)) – "produce a permanent paper record with a manual audit capacity..." for use in a recount.

2. Error Rate (HAVA §301(a)(5)) – requires that all voting systems have a test error rate that complies with error rate requirements of §3.2.1 of the VVSG.

3. Alternative Language Accessibility (HAVA §301(a)) – requires voting systems provide alternative language accessibility pursuant to the requirements of the Voting Rights Act of 1965 (42 U.S.C. §1973aa-1a).

4. Accessibility for Individuals with Disabilities (HAVA §301(a)) – at a minimum, election officials must provide at least one voting system equipped for individuals with disabilities at each polling place. Such system must provide voters with disabilities the same opportunity for access (including privacy and independence) as other voters.

The United States Department of Justice brought suit against the State of New York to compel replacement of the lever voting machines in order to comply with the Help America Vote Act. The federal court entered an order on June 2, 2006 that required New York to replace all lever voting systems with HAVA-compliant voting systems. New York State also applied for and accepted nearly $50 million in federal funds pursuant to Title 1 of HAVA appropriated solely for the purpose of replacing lever voting systems.(New York has also received an additional $158 million in non-earmarked HAVA funds that are available for new voting systems.)

The Attorney General's office and our own legal staff have repeatedly advised us that there is no way for New York to retain its lever voting machines without an amendment to the Help America Vote Act. Many people have discussed such an amendment with members of our Congressional delegation, but no one has introduced such a bill, and there is virtually no chance of enacting such legislation.

New York State is under court order to replace our lever voting machines. New York has adopted some of the most progressive regulations in the nation to insure the integrity of the new voting systems. Our certification testing system is the most comprehensive in the nation and has become the model for other states. We simply do not have the option to retain lever voting machines. The movement to retain them is misdirected because it cannot succeed without an act of Congress. Instead, the efforts of advocates of retaining lever machines would be much more productive if they were directed to insuring the best possible procedures for transparent, accurate and verifiable use of the new machines in each county.

Uniform Administration of Elections

With the transition to new voting technology, and the banning of lever voting machines, there comes the need to consider how all elections in New York are conducted. Confusion among the electorate is sure to ensue unless they can be afforded at every opportunity at which they can cast a vote, a uniform way in which to cast it. Our County Boards of Elections engender a team of dedicated election professionals, and they have spent and continue to spend considerable time and money to familiarize Election Day workers and voters on the use of this new technology. With the consolidation of every aspect of voting system ownership and use now housed within county boards, for the first time in many parts of the state, voting systems now undergo regular preventative maintenance routines and detailed pre-election testing and post-election manual audits to ensure the election process is reliable, accurate and secure. This level of election integrity should be relied upon by all voters in each election in which they choose to participate, regardless of the sponsor of the election. It is imperative in this economic climate to consider multiple levels of election sponsors – villages, libraries, schools[3], water districts, sewer districts, special municipal elections, and the multiple layers of costs involved in supporting multiple different voting systems at those multiple sponsor fronts.

[3] April 28, 2009 State Education Department memorandum to District Superintendents of Schools, Superintendents of Public Schools and School Attorneys advising the continued use of lever machines was acceptable practice until such time as new machines are certified for use by the New York State Board of Elections.

The regulations and procedures adopted by the State Board for the accurate, secure and verifiable use of new optical scan voting systems should be uniformly applied to all elections where new optical scan voting systems are used to conduct elections, regardless of the sponsor of the election. County Boards of Election may, pursuant to §3-224 of the NYS Election Law, permit towns, villages, school districts, fire, ambulance, water, sanitation, police and other special districts within the county to use voting machines and other equipment owned by it and used for the conduct of elections.

The County Boards of Elections throughout New York can certainly deliver consolidated election services in every election, ensuring that all aspects of the election are presented in a uniform, secure and accurate manner. Such uniformity will also eliminate voter confusion, as each election in which they choose to participate will be conducted on the same equipment and administered in the same manner.

While a mechanism exists in § 4-136 of the NYS Election Law for the charge back of certain election expenses, we are happy to continue to participate in discussions on how the existing provisions could be modified to incorporate the additional requirements for the use of new optical scan voting systems in special district elections.

County Name	Code	Pilot Project (Yes or No)	Countywide (CW), City/Town (C/T), or Poll Site (PS)	Pilot Election Districts	Pilot Poll Sites	Pilot Registered Voters
Albany	1	Yes	C/T (3)	25	15	20,136
Allegany	2	Yes	C/T (TOWN-1)	2	1	1,200
Broome	4	Yes	CW	190	123	118,000
Cattaraugus	5	Yes	C/T - (1)	7	3	4,563
Cayuga	6	Yes	CW	61	29	46,946
Chautauqua	7	Yes	CW	124	60	82,000
Chemung	8	Yes	C/T (Town-1)	8	4	5,290
Chenango	9	Yes	CW	42	28	30,857
Clinton	10	No		0	0	0
Columbia	11	No		0	0	0
Cortland	12	Yes	CW	42	28	30,136
Delaware	13	Yes	CW	59	28	29,253
Dutchess	14	Yes	PS	4	2	1,432
Erie	15	Yes	CW Except Buffalo	625	248	437,182
Essex	16	No		0	0	0
Franklin	17	Yes	CW	49	31	26,000
Fulton	18	Yes	C/T (1 city/1 town)	8	8	9,140
Genesee	19	Yes	C/T (1)	1	1	1,045
Greene	20	Yes	C/T (TOWN-2)	2	2	1,200
Hamilton	21	Yes	CW	11	11	4,695
Herkimer	22	Yes	C/T	3	1	2,063
Jefferson	23	Yes	CW	91	50	59,058
Lewis	25	Yes	CW	31	19	17,460
Livingston	26	Yes	C/T (2)	4	3	2,736
Madison	27	Yes	CW	55	33	40,637
Monroe	28	Yes	C/T (2)	11	6	6,386
Montgomery	29	Yes	C/T (1)	1	1	1,083
Nassau	30	No		0	0	0
Niagara	32	Yes	C/T (2)	9	5	6,919
Oneida	33	Yes	C/T (1)	4	4	3,862
Onondaga	34	Yes	C/T (TOWNS- 11)	117	52	81,882
Ontario	35	Yes	1 Town	2	1	1,200
Orange	36	Yes	C/T (2)	9	2	6,157
Orleans	37	Yes	C/T TOWN-1	6	2	2,715
Oswego	38	Yes	CW	124	56	73,000
Otsego	39	Yes	C/T (7)	14	9	5,346
Putnam	40	Yes	CW	86	22	59,270
Rensselaer	42	No		0	0	0
Rockland	44	No		0	0	0
Saratoga	45	Yes	C/T (6)	14	7	10,592
Schenectady	46	Yes	C/T (2)	10	3	6,908
Schoharie	47	Yes	PS	3	1	1,963
Schuyler	48	Yes	CW	17	16	12,340
Seneca	49	Yes	CW	27	19	20,124
St.Lawrence	50	Yes	CW	102	65	60,333
Steuben	51	Yes	CW	85	60	60,000
Suffolk	52	No		0	0	0
Sullivan	53	Yes	PS	3	2	2,290
Tioga	54	Yes	C/T (TOWN-2)	4	2	2,968
Tompkins	55	Yes	C/T (CITY -1)	19	10	11,600
Ulster	56	Yes	PS	5	2	2,887
Warren	57	No		0	0	0
Washington	58	No		0	0	0
Wayne	59	Yes	PS	1	1	722
Westchester	60	No		0	0	0
Wyoming	61	Yes	C/T (TOWN-1)	5	1	3,203
Yates	62	Yes	CW	20	13	14,692
Bronx	63a	No		0	0	0
Kings	63b	No		0	0	0
New York	63c	No		0	0	0
Queens	63d	No		0	0	0
Richmond	63e	No		0	0	0
Total	63f			2142	1090	1,429,471

Note: Version as of : Final (6-24-09)

Statement to the New York State Assembly committees on
Election Law, Education, and Libraries and Education Technology
and the Subcommittee on Election Day Operations and Voter Disenfranchisement
October 22, 2009
Assembly Hearing Room, 250 Broadway, New York, NY
Virginia Martin, Democratic Commissioner, Columbia County Board of Elections

Thank you, Assemblymembers Millman, Nolan, Lifton, Kavanagh, and others, for providing this opportunity to be heard.

I'm a relatively new election commissioner, having not yet completed a full year in the position, and I believe that my perspective as someone quite new to the issues of election administration and the Help America Vote Act may be a little different from others', and therefore particularly valuable, as sometimes a fresh perspective is.

This morning I want to speak to three issues: (1) whether we are truly addressing the spirit of the Help America Vote Act, which I thought was to improve election administration and to enable all individuals, including those with disabilities, to vote privately and independently at the poll site; (2) how the current mandates, most of them necessitated by New York's 2005 Election Reform and Modernization Act, impact our county boards financially, and (3) how the mandated transition to electronic voting and vote-counting will likely prevent me as commissioner from doing my job, which is to certify to the accuracy of election numbers.

1. Are we addressing the spirit of HAVA?

In the public notice of this hearing, the State Board of Elections says that it has accomplished a number of HAVA objectives, including the creation of a statewide database of voters, the placement of one accessible voting machine in each poll site, establishing a program to distribute funds to improve poll-site access, and other items relating to HAVA compliance. I will agree that a very robust and effective database has been created, and certainly that each poll site now has an accessible BMD. Yes, we have a means for reimbursement for our costs when we make our poll sites fully accessible. I agree that those crucial objectives relating to improved administration and access have been well met and implemented.

Where we are not meeting the spirit of HAVA, I think, is that only minimal attention is being given to helping people with disabilities get out to vote in the manner to which they have every right. This is happening not out of malice or conscious dismissiveness, but out of the county boards' need to direct every available resource to the complicated and all-consuming transition to new voting machines. We counties would have our hands full making a successful transition to our BMDs alone, but at the same time we're faced with having to introduce yet another system, the optical scan with post-election paper-ballot audit, a system to be used by the vast majority of our voters—a system that dramatically changes the way we administer elections.

I said a transition to BMDs alone would be consuming and resource-intensive. This is partially because the equipment is not high-quality and is prone to breakdowns and a variety of other problems; it's partially because the system itself is far more complex, involving a handful of software programs that require highly trained technicians to manage them; and it's partially because the system introduces into election administration many vulnerabilities that our old lever voting machines are free of.

For example, our BMDs, like the ballot scanners, rely on software rather than hardware for programming. Software is aptly named: it is soft, pliable, changeable, and therefore can be easily manipulated. Hardware (like we have on our lever machines) is, well, hard, and cannot be easily manipulated. (The BMDs of course have hardware, too, but unfortunately it's poor-quality hardware that breaks easily.) The other vulnerability our BMDs introduce is the paper ballot, which, while "harder" than software, is still easy to manipulate (or tear/spindle/mutilate); paper can be lost (or can be introduced post-election), and paper votes are subject to interpretation. When in the late 19th century the then ultra-modern lever voting machines were first introduced, one manufacturer boasted that they would "protect mechanically the voter from rascaldom"—that rascaldom being the tampering that so often happened to paper ballots. Going back to a fully paper-ballot system is, in many ways, a step back in time and I would say a mis-step.

In Columbia County, we're not participating in the pilot program. That's because we oppose the move to electronic voting and vote-counting and also because we know we don't have the resources to engage in a second major new process while we're putting huge amounts of time and energy into making our BMDs work well. We're training a whole new set of staff to operate them and be responsible for them. We're training that same staff and all our inspectors to appreciate and value the differences amongst our voting public and to learn how they can best welcome voters with disabilities into the polling places and if necessary to assist them. And we're training them to ensure that all our poll sites are fully accessible and truly appreciate what distinguishes accessible from non-accessible.

We're also engaged in a comprehensive program of outreach to our county's disability communities and to the general public. This program is to raise awareness, on a face-to-face basis, about these new voting machines; to allay any fears that people, who have historically been shunted aside when it comes to voting, may have about venturing out to vote; to raise awareness among the rest of the population about the desire that people with disabilities have to come to the poll site so that they can exercise their constitutional right to a private and independently cast vote. It's been a huge amount of work. I didn't design the program and curriculum we're using, but I don't believe that our voting-access consultant got it from the State Board. While our program has been very well received and is enjoying small but important successes, even after November's election we will have miles to go before we can begin to say we've done justice to addressing the needs and the rights of the people in Columbia County who have disabilities.

And that's one reason that neither I nor my Republican counterpart Don Kline can begin to think about implementing yet another, and far more widely used, voting system. We must get one right before we can think about doing another.

From what I can deduce about what other counties are spending their time on, the lion's share of it doesn't appear to be access for the disabled. Our conference agendas and our conference calls barely mention the needs of voters with disabilities. They're dominated by issues like chain of custody, security, seals, documentation, certification, testing, audits, paper handling, transportation, ballot design, programming, and the like. I haven't heard anyone talk about a great disability outreach or education program, or how they've developed and strengthened ties with the disability community. I don't think they have the time to.

2. The current mandates and their financial impact on county boards of elections

My second topic is how the current mandates impact our counties financially. The cost to Columbia County just to implement BMD use and the education and outreach program I spoke of above has been extraordinary. Yes, a good chunk of it will be reimbursed, but I can't tell you how much because no one in my county has had the time to examine that question—or to apply for much of the reimbursement—we're too busy making sure we get our elections right.

But in a year when all our county's departments are being mandated to cut expenses, ours are going up. We've held the increase to a minimum by refusing to participate in the pilot, by not purchasing the $78,000 election management system, and by not purchasing a host of other needs associated with the optical scan/paper ballot system. Nor do we intend to next year. Our small county can't afford an additional $40,000 (that's approximately one dollar per voter) for paper ballots and so we haven't put it in the budget. My county stands behind me on this. When our deputies see the BMD expenses they shake their heads in utter dismay, incredulous that they are so costly.

And nobody is arguing that democracy isn't worth the cost; I'm the first to say that democracy doesn't come cheap. But that doesn't mean that you don't try to be realistic in the face of economic crisis or that you throw fiscal prudence out the window. I want to pay what democracy and what voter-access programs reasonably cost, but I don't want to do it irrationally or ineffectively and I don't want to rake our taxpayers over the coals in the process.

Much of what the Election Reform and Modernization Act provided for was very good, and I know people who put in Herculean efforts to include certain of its provisions. They're justifiably proud of what they've done. I take issue, however, with the mandate to get rid of our lever machines. Most of the rationale for it I don't agree with. HAVA doesn't prohibit lever machines, so why did New York decide to? Perhaps instituting whole new voting systems seemed do-able in 2005. Given today's fiscal environment, and the state budget, and deficits, current and forecast, I believe that the only prudent thing to do is to amend ERMA to allow counties to continue to use their lever machines

as they may desire and as may be necessary so as to avoid taxing our residents far beyond their means to pay.

Boards across the state have encountered enormous resistance from their counties when they have tried to get the funds these unfunded mandates would have us incur. I know of two cases in which county budgets have tripled. Commissioners and county administrators have asked the state board for guidance; the state's advice has been to press the Legislature for more money or to pass the expenses down the line to their towns and cities. I think both are irresponsible. What the state board should do is advocate on our behalf to allow us to keep our levers, at least for the foreseeable future and through the fiscal crisis. That would enable us to fully comply with the spirit of HAVA, which was better election administration and access for all. As it stands now, we at county boards are at our wits' ends, struggling to run our elections with resources that don't begin to be adequate to the tasks we have at hand, which is to say that election administration is suffering rather than improving.

3. How ERMA will prevent me as commissioner from discharging my duties with integrity

Beyond the problem of too much to do with far too few resources in an undertaking as crucial as elections are to democracy is the ultimate role that each election commissioner has, which is to certify to the accuracy of an election result.

Until now, I've confidently certified two elections: a special congressional election and the recent primary. I was very confident of those numbers because the relatively few paper ballots that we had and hand-counted were handled with great care and oversight according to established processes. Also, I have great confidence in the tabulating mechanism in each of our lever machines. I can understand how the levers work—how the pointers, the gears, the counters, and the levers interact to add up the votes just as the voters cast them.

In Columbia County, we've done a pretty fair job of keeping our machines serviced, and so we have few breakdowns. We have no trouble getting the parts or the help and advice we need. We didn't, it's true, do everything that we might have to keep our machines in tip-top operating condition because we understood that their years were numbered. I know a lot of other counties did the same. But now, in anticipation of using our levers into the future, we're starting to ramp up our maintenance. Having gotten a good look at what the electronic voting-machine industry puts out (and it's not good), and having gotten a better idea of the true costs associated with electronic voting, and having seen the problems that continue to surface with electronic voting (the breakdowns, the hackings, and the secretive and proprietary nature of that which should be available to and understandable by the people), Columbia County has a far greater appreciation for the beautiful simplicity of our lever voting machines.

We deal with the Voting Machine Service Center in western New York for our AVM parts. They assure me that they are ready and more than willing to continue to service our

levers for many years ahead. I have also discussed this issue with International Election Solutions, which services the Shoup machines, and have been assured the same and that they have a huge inventory of machines that they've bought up from other states when they abandoned their levers. And, should we need brand-new machines, they have the blueprints and would be delighted to build them. I don't know where the oft-cited rumor that parts for these machines are unavailable comes from.

Federal standards allow 1 in every 11 voting machines or systems to fail either partially or completely in any 15-hour period. That's almost a 10% failure rate in every election. New York's standards require nothing better, and in the state there are far fewer complete failures of lever machines–only a few handfuls of machines out of about 20,000 statewide. Most lever problems can be resolved rapidly by technicians without the loss of cast votes. And unlike computerized systems, this can be verified by poll workers because lever machines are transparent machines.

If Columbia County starts using software to count votes, I will not certify an election unless an appropriately designed audit of the paper ballots is conducted. So far, the State Board has not mandated an audit that audit experts agree will expose inaccurate counts. If my county implements computerized voting, I will demand an appropriate audit. It will be expensive, though, and I know how well that will go over with my fiscally stressed county, especially after paying for all the other associated expenses. I'm afraid the county would not budget the funds needed to ensure my confidence, and if it didn't, I wouldn't certify the election. The high cost of auditing has other counties calling for less-stringent audit regulations. I shudder to think what the result to democracy will be if they get their way.

Summary

I will end by saying that, as I see it, statewide, some but certainly not all of HAVA is being complied with, and that, with a forced move to electronic voting, election-administration improvements will suffer as will any move toward greater access for people with disabilities. I will also say that a continued movement toward electronic voting will place exponentially greater stresses on our counties' and our state's budgets. Given today's financial crisis and given what in 2009 we know about electronic voting, including the optical-scan paper ballot systems that so many of us fought for, I implore you to rethink ERMA's ban on the lever machines that are bought and paid for and that instill confidence in us commissioners, in our poll workers, and in our voters. Thank you.

The League of Women Voters of New York State
62 Grand Street, Albany, New York 12207
Phone: 518-465-4162 Fax: 518-465-0812
www.lwvny.org E-Mail: lwvny@lwvny.org

THE LEAGUE OF WOMEN VOTERS
of New York State

TESTIMONY REGARDING THE ADMINISTRATION OF ELECTIONS IN NEW YORK STATE IN COMPLIANCE WITH THE FEDERAL HELP AMERICA VOTE ACT BEFORE THE NEW YORK STATE ASSEMBLY STANDING COMMITTEE ON ELECTION LAW, ASSEMBLY STANDING COMMITTEE ON EDUCATION, ASSEMBLY STANDING COMMITTEE ON LIBRARIES AND EDUCATION TECHNOLOGY OCTOBER 22, 2009

Good Morning members of the Assembly Election Law Committee, Education Committee, and Committee on Libraries and Education Technology.

My name is Adrienne Kivelson. I am the Election Specialist for the League of Women Voters of New York City. I am here today representing the League of Women Voters of New York State as well as the League of Women Voters of New York City. Thank You for the opportunity to address the relevant committees today about the impact of the enacted 2009-2010 State Budget on New York State's implementation of the Help America Vote Act (HAVA) on the State Board of Elections, local boards of elections and other public entities that conduct elections, such as school districts, public and association libraries and fire districts.

The League of Women Voters of New York State is a nonpartisan political organization which encourages informed and active participation in government and works to increase understanding of major public policy issues, and influences public policy through education and advocacy. Voting is fundamental to citizenship and the League has worked on the issues surrounding exercise of the franchise since women became enfranchised in 1920.

We work in coalition with many other like-minded organizations to educate voters and to advocate for laws which will secure the integrity of the vote while expanding opportunities for using it. With respect to implementing the Help America Vote Act in New York State, we have worked in coalition with other organizations whose mission is also to ensure that all eligible citizens can vote, and that their votes will be accurately counted. These organizations have endorsed a voting system based on voter-marked paper ballots. This goal was achieved when the paper ballot-scanner voting system was chosen by New York counties in 2008. We advocated for the paper ballot-ballot marker-scanner system because ***with rigorous procedures and citizen oversight*** it will meet the League of Women Voters of the United States' "SARA" test of security, accuracy, reliability and accessibility.

The League and many other organizations representing many constituencies, believe that the newer technology can provide better verifiability and a voter verifiable paper record that is the official record of the voter's intent. A joint statement by New Yorkers for Verified Voting and League of Women Voters of New York State "Do Lever Machines Provide a Better Voting System for Democracy?" is attached to this testimony.

The familiar lever voting machine, though it has performed fairly well for over 100 years, does not meet current standards for voting systems. The League and other election integrity organizations recognized that our efforts should be directed toward selecting a voting system based on voter marked paper ballots and establishing through legislation the highest standards for certification of the new voting equipment. The Election Reform and Modernization Act of 2005 implements the Federal law and, indeed, goes beyond that law, to set higher standards for accessibility, certification of voting equipment, and post-election auditing by local boards of elections. The lever machines cannot meet these standards. They cannot truly be audited since they provide no record of individual votes. To provide accessibility, counties have to deploy another machine with completely different technology. In this regard, a local elections commissioner commented, "with the optical scanner system, we now have two records to compare to verify the vote: a machine count and the paper ballots. With the levers we have ***had no backup to recount the vote; all we can do is recheck the numbers on the machine to make sure the inspectors recorded them correctly."***

ERMA states that lever voting machines will no longer be permitted for use in New York State once new voting systems have been certified, approved and implemented throughout the state. It is presumed that the effective date for implementation of the law will be 2010. This has been interpreted to mean that all elections where voting machines are used must conform to this law. Localities, public and association libraries and fire districts that currently use lever machines are subject to the same law.

We still have some have some issues with ERMA, particularly concerning the audits which we believe should be broader and larger than the 3% established in the law. We will continue to press for improved audit requirements.

Forty-seven New York counties are participating in a pilot program using the optical scanners in the 2009 elections. Early reports of the counties' experiences in the primaries are positive. It is our understanding that no significant machine malfunctions were reported. The problems which did arise had more to do with voter privacy and poll worker training. For example, there were repeated complaints about the placement of privacy booths, which may be new to our poll workers and voters. It was apparent to observers that the degree to which poll workers had hands-on training on the equipment impacted on how well the election proceeded.

The optical scanners which are being used in the pilot program are those now being tested for certification by State BOE. Our representative on the Citizens Advisory Committee has reported that the initial public component of the testing went well.

Everyone acknowledges that hands-on training is a key component in the transition to a new voting system. In this regard, we strongly support legislation amending the Election, Labor and Education laws to authorize persons seventeen years of age to serve as election inspectors and poll workers. More than forty states permit 16-17 year old persons to serve in some capacity at the polls and these

states have reported satisfactory results. This young tech-savvy population would be an asset at the polls when new voting machines come online in 2010 and opening the doors to active participation in the electoral process will stimulate life-long participation as a voter.

Concerns have been raised about added costs which will accrue to the counties to administer the new voting system, over and above the federal funds the state is receiving for HAVA implementation. We urge the state and counties to explore collaborative arrangements for purchasing equipment such as privacy booths and ballot printers, consolidating training costs and sharing EMS ballot programming consultants' services.
The NYSBOE should authorize the use of HAVA money for EMS purchase, as well as other systems' support funds. We are pleased to hear that the State Board is already exploring the possibility of reducing poll site staffing requirements as the precinct-based optical scanner can handle multiple ballot types so it may not be necessary to have multiple inspectors for each election district. We should all be pressing Congress for full funding of the Help America Vote Act.

The League position on election law supports uniformity in election laws and procedures in their implementation and enforcement, as well as the promotion of measures that ensure the integrity of all ballots. Uniformity in procedures and equipment and the schedule of elections enhances the experience of the voter by creating the optimum conditions for providing the most complete provision of information on issues and candidates and inspires confidence in the results because of a transparent process.

While school elections are the province of the NYS Education Law, other municipal elections (town, village, fire district, water district) are solely or jointly administered by the entity and the larger jurisdiction, the county board of elections. As a result, these elections occur throughout the year (March, April, May, June, November, and December). This patchwork of election administration does not lend itself to a "one size fits all" solution particularly as the State transitions to the new era of changing over to a more technically challenging voting process. The electronic voting machines which will be the standard machine in use require more stringent operational procedures to safeguard their integrity and to protect the investment which the state and counties have made in their purchase.

The NYS Commission on Local Government Efficiency and Effectiveness ("The Lundine Commission"), issued their final report in April 2008, and addressed some issues germane to the discussion today in the section entitled, *"Elections and Voter Participation."* In recommending possible solutions which might bring about positive improvements to election administration in New York State, they note that

- Surprisingly, very little data are available on elections, particularly for offices below the state level.

- The State BOE receives from the County BOEs the voting results of federal, state, and county offices, as well as for statewide ballot proposals. The State BOE *does not* routinely collect information on town, village and city elections, or on elections for fire districts or other special districts with elected commissioners. They also do not conduct school-related elections, such as votes for school board members, school budgets, or school-related propositions.

- There is no central repository in the state for information about how many people are voting, voter enrollment information for each municipality, who is elected, what propositions were put before the voter; and what the results of the vote were. Therefore, it is difficult to get a good picture of voter participation rates in local elections.

The Commission report highlights some of the problems of voting and election administration in New York. The impact of any decisions necessitated by the change to new voting equipment must be carefully examined. Creating more uniformity in election dates by realigning the dates of local elections throughout the state so that they would be synchronized might increase voter participation as well as simplify election administration. It would also be fiscally prudent as the state and local governments work to maintain mandated services at current levels. The Commission "encourages regional solutions, cooperative services and consolidation" where possible as one of its recommendations for the delivery of local government services. An objective examination of how changes in election administration in New York State might yield more economy, efficiency and accuracy to this vital governmental function would be a wise investment.

Thank You.

Aimee Allaud, Elections Specialist, League of Women Voters of New York State
Adrienne Kivelson, Election Specialist, League of Women Voters of New York City

The League of Women Voters
of New York State
62 Grand Street
Albany, New York 12207
www.lwvny.org

New Yorkers for Verified Voting
PO Box 163
Mecklenburg, New York 14863
www.nyvv.org

Do Lever Machines Provide a Better Voting System for Democracy?

Aimee Allaud
Elections Specialist, New York State League of Women Voters
Wanda Warren Berry
Executive Director, New Yorkers for Verified Voting

Some New Yorkers are seeking the support of our organizations for their misguided attempt to keep the lever voting machines instead of implementing the paper ballot-optical scanner system purchased last year by the county commissioners. This purchase was funded by millions of dollars allotted to New York under the Help America Vote Act (HAVA) specifically for the replacement of lever machines. Our commitment to high standards for verifiable and accessible voting prevents us from supporting retention of the levers once the scanners pass New York's rigorous certification process.

Lever voting machines, though they have worked fairly well for over 100 years, do not meet current standards for voting systems. Even if New York were not under a federal court order requiring their replacement in 2009, we believe New Yorkers have learned to ask for a higher level of accessibility and accountability than levers can provide.

In "Citizens' Right to Vote" (2006), the national League of Women Voters resolved to support only voting systems which:

- Provide a voter-verifiable paper record that is the official record of the voter's intent.
- Allow the voter to verify this paper record while still in the process of voting.
- Allow verification of vote totals by an independent hand count of the paper record.
- Allow routine audits of the paper record in every election.

Lever machines do not meet these standards. They retain no record of individual votes. During voting, one can see the small lever go down, but cannot see that the inner workings of the machine register the intended vote. In addition, levers include no record of individual votes that can be hand counted or audited to verify the totals. At the close of Election Day, they provide only the totals for each contest. Occasionally these totals have been known to be wrong; but there were no records to re-count. The federal Election Assistance Commission strongly recommends and is expected to require such records in the future.

Both HAVA and our own democratic standards ask that voting systems be accessible to persons with special needs. Lever machines are not. To compensate for this serious limitation, those advocating retention of the levers say that counties can continue to use the ballot marking devices (BMDs) used last Fall to allow persons with disabilities or with need for alternative languages to mark a paper ballot to be hand-counted. This plan shows no sensitivity to the right of persons with disabilities to cast a secret ballot using the same voting system as others. If most voters were using the levers, many poll sites would have only a small number of ballots marked with BMDs. This would make it difficult to preserve the anonymity of those ballots during Election Night hand-counts. With the paper ballot-scanner system, such ballots are submitted to the same precinct-based scanners as those marked by hand by other voters. They also are counted along with others in any re-counts and in mandated audits. This promises both independence and privacy to voters with special needs.

In addition, the attempt to keep the levers does not recognize the financial and managerial problems posed by the suggestion that the already purchased ballot markers continue to be used alongside the levers. Those who argue that keeping the levers would save taxpayers' money do not take into account that HAVA funds for the replacement of lever machines would need to be returned if levers are retained. Also significant is the fact that most counties purchased ballot markers that cannot function apart from the scanners. If this equipment is used along with levers, counties have to maintain, store, program, test, and deploy at least two large machines with different technologies for each polling place; this would increase operating costs.

The long process of gaining certification of new voting equipment for New York has been frustrating. But neither this frustration nor our sense of economic crisis should lead us to sacrifice the superior standards for verifiable and accessible voting that we have come to see as important to democracy. Lever machines cannot meet those standards.

Howard Stanislevic
Founder, E-Voter Education Project
15-38 146 St.
Whitestone, NY 11357
Phone: 718-746-0449
E-Mail: hscomms@verizon.net

Statement to the New York State Assembly Committees on
Election Law, Education, and Libraries and Education Technology
and the Subcommittee on Election Day Operations and Voter Disenfranchisement
October 22, 2009
Assembly Hearing Room, 250 Broadway, New York, NY

Thank you for the opportunity to testify. My name is Howard Stanislevic and I am the founder of the E-Voter Education Project -- a group dedicated to the demystification of electronic voting. Today I want to speak to you about the need to audit elections counted by computerized electronic ballot scanners, known as precinct-count optical scanners (PCOS), and how the State Board of Elections and our election laws have failed to meet that need.

First of all, we can't trust computers to count votes because it's not possible to conduct tests that would be adequate to merit our trust. In 2006, the same computer scientists at the National Institute of Standards and Technology (NIST) who wrote the 2005 federal voting system standards that New York has adopted to certify its new ballot scanners, advised the US Election Assistance Commission (EAC) that testing of software-based voting systems "to high degrees of security and reliability is from a practical perspective *not possible*." (emphasis added)

These scientists, and many others, advocate *software-independent* (SI) voting systems.[1] A voting system is software-independent only if an undetected change or error in its software cannot cause an undetectable change or error in an election outcome. This means we must randomly audit the election results, independently of software, by hand-counting enough votes to see who won each contest. *Nothing in our election law or regulations requires this*.

Some have incorrectly asserted that dependence on software is only a problem with direct recording electronic (DRE, usually touchscreen) voting machines -- not optical scanners. So I asked Dr. Ron Rivest of MIT and the EAC's Technical Guidelines Development Committee (TGDC) -- one of the co-authors of NIST's Software Independence paper -- to clarify whether SI principles must be applied to precinct-count op scans (PCOS) as well as DREs. Dr. Rivest's thoughtful response is attached and I ask that it be included in the record. To summarize, he said that indeed op scan elections are at risk; thorough testing is not sufficient to provide strong confidence in election outcomes; and "Testing is no more a guarantee of good behavior during an election than is good behavior before marriage a guarantee of fidelity afterwards!"

Ballot scanners are no more secure than touchscreens. They are both computers, and they are both programmed by yet another computer -- each county's Election Management System – a PC with election management software that costs about $75,000.

If these computers were people, and their memory cards were organs, we'd be talking about a highly efficient way to spread a sexually transmittable disease. No Internet or wireless connection is necessary to spread a computer virus. Malicious code could infect every scanner in a jurisdiction via the same memory cards necessary to program the scanners before each election, and to upload their tallies

[1] An excellent primer on software independence (SI) with links to the original papers by Rivest and Wack and the SI resolution passed by the EAC's Technical Guidelines Development Committee can be found at: http://en.wikipedia.org/wiki/Software_independence

afterwards. We see no evidence of procedures to mitigate this risk in New York. For example, doing so would require not one, but three of those $75,000-PCs in each county -- completely isolated from each other.[2] The University of Connecticut "hacks" each scanner's memory card, on behalf of their Secretary of State, to examine its contents.[3]

Computer scientists agree that the best answer is to rely on paper ballots. But New York will *not* be doing so, despite the claims of some of our election officials. Our Election Law provides no right to a post-election-night recount of *all the paper ballots* cast at the polls. The Election Law § 9-208 recanvass is *not* a recount, but merely a comparison of the reported scanner tallies, to paper copies of the same tallies -- up to two weeks after the election. Obviously, such a recanvass can neither detect nor correct erroneous or fraudulent tallies produced by scanner software within the Election District *on election day*. Correcting such errors requires a hand count of all the paper ballots originally counted by the machine. This recount is known as a *post-election audit.*

An unverified outcome of a contest is one in which the wrong winner may be certified, despite the fact that no miscounted votes were found in the post-election audit. The 3% audits required by Election Law § 9-211 may not find a single miscounted vote, even if the winners of many elections are incorrect. For example, we estimated that a 3% audit of Election Districts (EDs) in recent general elections, which is a more effective audit than that required by our election law, would result in the following numbers of unverified outcomes of recent State and Federal contests:[4]

Unverified Outcomes of NY General Election Contests with a 3% Audit of Election Districts *	
2002-2006	14 out of 87 US House races
2006	32 out of 150 Assembly races
2006	7 out of 62 NYS Senate races
* Graphs of these results are attached.	

In light of recent events, imagine the effect that *seven unverified outcomes* could have on the composition and leadership of the NYS Senate!

The number of unverified outcomes would be even greater if, as required by the Election Law, we audited 3% of *ballot scanners* instead of 3% of EDs. Since there are fewer total scanners than EDs, fewer scanners will be audited. But the chance of finding problems depends crucially on the *number* of units audited – not the fraction (percentage) thereof. If we use scanners to count votes, the audit required by our Election Law is a *worst practice.*

Not only does our Election Law lack a provision for larger random audits of closer races, it also has no provision for targeted investigations of anomalous results in particular Election Districts. And although the law says that a "complete audit" can be used to determine the winner of an election, it has no definition of "complete audit." The law is being read by the State Board of Elections as if a "complete audit" means an audit of only a *single county!* Thus a statewide or other multi-county contest may be decided by a hand count of only a *single county!*

The SBoE has also said that candidates who lose computer-counted elections must go to court to obtain more than a 3% hand count. But as we have seen, the 3% audit may not provide *any* evidence of miscounted votes to bring to court – even if the wrong winner were reported by the voting system.

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[2] See: "You Go to Elections with the Voting System You Have: Stop-Gap Mitigations for Deployed Voting Systems" http://citp.princeton.edu/pub/hrsw-evt08.pdf

[3] Details of scanner vulnerabilities and mitigations implemented by Connecticut, can be found at U. Conn's Voting Technology Research Center website: http://voter.engr.uconn.edu/voter/Reports.html

[4] "NY Election Audits: Is Three Percent Enough?" http://sites.google.com/site/evoterproject/files/NYAuditGraphs.pdf

At least one courageous Election Commissioner has said she will *not* certify a computer-counted election. Do we really want computers and courts to decide who wins and who loses our elections on a routine basis? Or should it be the will of the voters and the votes they actually cast? I vote for the voters. So please, *either fix the audit law, or keep the lever voting machines*. Experts are available who would be more than happy to help draft the appropriate legislation, *pro bono.*

Personal Communication From Dr. Ronald L. Rivest [5]
On Precinct-Count Optical Scanner (PCOS) Security Threats
And the Need for Software-Independent Audits
Dec. 8, 2008 (Submitted for the record with his permission)

It may be the case that PCOS software tends to be simpler than DRE software, since it doesn't need code to support complex interaction with the voter.

However, while thorough testing is a good idea, it is not sufficient by itself to provide strong confidence in the election outcome.

If the testing is only done for certification, you have the problem that the software running on election day may not be the software that was certified. Also, such testing wouldn't catch "ballot programming" errors.

So-called "logic and accuracy" testing may catch some of these problems. (Although I have been amazed that some jurisdictions run test decks that have the **same number** of votes for each candidate -- this fails to catch the common error when the ballot positions for two candidates are switched in the ballot programming!)

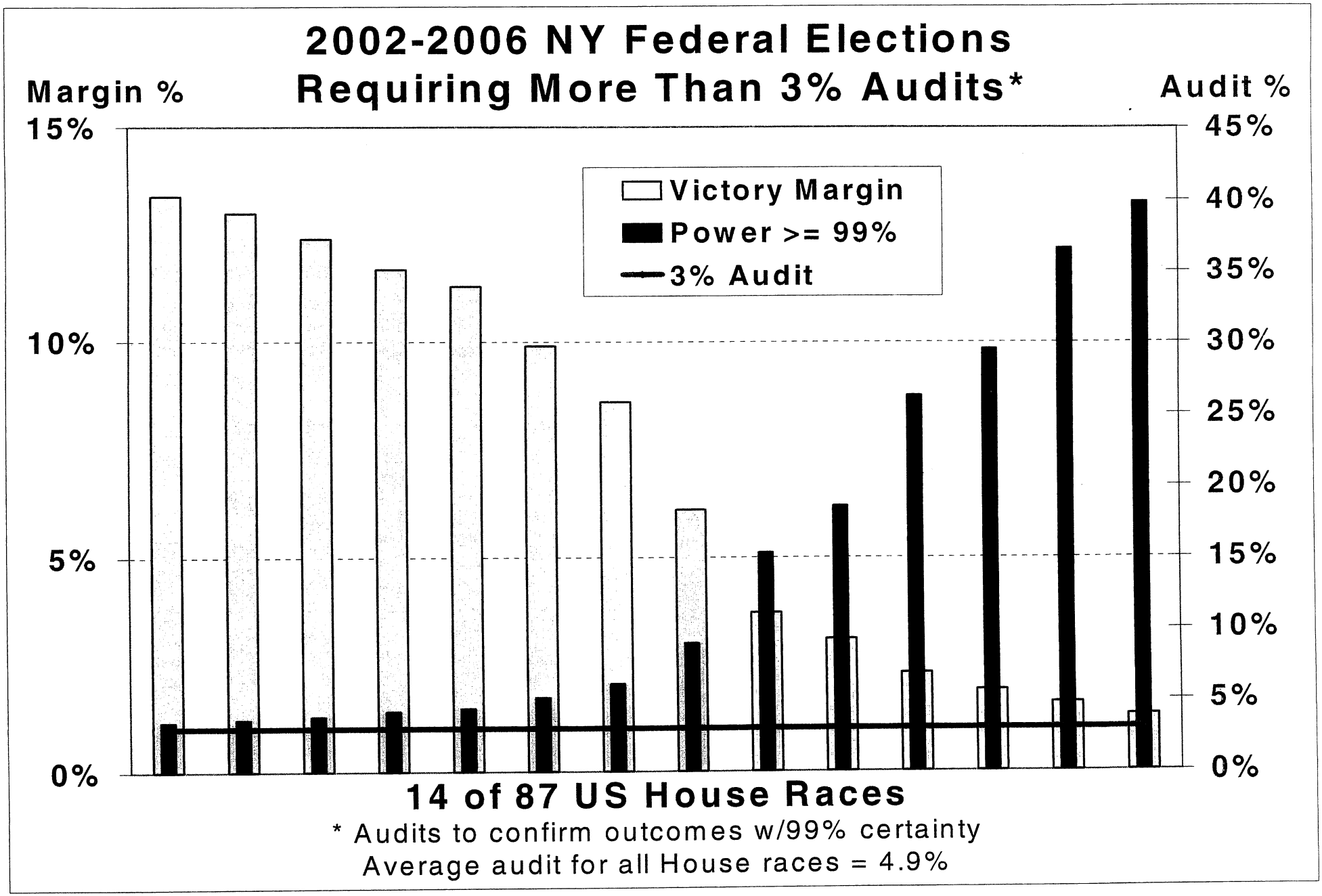
But both certification testing and L&A testing are inadequate to catch malicious software. Such malicious software may, for example, be triggered to enter "malicious mode" when a ballot of a certain configuration is entered early in the day by a confederate. So-called "parallel testing" would not catch this error either, since the trigger ballot would never be entered for the test machines. Once malicious mode is entered, a small percentage of the ballots may have their votes switched to the opposing candidate.

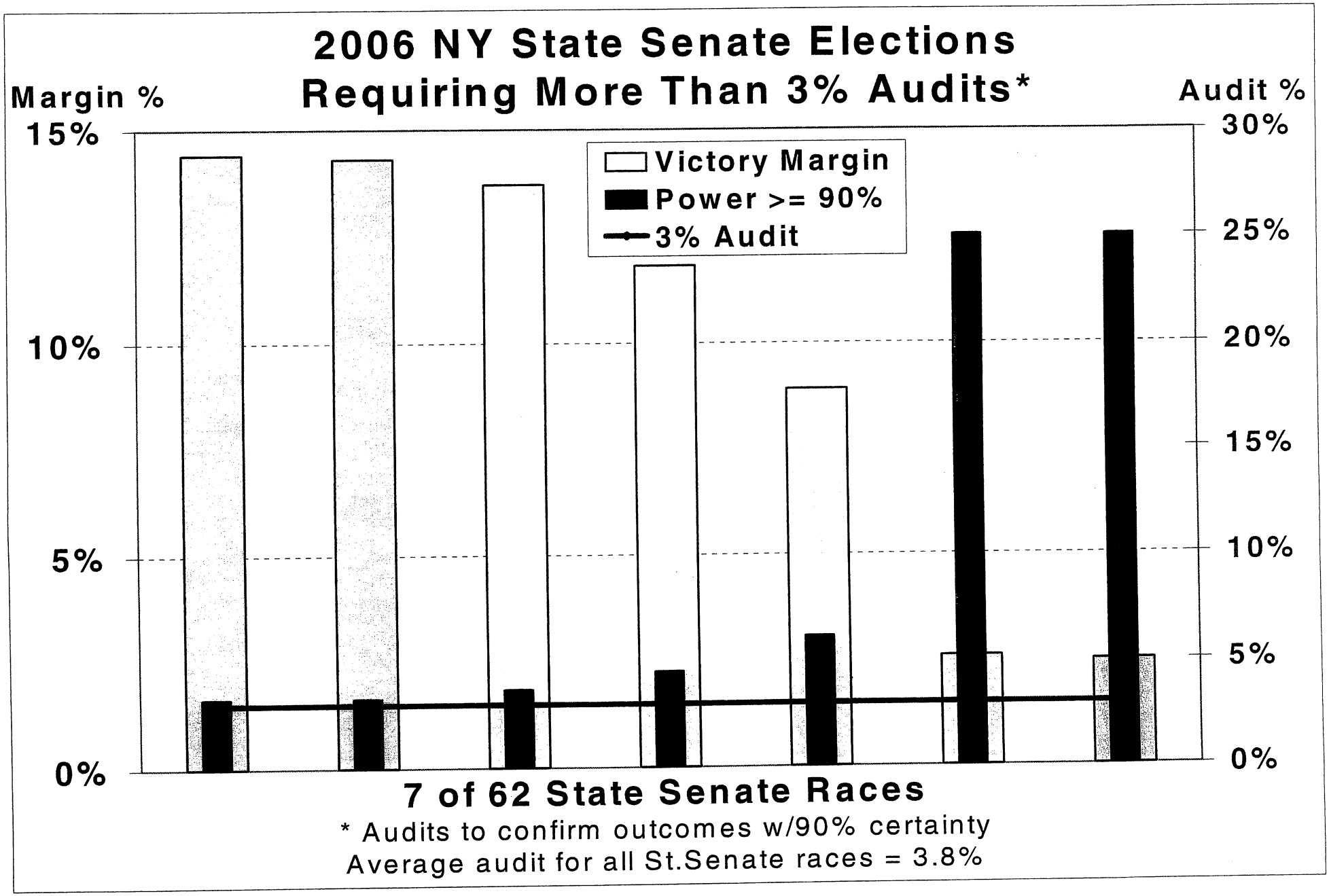
Testing is no more a guarantee of good behavior during an election than is good behavior before marriage a guarantee of fidelity afterwards!

The recent experience in Humboldt county shows the vital importance of statistical audits; you can't always trust the machines, even if (you believe that) they've behaved well in the past...

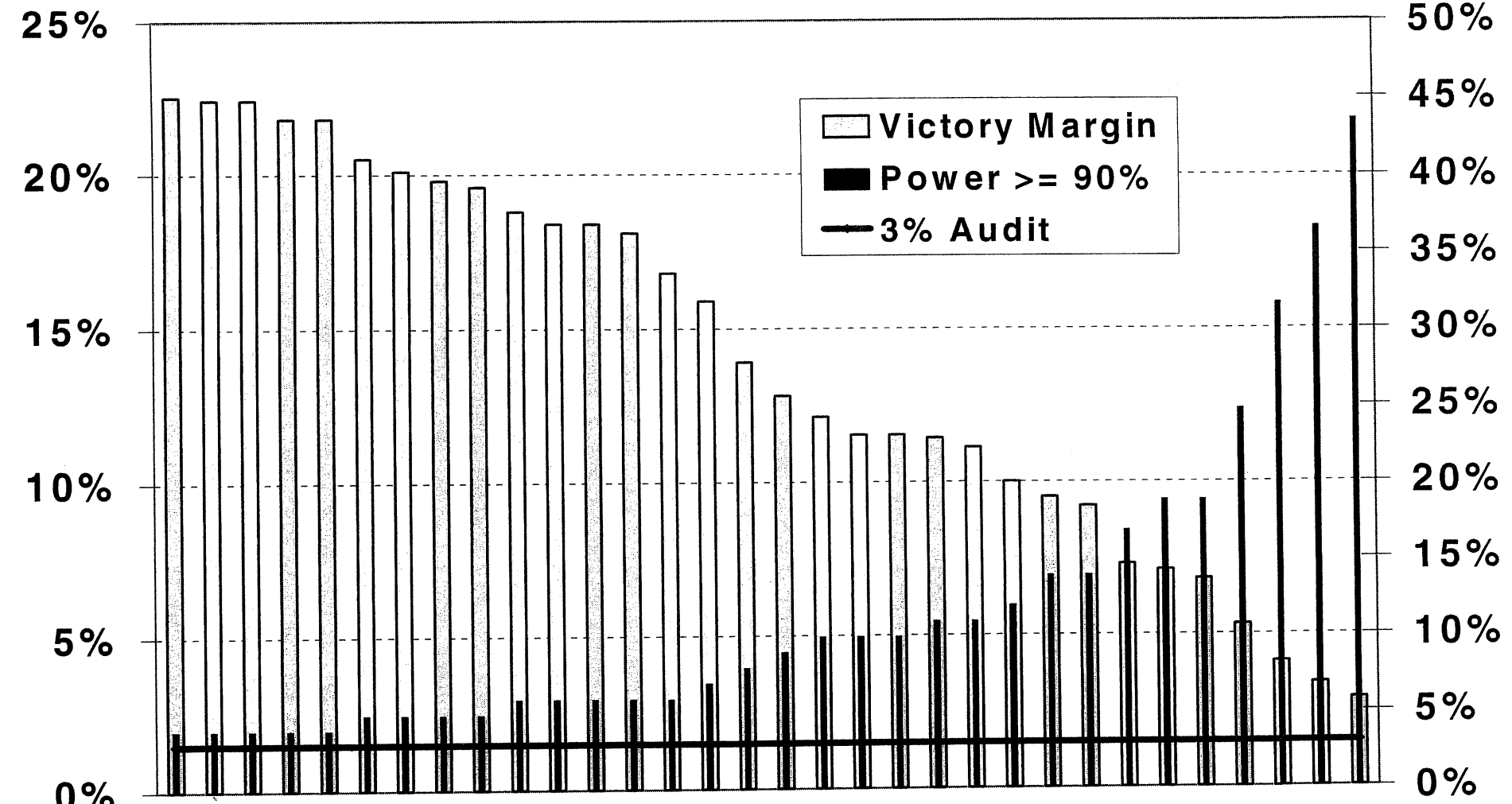
Cheers,
Ron Rivest

[5] Dr. Rivest is the Viterbi Professor of Electrical Engineering and Computer Science in MIT's Department of Electrical Engineering and Computer Science, a member of MIT's Computer Science and Artificial Intelligence Laboratory (CSAIL), a member of the lab's Theory of Computation Group and a founder of its Cryptography and Information Security Group. Dr. Rivest serves on the EAC's Technical Guidelines Development Committee, chaired by the National Institute of Standards and Technology (NIST). NIST and the TGDC write the federal voting systems standards adopted by the New York State Board of Elections.


2002-2006 NY Federal Elections
Requiring More Than 3% Audits*
Margin %
Audit %
15%
10%
5%
0%
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Victory Margin
Power >= 99%
3% Audit
14 of 87 US House Races
* Audits to confirm outcomes w/99% certainty
Average audit for all House races = 4.9%


2006 NY State Senate Elections
Requiring More Than 3% Audits*
Margin %
15%
10%
5%
0%
Audit %
30%
25%
20%
15%
10%
5%
0%
Victory Margin
Power >= 90%
3% Audit
7 of 62 State Senate Races
* Audits to confirm outcomes w/90% certainty
Average audit for all St.Senate races = 3.8%

2006 NY Assembly Elections
Requiring More Than 3% Audits*



* Audits to confirm outcomes w/90% certainty

Average audit for all Assembly races = 4.9%

Assemblymember Joan Millman, Chair,
Committee On Election Law

Assemblymember Catherine Nolan, Chair,
Committee On Education

Assemblymember Barbara Lifton, Chair,
Committee On Libraries And Education Technology

Assemblymember Brian Kavanagh, Chair,
Subcommittee on Election Day Operations and Voter Disenfranchisement

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

The Election Commissioners' Association of the State of New York shows ignorance of computers on the eve of computerizing our vote.

It is better to continue using our well-understood, affordable lever voting machines than to computerize our vote-counting at this time when our counties cannot afford – and our election commissioners do not understand the need for – proper audits.

Thank you for the opportunity to testify here today.

The first points I wish to make, very firmly, have to do with *context*. New York State has had enormous achievements in our preparation to replace lever voting machines by computerized equipment. We have led the nation in several ways.

- Audits -- At a time when activists nationwide were haggling to get *1/2 percent* audit of electronic voting systems, New York passed the Election Reform and Modernization Act requiring 3% audit.

- Communications -- At a time when electronic voting systems nationwide had communication capability that would enable malicious persons worldwide to easily modify our election results, we banned communications capability in electronic equipment to be used in New York State.

- Testing prior to Purchase -- At a time when other states were buying equipment without testing it, and without any attempt to evaluate the so-called federal testing for certification that was being done, New York required testing to federal standards and hired an independent technical company to evaluate the work of our federal laboratory. And as a result it became known that the federal laboratories either were not actually doing any testing, or were doing very little.

- Paper trail – New York law requires a paper record of every vote cast on electronic voting or vote-counting equipment. In 2005 when our law passed, this was a major achievement.

I want to repeat, New York's achievements are great when evaluated within the context of how computerized voting and vote-counting equipment is used in our nation. However, there is a

larger context, which is the use of computers in the professional world. I have worked with computers professionally since 1967. Many of the election integrity activists nationwide are computer professionals. We compare the use of computers in elections to the use of computers in the professional world, and we see that even in the best of states, like New York and California, the use of computers in elections has been unprofessional and wrong from the beginning.

- Preventing meaningful observation -- If the Help America Vote Act (HAVA) had said, "We hereby ban all election observers" people would have objected. But instead HAVA said, "Here's a lot of money so the states can buy computerized voting and vote-counting equipment." It's the same thing, because when you put vote casting and counting into a computer, there's nothing to meaningfully observe. In the professional world, when people need to solve a data-processing problem, a threshold question is asked, "What are the needs of this problem area, and can computers meet these needs?" One foundational need for elections is to use technology and procedures that facilitate meaningful public observation. Computers don't meet that need.

- Computer "security" -- I still remember the brochure for DREs (touchscreen-style voting machines) addressed to county election officials that said, "You can use what you learned at home with your personal computer to run secure elections." This is like telling someone, "If you can count to 10, you can be a rocket scientist." The fact is, no corporation runs secure computers, and corporations, especially those in the financial industry, know more about computer security than just about anyone. As a short-term contractor, I have worked for hundreds of clients, and most of the financial companies in our country. Every one of them has problems with insider and outsider intrusion into their computers, as well as innocent errors. In business "security" means that your processing results are correct, and it doesn't matter whether the cause of errors is innocent or malicious. Corporations verify 100% of every processing step. They would not do this unless it was necessary in order to find their errors before their clients find them.

- Reliance on pre-testing -- For practical purposes, there is no such thing as a secure, error-free computer, and all processing needs to be verified. If corporations could test their computerized equipment, and see that it works in tests, and then rely on those tests to ensure that processing would be accurate, and avoid the expense of 100% verification, they would not verify. In this context, New York's ground-breaking 3% audit is part of an "election exception" to professional handling of computers. We have to question why our nation has accepted this kind of exception. And also we need to ask why, here in New York, it appears that many – but not all -- of our county election officials believe that pre-testing is sufficient to ensure accurate results. Why don't they know that pre-testing is not a panacea?

- Paper trails turned out to be a failed idea – Paper trails were a theoretical solution intended to solve some of the problems of using computers to handle votes. But the idea was not practically feasible. I have attached a brief paper with the details on this point. http://www.wheresthepaper.org/VVPAT_Idea_Failed.pdf

Where is New York Now?

New York is about to replace our lever voting machines with voter-marked paper ballots and precinct-based optical scanners (vote-counting computers). The new technology is already in use in some upstate counties, and the State Board of Elections plans to finish certification testing on the scanners in December this year. Upon certification of the scanners, all counties will be asked to sign their purchase contracts for them.

In spite of the imminent switch-over to computerized vote-counting, many of our county election officials appear to be ignorant of the security needs of computers, especially the need for audits.

In August, 2009, William W. Scriber, President of the Election Commissioners' Association of the State of New York, sent a letter to the New York State Board of Elections on behalf of the Association.[1] He expressed serious concerns with the State Board's proposed 6210.18 regulations that would require counties to audit (hand-count) the votes processed by at least one scanner for each contest in each election.

His letter objected to the cost of such audits, a realistic concern in this time of drastic cutbacks in most governmental budgets. But the solution is not to skimp on proper computer security. Rather the solution would be to keep the affordable lever voting machines that we already have, which have minimal and affordable security requirements.

Mr. Scriber objected to the number of ballots that the proposed regulations would require to be hand-counted. He stated "we consider [audits for every race] totally unnecessary" given the pre-election tests of the scanners that counties would be doing.

This position and rationale reveal disturbing ignorance.

In business, 100% of transactions are confirmed and yet errors are common. ATM transactions are verified three to five times each, and yet ATM errors and fraud are widespread. Many businesses employ teams of technical employees who verify computer results -- and correct the errors -- around the clock, seven days a week. None of this verification would be done if it were not needed to ensure accurate computer results.

Use of computers in the field of elections differs from use of computers in business in two ways.

- Computerized vote-counting is harder to verify. The secret ballot, which we use to prevent vote-selling and coercion, also prevents effective use of most types of business verification, which are based on the use of tracking numbers for each transaction. Using tracking numbers or other identification on ballots would violate the secret ballot and enable people to identify who cast each ballot. This is why verification of computerized vote-counting consists of hand-counting the same votes that a scanner counted in order to determine if both vote-counts produce the same tallies. The hand-counting should take place immediately upon close-of-polls while the ballots are still under continuous observers' scrutiny, so that we know the ballots were not tampered with. If immediate hand-counts are impractical, then the voted ballots have to remain in observers' view until the hand-counts take place.

- Election officials have no interest in securing voted ballots by facilitating observers' continuous observation of them, and do not want to perform sufficient hand-count audits to confirm the outcome of all races.[2] And they get away with it. In business, a person who refuses to do their job, or misuses the technology they work with, gets fired.

If the scanner in my poll site reads my ballot incorrectly or credits my vote to a wrong candidate, I won't notice and neither will anyone else. In fact there is no way for anyone to know unless the votes on all ballots processed by my scanner are secured by observation and hand-counted.

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[1] http://www.wheresthepaper.org/ECA_6210.18_concerns.pdf

[2] This attitude is widespread -- http://www.wheresthepaper.org/HouseAdminTestimonyDougLewis3_20_2007.pdf

Scanners make mistakes.[3] The scanning "calibration" can "drift" during the election day, resulting in lost or switched votes, and no one would know. The ballot programming could contain innocent or malicious errors. The software could contain as-yet-unnoticed errors. Computers are vulnerable to many types of problems that mechanical machines don't have.

Yet our Election Commissioners' Association doesn't seem to know this. They think that testing a scanner before an election is enough to show that it will work a week or two later during the election. This would be true with mechanical lever machines, but not with computers.

Mr. Scriber's letter also says. 'We have always understood that it was the intent of the audit to check machine operation/programming and not to test each candidate. In reality the three percent audit was to test the machines functionality and not to do a partial "recount" of candidates...."

It is unclear what Mr. Scriber might mean by machine "operation/programming" or "functionality". One would think that these terms mean that votes are accurately read by the scanner, and votes are accurately credited to the correct candidate. The only way to know these things is to audit (hand-count) the votes to verify the computer's count.

It is unclear whether Mr. Scriber knows that scanners have "ballot programming" which determines which candidate gets the benefit of each vote, that separate ballot programming is done for every ballot style with separate opportunities for errors that may kick in after a large number of ballots are processed on election day. It is unclear whether he knows that scanning calibration may drift. The only way to know if the ballot programming is correct for each candidate *on election day* is to audit for each candidate after the election.

Based on Mr. Scriber's letter, it appears that not all of our county election officials understand these basics. This is why we need to halt our plans to replace our lever machines with computers now until our law mandates, and we can afford, to protect our future paper ballots with continuous observation, and audit all races sufficiently to demonstrate that the winners are indeed the winners. I urge this Committee to take all possible actions to enable our counties to keep our affordable, easily-secured lever voting machines until such time.

Thank you.

[3] "Ballot-Scanner Voting System Failures in the News - A Partial List," May 22, 2009. Describes 186 occurrences of malfunction including 80 incorrect tallies, 35 EMS miscounts, 22 memory card failures, 5 mark-detection failures, 13 instances of misprinted ballots, and 31 miscellaneous operational failures. Readers are cautioned to remember that although scanners have many failures, they are superior to touchscreen-style voting machines (called DREs) which have more failings and 3 times more failures. http://www.votersunite.org/info/OpScansIntheNews.pdf

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Subcommittee on Election Day Operations and Voter Disenfranchisement

Statement by Teresa Hommel, Chairwoman,
Task Force on Election Integrity, Community Church of New York
October 22, 2009

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]:

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[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.

"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 nor 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.

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 temptation and 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. Howard Stanislevic, another witness at this hearing, will explain that 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.

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[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

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.

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 New York it will not -- because of our 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.

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[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
>
> . . .

- 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.

###

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.

Teresa Hommel, May 26, 2009
www.wheresthepaper.org/VVPAT_Idea_Failed.pdf

Paper Trails: A Good Idea That Failed

The Good Idea

Why did activists lobby for years to get paper trails added to "Direct Recording Electronic" voting machines (DREs), also known as "touch screen" voting machines?

(Paper trails, also known as Voter-Verified Paper Audit Trails or VVPAT, are printed by a DRE after each voter indicates his or her votes, but before the votes are cast. The voter has a chance to verify the paper printout, and cast the ballot if the VVPAT is correct or cancel the ballot if the VVPAT doesn't repeat the voter's choices correctly.)

VVPATs were supposed to address two DRE problems:

- Computer work in the "information technology" world is 100% verified. Always. And mistakes are almost always found--and corrected before customers see them. Shockingly, DREs were designed without any feature to enable their work to be verified. If DREs had VVPAT, then Election Boards could hand-count the votes on VVPAT in front of observers, compare DRE and VVPAT tallies, and verify that DRE results were accurate.

- Election integrity is directly related to the ability of observers to watch vote handling and counting. When handling and counting are done inside a computer, observers can't do their job. If DREs had VVPAT, then observers could watch the handling and counting of votes on the VVPAT.

Vendors of "paperless DREs" (DREs without VVPAT) argued that DREs verified themselves. Activists and NIST (National Institute of Standards and Technology) said that software-created tallies needed "software-independent" verification via VVPAT.[1]

Why the Good Idea Failed

1. Voters can't verify.

The VVPAT idea assumed that voters would be able to compare their voting choices on the DRE display screen to a printout of the same choices on a little slip of paper similar to a cash-register receipt. However, studies show that most people can't do it.

Sarah Everett at Rice University found that two-thirds of test voters didn't notice when 8 races disappeared entirely from their review screen. [2]

Ted Selker of the CalTech/MIT Voting Project listed 18 problems with VVPAT, including these problems that make it difficult for voters to verify: paper looks different, different format than DRE, separate thing to look at, extra time and step for voting, poor lighting and poor readability.[3]

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[1] http://vote.nist.gov/DraftWhitePaperOnSIinVVSG2007-20061120.pdf "Requiring Software Independence in VVSG 2007: STS Recommendations for the TGDC", 11/2006.

[2] http://www.wheresthepaper.org/SarahPEverettDissertation.pdf, Everett, S. P. (2007). Doctoral dissertation, Rice University, Houston, TX. See especially, discussions on page 77 and 103.

[3] http://vote.nist.gov/speeches/3%20-%20Usability%20&%20Accessibility%20Panel/7%20-%20Selker.pdf

Selker testified to Congress that in a study where test voters cast votes in 108 test elections in which the VVPAT contained errors, test voters found no errors in the VVPAT.[4]

2. Vendors supplied printers that didn't work.

The VVPAT idea assumed that, since printing technology has been perfected for over 100 years, VVPAT printers would work. However, vendors have supplied shoddy printers that produce high rates of unusable VVPATs. Selker listed some of the types of printer failures: connection broken, paper out, paper jam, ink out, and printer broken.

3. Election administrators won't hand-count the VVPAT.

In testimony to Congress on March 20, 2007, R. Doug Lewis, head of The Election Center, explained several reasons why auditing computer tallies by counting votes on VVPAT is not feasible.[5] The time is too short between the end of an election and legal deadlines when election results have to be certified. Election Boards don't have the funds and staff to verify computer results by hand-counting.

There are other significant reasons. The receipt-like paper trail, which is on a continuous roll, is very difficult to tabulate by hand. Most important, Election Boards don't believe that they should have to do such work. They want voting equipment that they can trust without verification. They believe that computers can serve this purpose despite dozens of computer science studies and papers that provide thousands of pages of detailed explanations and examples that show otherwise.

4. The VVPAT is extraneous.

In DREs with or without VVPAT, the unverified, unverifiable electronic "votes" in computer memory are counted electronically, unobservably, for initial election-night tallies. Normally the VVPAT is not examined on election night or later, making it little more than a placebo.

Conclusion

VVPAT adds cost and complexity to DRE voting systems. VVPAT does not add to the observability of elections, nor ensure that outcomes result from the will of the voters. Even when a small percentage of VVPATs are hand-counted later, there is no assurance that voters verified them; in fact, evidence indicates that they probably didn't.

Technology is beneficial if it is used properly and for appropriate purposes. Computers are the wrong technology for use in elections because computers prevent observers from witnessing the handling and counting of votes. Even if DREs with VVPAT worked perfectly, their use undermines democracy and forces people to "trust but not observe or verify."

The offhand remark "we'll have the paper trail to recount if we need it" is not practically or legally sound. First, such paper needs to be secured by continuous observation by all parties between the close of polls and the recount, and second, assuming continuous observation, getting a hand-count to verify tallies requires a legal basis and financial resources that may be impossible to obtain. Optical scanner systems are better than DREs with VVPAT because voters create a first-hand record of their votes when they mark their paper ballot directly, but scanner systems suffer from the same problem that computer function needs to be verified but is not.

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[4] http://www.vote.caltech.edu/drupal/files/working_paper/vtp_wp31.pdf

[5] www.wheresthepaper.org/HouseAdminTestimonyDougLewis3_20_2007.pdf

http://www.wheresthepaper.org/NYCanKeepLevers_HAVA.pdf
Teresa Hommel, August 4, 2009

New York Can Keep Levers: Federal Law, HAVA

A. Testimony, Douglas A. Kellner, December 7, 2004

http://www.wheresthepaper.org/TESTIMONYOFDOUGLASAKELLNER.htm

Kellner testified to the New York City Voter Assistance Commission on Dec. 7, 2004. At the time he was the Democratic Election Commissioner of New York County. He is currently Co-Chair of the New York State Board of Elections.

"The federal Help America Vote Act, 42 USC §§15301 et seq., will require substantial changes in election administration for the 2006 elections. In particular, 42 USC § 15481, sets minimum standards for voting machines. Our lever machines satisfy all but one of those standards, that there be at least one machine at each poll site that is 'accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.' 42 USC § 15481(a)(3)."

B. Statement, Ray Martinez, April 8, 2006

Martinez spoke at a conference sponsored by VoteTrustUSA at Catholic University in Washington, D.C. At the time he was Vice-Chair of the federal Election Assistance Commission.

"Any state that does not take Title I funds can choose to keep their antiquated machines - levers or punchcards - as long as they provide voter education to prevent overvotes, and supply one disabled accessible machine per polling place." (transcription of private audio tape)

New York now meets these requirements because (1) lever machines do not allow overvotes and (2) New York counties now own and deploy one or more accessible ballot-marking devices per poll site.

C. Links to the text of the Help America Vote Act (HAVA)

Entire act: http://www.fec.gov/hava/law_ext.txt
§301: http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00015481----000-.html

D. HAVA Title III, Section 301, Voting Systems Standards -- with explanatory comments.

SEC. 301. VOTING SYSTEMS STANDARDS.

(a) Requirements.--Each voting system used in an election for Federal office shall meet the following requirements:
  (1) In general.--
    (A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall--
      (i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;
      (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and
      (iii) if the voter selects votes for more than one candidate for a single office--
        (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;
        (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and
        (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.

Comment 1. Levers meet the above requirements.

    (B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by--
      (i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and

Comment 2. Levers do not allow overvotes.

      (ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct

the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.

(2) Audit capacity.--

(A) In general.--The voting system shall produce a record with an audit capacity for such system.

(B) Manual audit capacity.--

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.

Comment 3. HAVA defines voting systems as equipment and practices in Section 301(b) below.

Comment 4. Lever systems comply with the requirement for "manual audit capacity" by requiring poll workers to record machine tallies from the face of the lever machine onto Return of Canvass paper forms on election night, and by requiring Board of Election technicians and observers to audit (confirm) those tallies when the numbers recorded on paper and on the machine are compared during the 100% recanvass according to EL §9-208. http://www.elections.state.ny.us/NYSBOE/download/law/2009NYElectionLaw.pdf

(3) Accessibility for individuals with disabilities.--The voting system shall--

(A) be accessible for individuals with disabilities, including nonvisual Accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;

(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and

Comment 5. Provision (B) requires at least one accessible system per polling place. NY complied by purchasing and fielding at least one accessible Ballot Marking Device (BMD) per poll site in 2008. There is no HAVA or New York State requirement for all voters to use the same type of machine.

(C) if purchased with funds made available under title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).

Comment 6. New York used Title II funds to purchase its BMDs. New York accepted funds for lever replacement under Title I, but has not spent that money yet. See "E. HAVA Title I, Section 102, Replacement of Punch Card or Lever Voting Machines" for HAVA provisions for return of lever replacement funds.

However, some counties may be in the process of purchasing their replacement equipment now, despite the fact that it has not been certified by the State Board of Elections, in order to participate in the "pilot" during the 2009 primary and general elections.

(4) Alternative language accessibility.--The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).

Comment 7. Levers meet this requirement. For example, in New York City they provide up to 4 languages—English and Spanish in all poll sites, with Chinese in addition in over 1800 election districts, and Korean in addition in almost 400 election districts. BMDs can increase the number of languages available to voters.

(5) Error rates.--The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.

Comment 8. Section 3.2.1 is copied below in "F. Error Rate Standard in the Voting System Standards Volume I."

The error rate standards do not apply to lever machines: "The Standards did not cover paper ballot and mechanical lever systems because paper ballots are sufficiently self-explanatory not to require technical standards and mechanical lever systems are no longer manufactured or sold in the United States." [Volume I, page 1-8]

(6) Uniform definition of what constitutes a vote.—Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.

Comment 9. The NYS Board of Elections wrote a standard for lever machines in the regulations, Part 6210.17, available at:
http://www.elections.state.ny.us/NYSBOE/law/Regulations/Part6210RoutineMaintenanceTestingVotingSystems.pdf

(b) Voting System Defined.--In this section, the term "voting system" means--
(1) the total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to

program, control, and support the equipment) that is used--
(A) to define ballots;
(B) to cast and count votes;
(C) to report or display election results; and
(D) to maintain and produce any audit trail information; and
(2) the practices and associated documentation used--
(A) to identify system components and versions of such components;
(B) to test the system during its development and maintenance;
(C) to maintain records of system errors and defects;
(D) to determine specific system changes to be made to a system after the initial qualification of the system; and
(E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

Comment 10. A "voting system" consists of machines, practices and documentation. Paper records such as the election-night Return of Canvass produced by poll workers meet HAVA's audit requirement.

HAVA does not require a software-independent, voter-verified, paper record of every vote. In fact, the EAC has allowed HAVA's audit requirement to be met by post-election printouts of purported cast-vote records stored in computer memory, NOT traceable to the original vote-casting transaction (due to the need for a secret ballot), and NOT witnessed by the voter. Data stored mechanically in a lever machine, along with the paper Return of Canvass, provide superior manual audit capacity.

(c) Construction.--
(1) In general.--Nothing in this section shall be construed to prohibit a State or jurisdiction which used a particular type of voting system in the elections for Federal office held in November 2000 from using the same type of system after the effective date of this section, so long as the system meets or is modified to meet the requirements of this section.

Comment 11. Lever machine systems were used in November 2000, and have been modified by being supplemented by accessible BMDs.

(2) Protection of paper ballot voting systems.--For purposes of subsection (a)(1)(A)(i), the term "verify" may not be defined in a manner that makes it impossible for a paper ballot voting system to meet the requirements of such subsection or to be modified to meet such requirements.

(d) Effective Date.--Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

E. HAVA Title I, Section 102, Replacement of Punch Card or Lever Voting Machines.

This section allows for the return of lever replacement money.
http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00015302----000-.html

SEC. 102. REPLACEMENT OF PUNCH CARD OR LEVER VOTING MACHINES.

(a) Establishment of Program.--
(1) In general.--Not later than 45 days after the date of the enactment of this Act, the Administrator shall establish a program under which the Administrator shall make a payment to each State eligible under subsection (b) in which a precinct within that State used a punch card voting system or a lever voting system to administer the regularly scheduled general election for Federal office held in November 2000 (in this section referred to as a "qualifying precinct").
(2) Use of funds.--A State shall use the funds provided under a payment under this section (either directly or as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in qualifying precincts within that State with a voting system (by purchase, lease, or such other arrangement as may be appropriate) that--
(A) does not use punch cards or levers;
(B) is not inconsistent with the requirements of the laws described in section 906; and
(C) meets the requirements of section 301.

[Some portions, not relevant to return of funds, are omitted here.]

(c) Amount of Payment.--
(1) In general.--Subject to paragraph (2) and section 103(b), the amount of payment made to a State under the program under this section shall be equal to the product of--
(A) the number of the qualifying precincts within the State; and
(B) $4,000.

[Bold emphasis added in the next paragraph.]

(d) Repayment of Funds for Failure To Meet Deadlines.--
(1) In general.--If a State receiving funds under the program under this section fails to meet the deadline applicable to the State under subsection (a)(3), the State shall pay to the Administrator an amount equal to the noncompliant precinct percentage of the amount of the funds provided to the State under the program.
(2) Noncompliant precinct percentage defined.--In this subsection, the term "noncompliant precinct percentage" means, with respect to a State, the amount (expressed as a percentage) equal to the quotient of--

(A) the number of qualifying precincts within the State for which the State failed to meet the applicable deadline; and
(B) the total number of qualifying precincts in the State.

F. Error Rate Standard in the Voting System Standards Volume I

Error rate standards, called "Accuracy Requirements," are in Voting Systems Standards Volume I Performance Standards posted by the federal Election Assistance Commission (EAC) at http://www.eac.gov/voting%20systems/voluntary-voting-guidelines/docs/voting-systems-standards-volume-i-performance.pdf/attachment_download/file

All volumes are posted at http://www.eac.gov/voting%20systems/voluntary-voting-guidelines/2002-voting-system-standards

The standards do not apply to lever machines: "The Standards did not cover paper ballot and mechanical lever systems because paper ballots are sufficiently self-explanatory not to require technical standards and mechanical lever systems are no longer manufactured or sold in the United States." [page 1-8]

3.2.1 Accuracy Requirements
Voting system accuracy addresses the accuracy of data for each of the individual ballot positions that could be selected by a voter, including the positions that are not selected. For a voting system, accuracy is defined as the ability of the system to capture, record, store, consolidate and report the specific selections and absence of selections, made by the voter for each ballot position without error. Required accuracy is defined in terms of an error rate that for testing purposes represents the maximum number of errors allowed while processing a specified volume of data. This rate is set at a sufficiently stringent level such that the likelihood of voting system errors affecting the outcome of an election is exceptionally remote even in the closest of elections.

The error rate is defined using a convention that recognizes differences in how vote data is processed by different types of voting systems. Paper-based and DRE systems have different processing steps. Some differences also exist between precinct count and central count systems. Therefore, the acceptable error rate applies separately and distinctly to each of the following functions:

a. For all paper-based systems:

1) Scanning ballot positions on paper ballots to detect selections for individual candidates and contests;

2) Conversion of selections detected on paper ballots into digital data;

b. For all DRE systems:

   1) Recording the voter selections of candidates and contests into voting data storage; and

   2) Independently from voting data storage, recording voter selections of candidates and contests into ballot image storage.

c. For precinct-count systems (paper-based and DRE): Consolidation of vote selection data from multiple precinct-based systems to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data; and

d. For central-count systems (paper-based and DRE): Consolidation of vote selection data from multiple counting devices to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data.

For testing purposes, the acceptable error rate is defined using two parameters: the desired error rate to be achieved, and the maximum error rate that should be accepted by the test process.

For each processing function indicated above, the system shall achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions.

# # #

AAUW Kingston Branch • Citizens for Voting Integrity • E-Voter Education Project
New York Citizens for Clean Elections • Task Force on Election Integrity

Legislative Memorandum

Keep Lever Voting Machines

Contact: Teresa Hommel
Chairwoman, Task Force on Election Integrity
212 228-3803, tahommel@earthlink.net
June 15, 2009

We urge the New York State Legislature to take action to enable our state to keep the lever voting machines, and to give our State Board of Elections direction and support for this purpose.

The replacement of our levers by voter-marked paper ballots and precinct-based optical scanners would be unwise at this time. This is partly a result of new economic constraints that were unforeseeable in 2005 when the decision was made to replace the levers.

In addition, much new information, detailed in this memorandum, gives urgency to the need for immediate legislative response.

Statewide support for keeping our levers is growing rapidly as the costs and vulnerabilities of paper ballots and optical scanners are becoming known. We urge our State Assemblymembers and State Senators to make every effort to enable us to keep our levers, allocate our scarce resources to more essential uses, and protect our electoral system from the risks of improperly-used computerized equipment and unsecured paper ballots.

Respectfully,

Teresa Hommel, Task Force on Election Integrity, Community Church of New York
http://www.wheresthepaper.org/ny.html#KeepLevers

Susan Holland and Ruth Wahtera, AAUW, Kingston Branch

Allegra Dengler, Citizens for Voting Integrity

Howard Stanislevic, E-Voter Education Project

Irene Miller, New York Citizens for Clean Elections

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1. Objective—Keep Our Lever Voting Machines!

We urge the New York State Legislature to pass legislation in 2009 to require counties to permanently retain and use the lever voting machines (levers) and continue to provide at each poll site one or more accessible ballot-marking devices (BMDs) to enable voters with disabilities to exercise a private and independent vote.

Alternatively, we urge the New York State Legislature to pass legislation in 2009 to enable each county to choose either to retain their levers to be used with accessible BMDs as described above, or to implement voting systems consisting of voter-marked paper ballots and precinct-based optical scanners (PBOS) along with accessible BMDs. Counties choosing PBOS must be required to:

- perform hand-count audits of a sufficient number of their scanners or Election Districts to achieve 99% statistical confidence that the correct winner(s) of each contest, and the correct vote share of each political party, have been accurately determined.[1]
- establish and implement procedures to either (1) perform all hand-count audits immediately upon close of polls before voted ballots and other election-day materials leave public view, or (2) maintain voted ballots and other election-day materials in public view from close of polls until completion of all hand-count audits in order to enable meaningful observation and prevent tampering, opportunity, and suspicion.

2. New information and economic constraints require immediate state action.

2.a. The costs of replacing levers will be significantly higher than previously known.
The first published study of lever replacement costs, completed in May, 2009, by private citizens using public documents alone, shows that first year replacement costs for New York City exceed federal funds for this purpose by as much as $22 million. Annual costs of using PBOS exceed the cost of using levers by as much as $16 million.[2] The report states that these cost amounts should be considered lower than realistic because many costs could not be found in public documents. See section 5.

2.b. The 2009 "pilot program" shows we are not ready to use paper ballots and scanners.
Our State Board of Elections is planning a pilot program that consists of using uncertified scanners in this year's Primary and General elections for more than 1,400,000 voters—without proper ballot security and scanner verification. If we lack resources or political will to use PBOS properly in a pilot, it is unlikely that we will use it properly later. See sections 6 and 9.

2.c. Support for keeping levers is escalating rapidly as officials, voters, and organizations realize the costs and dangers. See section 8.

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[1] For more info on audits: Howard Stanislevic, hscomms@verizon.net , 718-746-0449

[2] Lever Replacement Costs, NYC, http://www.votersunite.org/info/LeverToOpScanCost_NYC.pdf

3. New York now complies with federal mandates and need not replace our levers.[3]

3.a. New York offers accessible equipment in every poll site. The Help America Vote Act of 2002 (HAVA) requires one accessible voting device in each poll site. Our counties have satisfied this requirement by purchasing and using accessible Ballot Marking Devices.

3.b. Lever machines have a "manual audit capacity." HAVA requires voting systems to have a "manual audit capacity"[4] but the term has never been defined in law. HAVA says that voting systems consist of machines, the people who run them, and the procedures used.

For some lever systems, the manual audit consists of poll workers copying tallies from the face of the machine onto a Return of Canvass form on election night, and the recanvass a few days later when the face of the machine is compared to the Return of Canvass. For other lever systems, the machine creates a pressure-imprinted form on election night, and the rest of the procedure is the same. This is how levers satisfy HAVA's requirement for manual audit capacity.

PBOS systems work differently and their audit is different. Voters directly mark their ballots, creating a first-hand authentic record of their intent. An audit consists of hand-counting the same votes that the scanner counted, and comparing the results.

However, current state law, as well as the State Board of Elections' plan for pilot use of scanners this year, make clear that *meaningful* scanner audits may never occur in our state. This is because the voters' authentic record of their intent loses authenticity at the close of polls when the paper ballots leave public view. New York has no plan for either election-night hand-count audits or continuous public observation of scanned ballots from close of polls until completion of hand-count audits many days later.

A suggestion has been made to audit scanners by counting votes on electronic ballot images created by the scanners, rather than counting votes on the original marked paper ballots. This idea suffers from the problem that such images are not voter-verified. Also, they are created by the same software that creates the scanner's tallies, and thus the audit would not be independent of the software it purports to verify. A third problem is that ballot images on a little memory card or memory stick cannot be publicly observed, and the card or stick itself loses authenticity when it leaves public observation. Tampering by modifying ballot images would be easier than modifying paper ballots, and the entire ballot box can fit in someone's pocket.

Meaningful audits are problematic in all states for many reasons, including lack of public observation of the "chain of custody" of ballots and other election-day materials. In this light, the intent of HAVA's requirement for "manual audit capacity" is at best unclear. New York would be wise to avoid computerized election technology because proper use of it relies entirely upon performance of meaningful audits, which may not be possible in our political context.

While some have argued that lever audits have the same flaw as PBOS audits, in that both levers and paper ballots will leave public view after an election, the superiority of levers is not theoretical but based on practical, historical comparison. See section 4.c.

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[3] For more info on legal issues: Andrea Novick, Esq., anovick@fnklaw.com , 845-876-2359

[4] HAVA does not require that any system or vote tallies actually be audited.

Levers are the only machines for which it is feasible to meaningfully audit the machines themselves to confirm their performance during an election. This is because their mechanical rods and gears are easily visible and do not have the software capability to modify their own setup. A mechanical audit of a lever machine consists of visual inspection and simple mechanical tests. A mechanical audit is appropriate for levers because they are mechanical devices, in the same way that a software-independent audit using continuously-observed paper ballots is appropriate for scanners because scanners are software-driven devices.

3.c. New York need not spend the HAVA funds we accepted for lever replacement; we can rescind ERMA and return the money. New York State agreed in federal court to replace our levers in compliance with our state law, the Election Reform and Modernization Act of 2005 (ERMA). Rescinding ERMA would be a step toward renegotiating the agreement.

If New York does not replace our levers, we would have to return the approximately $57 million in HAVA Title I Section 102 funds that we accepted for this purpose. Returning this money would be another part of renegotiating our agreement. It would also save us hundreds of millions of dollars within the next few years (see section 5 for financial impact).

4. Levers serve the public good.[5]

4.a. Levers keep elections out of the hands of private companies. New York is one of the last states with election administration that is still independent of private corporations. Keeping levers keeps us independent.

Election administration in nearly every other state, once reliant on local officials accountable to the public, is now almost entirely dependent on private corporations that are not accountable. In those states, local officials are unable to administer elections without the equipment, services, and trade-secret software of a small number of vendors; if vendors withdrew their support, the election structure would collapse.[6]

Dependence on vendors has made elections in those states vulnerable to corporate decisions that may be contrary to the public interest, as well as corporate profiteering and claims of trade-secrecy for information that is essential to public oversight of elections.

4.b. Levers are secure and accurate. Levers are more secure and accurate than computers because they are single-purpose mechanical devices, and their proper setup can be confirmed simply and quickly by visual inspection and easy-to-perform mechanical tests. No computer is as secure as a mechanical machine, and in fact very few computers are secure.[7]

In contrast to levers, confirmation of proper setup of scanners is difficult, costly, and cannot ensure proper function on election day. This is why Boards of Elections must perform expensive,

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[5] For a longer discussion, see "Why Keep Lever Voting Machines" http://www.WheresThePaper.org/WhyKeepLeverVotingMachines.htm

[6] Ellen Theisen, VotersUnite.Org: "Vendors are Undermining the Structure of U.S. Elections" http://www.votersunite.org/info/ReclaimElections.pdf

[7] FBI 2005 Computer Crime Survey http://www.WheresThePaper.org/FBI_ComputerCrimeSurveyPR.pdf and "You Go to Elections with the Voting System You Have: Stop-Gap Mitigations for Deployed Voting Systems," http://www.WheresThePaper.org/YouGoToElectionsStopGapMitigations.pdf

time-consuming post-election hand-count audits in order to confirm secure and accurate computer function on election day.[8]

Some New Yorkers believe that scanner certification guarantees proper function during elections. Unfortunately, certification testing only shows whether a particular scanner is capable of working under tested conditions. Many variables are not tested, especially ballot programming and unusual vote combinations that can trigger previously-undetected errors.

4.c. Historical comparison of voting technologies shows that levers are the most secure. In over 100 years of use, a culture of fraud has never developed around the levers. They are "tamper-resistant" because they are too cumbersome to tamper with, and problems are too easily visible. In contrast, the FBI Computer Crime Survey of 2005 showed that computer technology cannot be secured even by organizations with great expertise in computer security.[7] Paper ballots have historically been subject to widespread tampering.[9]

4.d. Levers are manageable. Levers are easy to manage for voters, poll workers, election administrators, and maintenance technicians. Problems with levers are easily detected, diagnosed, and corrected.

In contrast, problems with scanners are mysterious, requiring Boards of Elections to rely on vendors who often say that they don't know why the problems occurred.[10]

5. Levers are affordable. Scanners are not.

Our state, like the rest of our nation, is facing economic crisis. It would be irresponsible to replace our levers now with equipment that will drain resources from essential services that New Yorker's lives depend upon—especially since doing so is unnecessary and can be avoided.

It is a red flag that no governmental body has yet produced a financial projection of the initial costs of replacing levers and the continuing cost of running PBOS elections. We have two warnings of the magnitude of higher costs we will face:

- A cost study for New York City, completed in May, 2009, from public documents alone by individual citizens, shows that first year replacement costs exceed HAVA funds for this purpose by as much as $22 million. Annual costs of using PBOS exceed the cost of using levers by as much as $16 million.[11] The report states that these cost amounts should be considered lower than realistic, because many costs could not be found in public documents.

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[8] Full discussion of problems: "Back to Basics" http://www.WheresThePaper.org/BackToBasics.pdf

[9] Deliver the Vote, 2005, by Tracy Campbell, Carroll and Graf Publishers. Also, Election Administration in the United States, 1934, by Joseph P. Harris, Ph.D., at http://vote.nist.gov/election_admin.htm

[10] "Ballot-Scanner Voting System Failures in the News - A Partial List," May 22, 2009. Describes 186 occurrences of malfunction including 80 incorrect tallies, 35 EMS miscounts, 22 memory card failures, 5 mark-detection failures, 13 instances of misprinted ballots, and 31 miscellaneous operational failures. Readers are cautioned to remember that although scanners have many failures, they are superior to touchscreen-style voting machines (called DREs) which have more failings and 3 times more failures. http://www.votersunite.org/info/OpScansIntheNews.pdf

[11] Lever Replacement Costs, NYC, http://www.votersunite.org/info/LeverToOpScanCost_NYC.pdf

5.a. Levers are affordable. Lever parts and maintenance are easily available.[12] Most parts are standard hardware store items, while a few have always been made-to-order in machine shops. Levers can be kept in nearly-new[13] condition for another hundred years at minimal cost: one county recently renovated their levers to nearly-new condition for an average cost of $426 each. Full inspection and maintenance of this kind is recommended every 4 years.

5.b. Scanners are not affordable. State and county election offices nationwide are struggling to deal with the spiraling costs of computerized elections in the midst of our economic crisis.[14] The costs they face were not foreseeable when their jurisdictions rushed to buy computerized equipment. But New York can learn from their experience and avoid their mistakes by keeping our levers accompanied by accessible BMDs.

For example, after expiration of the 5-year warrantee required by New York law, maintenance costs will increase annually as delicate electronic components need replacement. The scanners themselves will need replacement within the decade or shortly thereafter—computers do not age well, especially if they have to be moved from storage to poll site and back repeatedly. Verification of the scanners' proper function on election day requires hand-counts that will increase the cost of elections. Printing costs for paper ballots will be an additional expense.

6. New York's law is not ready for elections with paper ballots and scanners.

6.a. Paper ballots must be secured by observation. History tells us that paper ballots can be secured only by continuous public observation, and our law must be updated for this. Whether hand-count audits take place at close of polls on election night, or after proper observation for many days, both solutions require additional county resources, as well as additional party resources to recruit sufficient observers. If our state lacks the resources and political will to mandate one of these solutions, we should not proceed to replace our levers with paper ballots.

The tamper-resistant nature of levers has enabled us to conduct secure lever elections with minimal security procedures. But paper ballots and computers invite tampering, innocent errors, and suspicion. If we do not mandate the security that paper ballots need, our voters and candidates will not have full confidence in our election results, and our county election administrators will suffer the unfair burden of suspicions and potential allegations of irregularities but will not be able to call upon observers to attest to proper continuous security.

6.b. A statistically-significant number of scanners or Election Districts must be verified by hand-counts to confirm correct outcomes and party vote-shares. Our law must be updated for this, because now it requires only 3% of scanners to be verified by hand-counts, and 3% will not reveal many errors made by the scanners and the ballot programming.[1]

7. Arguments in favor of PBOS twist facts and reasons.

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[12] International Election Solutions services the Shoup machines used in New York City and Albany. http://www.WheresThePaper.org/Shoup_IntlElectionSolutionsMar18_09.pdf
Voting Machine Service Center, Inc. services the AVM machines used in most other counties. http://www.WheresThePaper.org/VotingMachineServiceCenterletterJan23_09.pdf

[13] Nearly-new means that the insides are like-new but dents in the external housing would still be visible.

[14] Electionline, Feb. 19, 2009
http://www.WheresThePaper.org/Electionline090220StateCtyElecOfficesEconomicCrisis.htm

7.a. Rebuttal to "We need a paper record of every vote." In fact paper records are needed to perform "software-independent" verification of software-created results. Scanners use two kinds of software, both of which need verification. First is their basic programming which has failed to pass its certification tests in over three years of testing by our State Board of Elections. Second is their ballot programming which changes with each election, is difficult to create correctly, is prohibitively expensive and time-consuming to test fully, and is typically used without being adequately tested. This is why we need to perform hand-counts of the votes processed by a statistically-significant number of scanners or Election Districts after each election.

In contrast, levers don't use software and don't need software-independent verification methods. Lever programming is mechanical, and is verifiable by visual inspection and mechanical tests.

Concerns that levers do not meet computer standards should be replaced by concerns that computers don't meet mechanical standards—simplicity, observability, speed and ease of visual and mechanical verification of ballot programming, and ease of detection and repair of problems.

7.b. Rebuttal to "We'll have the paper ballots to recount if we need them." First, how will we know if we need a recount? Second, "if we need them" won't give anyone standing or a cause of action to get a court order to count the votes on paper ballots. Third, if the ballots have been out of public view since the end of the election day, their value is diminished.

7.c. Rebuttal to "We'll have the ballot images to recount if we need them." Ballot images are computer-generated and not voter-verified. They would be easier to tamper with than paper ballots. An entire ballot box fits on a memory card the size of a quarter. If you have ever watched a photo retoucher remove a blemish from someone's chin in a portrait, you can understand that votes can be moved around on a ballot image more simply because it's only black and white – no need to blend skin tones. "If we need them" would still be a problem, as in section 7.b. Elections should be simple, understandable, and observable, but paper ballots, ballot images, and scanners turn elections and election security into an unnecessarily complex "Rube Goldberg" task.

7.d. Rebuttal to "Some localities don't maintain or secure their levers. (Alternative form: I heard about or encountered a broken lever machine.)" Use of computers will not solve faulty administrative practices or lack of maintenance, but those poor practices applied to the use of computers could lead to broken computers, erroneous software, corrupt ballot programming, or tampering that could have wide effects and easily remain unnoticed.

7.e. We urge you to review three documents for more arguments and rebuttals.

a. "FAQ: Why Keep Levers" http://www.WheresThePaper.org/FAQ_WhyKeepLevers.pdf
b. "Back to Basics" http://www.WheresThePaper.org/BackToBasics.pdf
c. "League of Women Voters standards were adopted for electronic systems, and never were intended to apply to non-electronic systems such as lever machines" http://www.WheresThePaper.org/rebut_NYVV_LWVNYS_Feb12_09.htm

8. Support for keeping levers is escalating rapidly as officials, voters, and organizations realize the costs and dangers.[15]

15 counties have passed resolutions to keep levers: Chenango, Columbia, Delaware, Dutchess, Essex, Fulton, Greene, Herkimer, Rensselaer, Schuyler, Sullivan, Tioga, Ulster, Warren, and Washington. A resolution to keep levers was passed by the Intercounty Legislative Committee of the Adirondacks (Clinton, Essex, Fulton, Hamilton, Herkimer, Lewis, St. Lawrence, Saratoga, Warren, and Washington counties). The Association of Towns' 2009 Legislative Program supports keeping levers. District Council 37, AFSCME, released a statement of support. Thousands of individual New Yorkers have signed petitions to keep levers. The Westchester County Board of Legislators sent a letter to Governor Paterson and state legislative leadership urging continued use of levers.

9. New York is planning to use new uncertified scanners in the 2009 Primary and General Elections for over 1,400,000 voters--with no effective security or verification.[16]

New York is the first state to independently and professionally test the computerized election equipment submitted to us for certification; we must thank our State Board of Elections for this. However, after more than 3 years the scanners have failed to pass their tests, and now we will use them anyway in this pilot.[17]

The pilot will take place in this year's primary and general elections for more than 1,400,000 voters. Only 3% of scanners will be selected for hand-count verification, and the hand-count will take place after voted ballots have been out of public view for many days. This plan violates the interests of voters, candidates, and political parties.
This pilot is a wake-up call: the legislature cannot rely on our State Board of Elections to stand alone against pressures from the U.S. Department of Justice and the Federal Court as well as uninformed public opinion that assumes that the new scanners will work as reliably, conveniently, manageably, and inexpensively as our levers.

Despite the use of uncertified scanners, the pilot plan does not require 100% hand-count verification of scanner tallies on election night, nor continuous observation of the "chain of custody" of the ballots or other election-day materials until later hand-count verification procedures, nor a statistically-significant number of hand-counts.

The pilot program has been widely criticized.[17, 18, 18] The pilot program's lack of proper security and verification procedures is an urgent reminder that security for paper ballots and verification for scanners are burdensome, time-consuming and expensive. Our county Boards of Elections may not have sufficient resources to secure paper ballots and verify computer function in this

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[15] All items in this section are available at **www.WheresThePaper.org/ny.html#CountyResolutions** or http://nylevers.wordpress.com/

[16] Stanislevic, "New York Rolls Out Uncertified Voting Systems for 2009 Elections" has links to all documents on the New York State Board of Elections web site. http://e-voter.blogspot.com/2009/05/new-york-rolls-out-uncertified-voting.html

[17] Ellen Theisen, VotersUnite.Org: "New York's New Plan for Deploying Optical Scanners Is Dependent on Historically Undependable Vendors and Proper Functioning of Their Historically Defective Equipment" http://www.votersunite.org/info/NYSBOE-June4Plan.pdf

[18] "Comments on the NY State Board of Elections Proposed 2009 Pilot Plan" by Bo Lipari http://www.WheresThePaper.org/LipariCEMACPilotComments.pdf

year's pilot, but they will have fewer resources next year as our economic downturn continues; their resource deficiency will be more severe if the use of paper ballots and scanners replaces our affordable and easily-secured lever machines.

10. Conclusion

State legislative action now to retain our levers can help our state both economically and in support of manageable elections.

New York is continuing to lose jobs and our economic base. It would be irresponsible to replace our levers now with equipment that will drain resources from essential services that New Yorker's lives depend upon.

Use of paper ballots and scanners in our elections would introduce new vulnerabilities to both innocent and malicious errors that would be potentially uncontrollable. At best, errors would be difficult and expensive to detect--due to the need to maintain public observation of voted ballots and to conduct sufficient hand-counts. Detected errors would be difficult and expensive to correct if correction were even possible.

To keep our democracy vital, we must use equipment that our Boards of Elections can understand and manage at least as well as our levers; that people without computer science degrees can understand; that don't require software-independent verification of software function; that have a history of minimal errors, problems, and tampering; and that keep our elections under the control of public servants rather than forcing our Boards of Elections into dependence on private corporations.

"Using computers" and "being modern" may be tempting, but citizen understanding, oversight, and control of governmental processes, including elections, are the basis of democracy. Government behind closed doors is easily corrupted. Computers are closed doors that can't be opened.

The people of New York need our State Senate and Assembly to act now to enable our counties to retain and use our time-proven lever voting machines.

# # #

Assemblymember Joan Millman, Chair, Committee On Election Law
Assemblymember Catherine Nolan, Chair, Committee On Education
Assemblymember Barbara Lifton, Chair, Committee On Libraries And Education Technology
Assemblymember Brian Kavanagh, Chair, Subcommittee on Election Day Operations and Voter Disenfranchisement

Statement by Catherine Skopic
140 West Broadway, New York, N.Y. 10013
(212) 227-7847
cskopic@aol.com

Oct 22, 2009

Thank you for conducting this hearing and giving us an opportunity to speak.

I am a citizen of these United States, resident of New York State, and an educator for 35 years. I have been concerned about electronic voting and vote counting for several years, and have spoken at other hearings about the need for fair, observable, and honest elections. In my opinion, the lever voting machine is the most reliable, transparent, and tamper-proof voting mechanism that we have.

Book: Keep the Levers

This morning I am proud to present you with copies of this book, Keep the Levers, that contains many different expressions of support for keeping the lever voting machines.

There are several sections separated by sheets of blue paper.

1. The first section contains resolutions passed by 19 New York counties:
Chenango, Columbia, Cortland, Delaware, Dutchess, Essex, Fulton, Greene, Herkimer, Montgomery, Rensselaer, Schoharie, Schuyler, Sullivan, Tioga, Ulster, Warren, Washington, and Wyoming.

2. Next is the June 11, 2009 letter from the Westchester County Board of Legislators to Governor Paterson, signed by the legislators.

3. Next are three town resolutions from Shandaken, Greenburgh, and Copake.

4. Next are resolutions from

   a. The Intercounty Legislative Committee of the Adirondaks which includes the counties of Clinton, Essex, Fulton, Hamilton, Herkimer, Lewis, St. Lawrence, Saratoga, Warren, and Washington.

   b. The Association of Towns of the State of New York, which represents 8.1 million New Yorkers who live in towns.

   c. The Democratic Rural Council.

5. Next are resolutions adopted by organizations, including

a. District Council 37, American Federation of State, County, and Municipal Employees, AFl-CIO.

b. United Hebrew Trades, a Division of the Jewish Labor Committee.

c. JPAC, the Joint Public Affairs Committee, sponsored by the Jewish Association for Services for the Aged, JASA.

d. Brooklyn-Queens Chapter of the National Organization for Women, NOW.

e. The New York City Chapter of the New York StateWide Senior Action Council, Inc.

f. OWL, The Older Women's League, Brooklyn Chapter.

g. The 504 Democratic Club, which is the northern Manhattan chapter of the 504 Democratic Club and which focuses on bringing disabled people of color into the poltical process to advocate for change.

h. The Village Independent Democrats of New York City.

i. The Independent Neighborhood Democrats of Brookyn.

6. The last section in the book is the largest. It contains copies of petitions, or the transcribed names and addresses of over 3000 New Yorkers from different parts of our state who have signed petitions, to keep the lever voting machines.

Testimony of Dr. Charlotte Phillips, MD

In addition to the Keep the Levers book I would also like to submit into the official record ten copies of this very personal testimony prepared by Dr. Charlotte Phillips, MD, who is a practicing pediatrician, the Chairperson of Brooklyn for Peace, and a constituent of Chairwoman Millman.

Testimony of Ellen Theisen, Director of VotersUnite.org

Concern for New York's election equipment is nationwide, and this is appropriate because, until the pilot use of scanners in some upstate counties, we have been one of the few states that have not yet computerized our vote-casting or vote-counting. Many election integrity activists nationwide are hoping that New York can lead a movement away from the use of computers to handle votes, for the many reasons that will be cited by other witnesses here today.

I would like to submit into the official record five copies of this 118-page testimony by Ellen Theisen entitled "A National Perspective on the Use of Electronic Ballot Scanners and the Dependence on Voting System Vendors." Ellen Theisen is the founder and director of VotersUnite.org, and has spent the last six years documenting the experiences of counties and states nationwide with their electronic voting and vote-counting equipment. She has published more than 20 major studies since 2003, including

- "Voting System Companies Fail to Meet New York State's Requirements for "Responsible Contractors," a 2007 report providing documented evidence revealing that the four voting system companies then under consideration in New York fail to meet New York State's criteria for responsible contractors. http://www.votersunite.org/info/IrresponsibleVendors.pdf

- "Vendors are Undermining the Structure of U.S. Elections." Featured in an August 2008 "Lou Dobbs Tonight" segment, this report focuses on eight case studies that demonstrate the pervasive control voting system vendors have over election administration in almost every state and the consequences jurisdictions experience.
http://www.votersunite.org/info/ReclaimElections.pdf

Ellen Theisen's testimony offers us a national perspective on the problems many states and counties have had when using optical scanners in their elections, with summaries of 186 failures of such systems. She also is providing her report on the consequences many jurisdictions have experienced when relying on private corporations for assistance in administering elections. She hopes that New York State will be able to use this information to learn from the experiences of other states and avoid the problems that plague other jurisdictions.

Testimony of Bruce Funk, Former Emery County Utah Clerk

The last item that I am submitting today is a brief personal testimony by Bruce Funk. He is the former county clerk in Emery County, Utah. After he inspected his electronic voting equipment and found illegal software, he was immediately fired by the state of Utah. He describes his experience, and draws the conclusion that

> *If you can avoid switching your elections to electronic equipment, you will avoid this entire problem [of loss of transparency and public oversight of all election functions] that electronic machines create.*

Conclusion

Thank you very much for accepting these materials. I hope that by working together we can find some way to avoid computerizing our vote-handling and vote-counting.

DISTRICT OFFICES
☐ 751 WEST 183RD STREET
NEW YORK, NY 10033
212.928.1322
FAX 212.928.4177

☐ 425 WEST 144TH STREET
NEW YORK, NY 10031
212.234.0551
FAX 212.234.0552

CITY HALL
☐ 250 BROADWAY, ROOM 1747
NEW YORK, NY 10007
212.788.7007
FAX 212.788.9190

rjackson@council.nyc.gov
council.nyc.gov

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TESTIMONY

Assembly Standing Committee on Election Law

Assemblymember Joan L. Millman, Chair

Assembly Standing Committee on Education

Assemblymember Catherine Nolan, Chair

Assembly Standing Committee on Libraries And Education Technology

Assemblymember Barbara Lifton, Chair

Subcommittee on Election Day Operations and Voter Disenfranchisement

Assemblymember Brian Kavanagh, Chair

October 22, 2009

Madam Chair, Mr. Chair, and members of the New York State Assembly Committees and Subcommittee, thank you for the opportunity to add my thoughts as you consider an issue that is fundamental to sustaining – and given the problems with our 2000 and 2004 Presidential elections, some would say fundamental to restoring – public confidence in our election process. This testimony follows comments I made before the New York State Senate Committee earlier this month.

Three years ago, the Council of the City of New York unanimously passed Resolution 228-2006 that urged reasonable criteria to guarantee a successful implementation of voting machine reform. I was the lead sponsor of Resolution 228 and I am speaking from the perspective of a New York City legislator. I continue to be concerned about our future elections because, to date, most of the prudent measures advocated by Resolution 228-2006 have not been adopted in New York.

From day one, the cost of proposed electronic systems has been a concern. To date, only independent citizens have produced cost analyses for New York City. These analyses show that our counties will not be able to afford to conduct elections properly without diverting significant resources from other essential needs. In these times of diminished resources and declining tax revenues, is it responsible to embark on a particular path for HAVA compliance without a comprehensive cost study? I think not.

I urge you to work with the New York State Comptroller to quickly produce and publish a comprehensive cost analysis and to identify sources of funds to cover the cost of electronic elections, before allowing our counties to proceed with replacement of our accurate and affordable lever voting machines.

Besides cost – there is the issue of confidence. Government must be credible. We cannot tolerate an electoral system where who counts the votes is more important than who casts them. Resolution 228A recommended a public demonstration of county boards of elections' ability to independently perform all tasks related to running an election with its chosen new equipment, from programming the ballots to canvassing votes and tabulating final tallies. In addition, Resolution 228A asked for such a demonstration to show that counties would be able to confirm that tallies, activity logs and event logs are accurate. The pilot use of the new equipment in the 2009 Primary and General elections this year has not yet and will not accomplish this objective, since verification of tallies, logs etc is not part of the pilot. I urge you to mandate that the State Board of Elections conduct such a demonstration of proficiency.

I urge you to ask the State Board of Elections to conduct a public hacking test on each scanner system being tested for certification. **Can you point to a method by which a county board of elections can verify that its delivered equipment consists <u>solely</u> of legal components that have passed state certification tests and contains no other components, including hardware, software, firmware, operating systems, anti-virus software, firewalls, drivers, and all other types of components?**

My concern about the probability of illegal supplemental software is influenced by the experience of whistleblower and former County Clerk Bruce Funk, from Emery County, Utah who, upon inspection, found that none of his electronic voting systems contained only legal software. Or, put differently, all of the electronic voting systems contained illegal software. His testimony is compelling and is supplemented by findings in California of illegal and unexpected software in its electronic voting systems from all of its vendors.

Key here is that State of California ***<u>made</u>*** inspections. Although New York State law and regulations prohibit communications capability in electronic voting

systems, there is no provision in our State law ***requiring*** inspections. Do we just have to trust that there is no incentive to subvert an accurate tally? I believe that as stewards of the public trust, we must do more – we must ***guarantee*** an accurate tally. Just as the ability to create an audit trail means nothing without the impetus of an actual audit, I urge you to mandate inspection for illegal components. I further urge you to mandate the State Board of Elections to devise a method of inspection by which a county board of elections can verify that delivered equipment consists solely of legal components.

New York City's counties are currently able to conduct cost-effective and accessible elections generating trustworthy results by using existing lever voting machines supplemented by the new accessible Ballot Marking Devices ("BMDs") that were purchased and deployed in 2008. Let us seize the obstacle of high costs to install electronic voting and transform it into an opportunity: to create an accurate, efficient and economically justifiable 21st century election infrastructure.

Start by meeting the criteria of Reso 228.

Thank you for your attention to my testimony.

The New York City Council

City Hall
New York, NY 10007

Legislation Details (With Text)

File #:	Res 0228-2006	**Version:** A	**Name:**	Help America Vote Act of 2002 (HAVA)
Type:	Resolution		**Status:**	Adopted
			Committee:	Committee on Governmental Operations
On agenda:	4/5/2006		**Final action:**	8/16/2006
Enactment date:			**Law number:**	

Title: Resolution urging the Board of Elections in the City of New York to take various measures to ensure public input and inspire public confidence in any election systems procured pursuant to the Help America Vote Act of 2002.

Sponsors: Robert Jackson, Christine C. Quinn, Maria Del Carmen Arroyo, Charles Barron, Gale A. Brewer, Yvette D. Clarke, Leroy G. Comrie, Jr., Inez E. Dickens, Helen D. Foster, James F. Gennaro, Letitia James, G. Oliver Koppell, John C. Liu, Melissa Mark-Viverito, Rosie Mendez, Michael C. Nelson, Annabel Palma, Larry B. Seabrook, Kendall Stewart, Miguel Martinez, Michael E. McMahon, Hiram Monserrate, Tony Avella, James Vacca, Melinda R. Katz, Joseph P. Addabbo, Jr., James Sanders, Jr., Jessica S. Lappin, Peter F. Vallone, Jr., Daniel R. Garodnick, David Yassky, Sara M. Gonzalez, Eric N. Gioia, Domenic M. Recchia, Jr., Vincent J. Gentile, Darlene Mealy, David I. Weprin, Diana Reyna, Alan J. Gerson, Bill de Blasio, Simcha Felder, Lewis A. Fidler, Albert Vann, Maria Baez, Helen Sears, Erik Martin Dilan, Thomas White, Jr., James S. Oddo, Andrew J. Lanza, Betsy Gotbaum

Indexes:

Attachments: Committee Report 4/24/06, Committee Report 8/16/06, Hearing Transcript 8/16/06, Hearing Transcript - Stated Meeting 8/16/06

Date	Ver.	Action By	Action	Result
4/5/2006	*	City Council	Introduced by Council	
4/5/2006	*	City Council	Referred to Comm by Council	
4/24/2006	*	Committee on Governmental Operations	Hearing Held by Committee	
4/24/2006	*	Committee on Governmental Operations	Laid Over by Committee	
8/16/2006	*	Committee on Governmental Operations	Hearing Held by Committee	
8/16/2006	*	Committee on Governmental Operations	Amendment Proposed by Comm	
8/16/2006	*	Committee on Governmental Operations	Amended by Committee	
8/16/2006	A	Committee on Governmental Operations	Approved by Committee	Pass
8/16/2006	A	City Council	Approved, by Council	Pass

Res. No. 228-A

Resolution urging the Board of Elections in the City of New York to take various measures to ensure public input and inspire public confidence in any election systems procured pursuant to the Help America Vote Act of 2002.

By Council Members Jackson, The Speaker (Council Member Quinn), Arroyo, Barron, Brewer, Clarke, Comrie, Dickens, Foster, Gennaro, James, Koppell, Liu, Mark-Viverito, Mendez, Nelson, Palma, Seabrook, Stewart, Martinez, McMahon, Monserrate, Avella, Vacca, Katz, Addabbo Jr., Sanders Jr., Lappin, Vallone Jr., Garodnick, Yassky, Gonzalez, Gioia, Recchia Jr., Gentile, Mealy, Weprin, Reyna, Gerson, DeBlasio, Felder, Fidler, Vann, Baez, Sears, Dilan, White Jr., Oddo, Lanza and The Public Advocate (Ms. Gotbaum)

Whereas, The federal Help America Vote Act of 2002 ("HAVA") requires the Board of Elections in the City of New York ("Board") to modernize elections; and

Whereas, One substantive aspect of election modernization entails the procurement of new voting machines to replace the mechanical lever machines that are currently in use throughout the city; and

Whereas, Transparency, accountability, and public input are hallmarks of democratic government; and

Whereas, Free and fair elections are best accomplished when members of the public participate in and observe all aspects of the conduct of elections, as this protects the accuracy and integrity of the election and instills confidence in the outcome; and

Whereas, Notwithstanding the preceding, the Board has yet to hold public hearings regarding election modernization or conduct public tests of any of the new voting systems that may be under consideration; and

Whereas, The Board has not yet published a cost analysis of the acquisition, transition, and continuing costs of new voting systems; and

Whereas, Citizens continue to advocate for transparency in the process of selecting and testing new voting equipment; and

Whereas, Public participation and confidence in the selection process, and confidence in the equipment selected, would be improved if the Board undertook the following measures, for each system under consideration, prior to selection of new machines:

1. Conduct public hearings in each borough, during both day and evening hours;

2. Publish an analysis of the acquisition, transition, and continuing costs;

3. Avoid using paper for the voter verified paper audit record of a quality that fades during the time that such records are required to be kept, and that requires climate-controlled storage;

4. Conduct a Mock Election Public Test with the objective that such Mock Election Public Test would demonstrate that:

a. Vendor documentation, training materials, and the ability to train election staff are effective, such that the vendor can train Board staff so that Board staff can: (i) independentlyperform all tasks to prepare the test machines for the test, includingballot programming, (ii) train election inspectors for the test, and (iii) perform all post-election tasks to canvass the votes;

b. Votes displayed on screens and voter verified printouts, tallies, and activity and event logs for all systems under consideration are accurate;

c. Tabulating equipment associated with each system under consideration is accurate;

5. Conduct hacking tests, including a Professional Hacking Test or a Public Hacking Test;

6. Confirm publicly that any voting systems equipment purchased and delivered for use in New York City elections are correctly configuredand consist of exactly the same components as the system of that type that was certified for use in New York State by the State Board of Elections, includinga demonstrationof an easily-used inventory list of all system components in each state-certified voting system under consideration by the Board, which includes all hardware, programming, files, file system structures, documentation, accessories, and all other components, and a demonstrationthat all components are safe and proper for inclusionin a voting system in New York State, and that no components would allow for illegal voting-related activities such as tampering through the use of wireless communications;

7. Enable all parties currently permitted to be poll watchers pursuant to the State Election Law to examine the voting system, during the hours specified by the State Election Law, to verify that the machines used are correctly configured,contain exactly the same components as the system of that type that was certified for use in New York State, and do not contain illegal communicationcapability, whether hardware, software,

firmware, or any other type;

8. Ensure that the testing of voting systems that includes the entry of test ballots uses ballots entered through the same methods as used by voters on Election Day, includingthe use of all accessibilityattachments minority language displays, DRE voter verified printouts, and extraction of end-of-day results;

9. Insist that the New York State Office of General Services include in the contract for procurement the posting of a bond or letter of credit so that vendors can remedy the problems that occur, and reimburse the additional expenses that are incurred, due to the determinationthat systems upon delivery, or after vendor access to systems, are corrupt or different from the state-certified version of the system; and

Whereas, If the Board adopted these measures, it would further enhance the democratic process and ultimately improve voter participation once the new voting systems are in place; now, therefore, be it

Resolved, That the Council of the City of New York urges the Board of Elections in the City of New York to take various measures to ensure public input and inspire public confidence in any election systems procured pursuant to the Help America Vote Act of 2002.

DJ
LS # 668
8/15/06

The 504 North Star Democratic Club is the northern Manhattan chapter of the 504 Democratic Club. Our club focuses on bringing disabled people of color into the political process to advocate for change.

On October 6, 2009, the 504 North Star Democratic Club approved the following resolution:

The 504 North Star Democratic Club resolves that New York State should keep our lever voting machines and accessible ballot marking devices, and not replace them with voter-marked paper ballots and precinct-based optical scanners until our state law requires proper security for both the paper ballots and scanners, and our counties can afford them. Specifically:

> All voter-marked paper ballots must be secured by keeping them in full public view before observers from the close of polls until the completion of all audits and the certification of winners.
>
> Statistically-significant audits before observers must be conducted to ensure that the correct winners of all contests are determined.

We recognize the economic difficulties our state faces, and that these difficulties will not be solved for several years. We believe that our state should not risk endangering our elections by replacing our current affordable equipment with new, more expensive election technology that our counties cannot afford to implement properly and with appropriate security.

We urge that funds available for improvement of our elections should be spent to:

> Provide training for poll workers so they can better assist voters who wish to use the accessible ballot marking devices that New York now offers in every poll site.
>
> Make poll sites more accessible to voters with disabilities.
>
> Develop voter communication materials in all accessible formats and disseminate such materials multiple times prior to elections through a wide variety of outlets.

Assemblymember Joan Millman, Chair, Committee On Election Law
Assemblymember Catherine Nolan, Chair, Committee On Education
Assemblymember Barbara Lifton, Chair, Committee On Libraries And Education Technology

Statement by Georgina Christ, 327 East 12 Street, New York NY 10003
October 22, 2009

Questions and Answers about Voting Equipment

Thank you for the opportunity to testify and to put information into the public record of this hearing.

Some questions have been asked repeatedly. No matter how often the answers are given, the questions just get asked again as if they had not been answered.

I would like to report some of the questions that I am aware of, and answers to them.

1. Why keep our lever voting machines? Why not switch to paper ballots, and use scanners to count the votes?

Lever machines have 100 years of proven service, ease of use, minimal cost, and simple visual inspection to ensure correct programming of the rods and gears. We perform 100% recanvass of the lever voting machines.

If we replace our lever machines with paper ballots and scanners, our law specifies:

- 3% "audit" of scanners, which is too little to find all innocent or malicious programming and scanning errors.
- 97% unverified computerized vote-counting by scanners.

Our law allows paper ballots to be out of observers' view for up to 15 days between the end of election day and the 3% "audit," creating temptation and opportunity for tampering as well as public suspicion of tampering.

2. Sometimes our lever machines have been broken. They can be jimmied to not work. That's why we should use computers.

Our lever machines are very simple to maintain. If they are broken or jimmied, it is because of negligent or malicious people. Replacing the levers with computers won't turn negligent or malicious people into saints, but it will require more work to ensure that the computers are properly set up, and computer problems may not be noticeable or detectable to the most conscientious and honest computer technicians.

3. Why keep trying? That train has left the station. That ship has sailed.

In fact, the lever machines are alive and well in their warehouses. The only train or ship that has gone is the political will to avoid making an expensive mistake.

No optical scanners have passed their certification tests despite years of testing. No contracts have been signed except those required for the "pilot" in September and November, 2009.

4. It's 2009. Computers are modern. Our whole society uses computers.

Democracy is about government by the people, not about being modern. Government behind closed doors is easily corrupted, including elections. Computers are like closed doors that can't be opened -- they prevent election observers and ordinary people from witnessing the proper handling of votes, or understanding how their votes are (or should be) handled and counted.

It's 2009, and in professional use of computers, 100% of processing is verified at every processing step, but errors and fraud occur anyway. ATMs are widely used for fraud and identity theft. Google on "computer fraud cases" and "ATM fraud" gives over 12 million entries. The FBI says 87% of installations have security incidents in a year, 64% of which are serious and cause loss of money. 44% are caused by insiders!

It's 2009, and why are we willing to risk our elections with this vulnerable technology—with an unprofessional 3% scheme of verification and blind trust in 97% of the unobservable, computerized vote-counting?

5. All we need is some security device to protect the scanners.

There is no such a device.

6. Voters with disabilities don't want "separate but equal" treatment. They want to use the same machines as everyone else.

"Separate but equal" for Blacks was a sham—it was never equal, and always inferior. But voters using New York's new accessible Ballot Marking Devices have the "gold standard" of voting – voter-marked paper ballots with vote-counting immediately upon close of polls with all ballots under continuous observation.

At this time no vendor is offering a machine that gives us the same process for all voters, with and without disabilities, and also preserves the integrity of the vote.

The objective of election integrity advocates is for all voters to cast a private and independent "secret ballot" with votes that get counted as the voter intended.

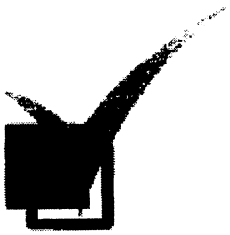
7. Advocates for accessibility are not responsible for election security.

It is counter-productive to advocate the use of technology that is (1) known to be insecure with a history of errors and fraud, and that (2) undermines our democracy by preventing citizen oversight of our elections. Computerized voting and vote-counting do create a kind of equality—no one's votes are secure, and no one knows whether election results were created by innocent error, fraud, or the voters.

8. We need a paper record of each ballot, which lever machines don't have.

Paper records are needed for *software-independent verification* of software-created results. Scanners use invisible software to credit votes to the intended candidate and add up the votes in invisible software counters. Scanners need software-independent verification that observers can witness—that means hand-counting the same votes that the scanner counted to prove the scanners were programmed correctly.

Lever machines don't have software at all, and don't need software-independent verification. Lever machines use mechanical components—metal rods and gears and counters. Lever machines need visual inspection and mechanical tests. # # #



INTERNATIONAL ELECTION SOLUTIONS LLC

SALES & SERVICE OFFICE

517 Lincoln Avenue
Riverside, NJ 08075

Phone: 856-373-0746
Fax: 856-461-4415

Testimony of
James C. Wilkins, Jr.
General Manager
International Election Solutions
Phone: 856 373-0746
E-mail: iessolutions@comcast.net

Public Hearing on Administration of Elections in New York State
in compliance with the federal Help America Vote Act
250 Broadway
New York City, NY
Oct. 22, 2009

Joan L. Millman
Chair, Committee on Election Law

Catherine Nolan
Chair, Committee on Education

Barbara Lifton
Chair, Committee on Libraries and Education Technology

Brian Kavanagh
Chair, Subcommittee on Election Day Operations
And Voter Disenfranchisement

International Election Solutions is available to deliver the full array of services for the 3.2 Shoup lever voting machines currently in use in New York City, the city of Albany and other jurisdictions.

International Election Solutions is the successor to International Election Systems. We maintain the same management and personnel as our predecessor. We are fully capable of programming, repairing and replacing 3.2 Shoup lever voting machines and training election personnel.

We look forward to continuing to work with the New York City Board of Elections, Albany County Board of Elections and all other entities in need of our services. We will be available to meet board requirements for the foreseeable future.

Thank you for the opportunity to submit testimony today.

James C. Wilkins, Jr.
General Manager
International Election Solutions

CORPORATE OFFICE

601 Shores Boulevard
St. Augustine, FL 32086

Phone: 904-797-1190
Fax: 904-797-4005

Voting Machine Service Center, Inc
PO Box 261
Gerry, NY 14740
vote@netsync.net
716-287-2090

October 21, 2009

Voting Machine Service Center, Inc (VMSC) has been in business for over 32 years. During those 32 years, it has serviced the Automatic Lever Voting Machine (AVM) along with supplying all the parts and technical support necessary for the AVM. At no time during those years, was it unable to fulfill any order requests from our customers in New York State or any other states that use the AVM.

In addition, VMSC purchased the mechanical automatic voting machine division from Sequoia Pacific in February 2001, thus making Voting Machine Service Center, Inc. the sole authorized mechanical automatic voting machine company.

VMSC also manufactures parts and supplies or subcontracts this to different suppliers and vendors according to AVM original prints and specifications. Shoup paper rolls are another supply that VMSC provides.

VMSC has not authorized any other election company to sell, produce, or distribute its product. This includes but is not limited to Printer packs and paper rolls for the AVM.

In 2009 and beyond, VMSC will be able to sell items that are currently in stock on a first come first served basis. All other parts and supplies may be specially ordered, upon receipt of a sufficient deposit, lead time and final payment prior to shipping. Minimum orders may be required.

Given the above conditions, VMSC can say with confidence that the AVM lever machines in the State of New York could be maintained indefinitely.

Sincerely,
Heidi L. Marshall
Vice President

Assemblymember Joan Millman, Chair,
Committee On Election Law

Assemblymember Catherine Nolan, Chair,
Committee On Education

Assemblymember Barbara Lifton, Chair,
Committee On Libraries And Education Technology

Assemblymember Brian Kavanagh, Chair,
Subcommittee on Election Day Operations and Voter Disenfranchisement

Testimony of Bruce C. Funk
765 North Hwy 10 Clawson, Utah 84516
Former Emery County, Utah Clerk – 23 years Election Experience

Vulnerabilities and concerns in considering electronic voting equipment, including optical scan, and associated election law issues

I appreciate the opportunity of giving my testimony as you consider electronic voting equipment and the associated laws that will govern their use.

You might first ask why a 23-year veteran election official from Utah would be concerned. I believe that you can benefit from my experience with optical scan voting machines and paper ballots. My purpose is only to make you aware of the vulnerabilities that I witnessed and how it took away voter confidence. The issues I wish to address are applicable to any voting machine which counts votes or tabulates the results without public oversight.

The vendor of Utah's voting machines is Diebold, later called Premier. They claim their software, equipment and any documentation as "privatized". This means they can lock out any official or others from investigating their software, voting equipment, voter registration files and any documentation including poll books and poll worker training manuals. In Utah, state laws were enacted effective June 1, 2006, making it a felony to investigate a voting machine, its software, or the tabulation software and "other" as deemed private.

However, even if a state has limited or full permission to examine their voting equipment, if the state and counties do not examine their equipment upon delivery and after maintenance, the final result is the same – election officials, candidates and voters will not know how the votes are handled, or if the votes are counted as intended.

In February, 2006, I became concerned with the new voting machines which the State of Utah required to be implemented in every county in our state. It was obvious that I needed to bring in independent, outside security experts to examine the machines' software. The most serious security problem we found was that there were three "pass worded" back doors at three different levels in the software which opened the door for malicious tampering at a previously unsuspected level.

A detailed document of the investigation is available at the web site BlackBoxVoting.org.

We found that vote flipping software could be added or activated by using the date. I personally found that the computer clock could be set for Election Day which would enable someone to add votes, but upon returning the clock to the real current date there was no log of the changes that had been made to the clock or the votes. I also found that upon concluding its work the vote flipping software removed itself.

We actually loaded other operating software onto one machine, replacing the original, and there was no log of this in the computer.

My work was incorrectly reported in the media, which said: "It was obvious there was an attempt to hack the voting machines in Emery County, but because of the advanced security of the machines we were unsuccessful." In this way the public and other election officials were misled and given false confidence.

As a result of my investigation, I was locked out of my office as an elected official after 23 years.

I am submitting this testimony in order to try to be of assistance to the Assembly of the State of New York to help you maintain honesty, integrity and voter confidence in your elections. I believe this is the essence of your responsibility as you conduct this hearing and consider your course as to how future elections in your state are to be conducted.

The most important issue in any formulation of future elections is transparency and public oversight of all election functions. If electronic machines are used to handle votes, you will lose all transparency, and all possibility of public oversight, unless you can devise some way for your election officials, candidates, and voters to ensure that every unit of your equipment counts the votes accurately on election day in some way that allows people to act as observers. I personally do not know of any way to do this with paper ballots and scanners unless the votes are manually counted immediately after the election. If you can avoid switching your elections to electronic equipment, you will avoid this entire problem that electronic machines create.

TESTIMONY BY CHARLOTTE PHILLIPS, M.D.
New York State Assembly Standing Committee on Elections
October 22, 2009

I'm Charlotte Phillips, a resident of Brooklyn, in the 52nd State Assemby District. I'm proud to have Joan Millman as my representative in the State Assembly. I am submitting this testimony on my own behalf; however, for identification, I will mention that I am the Chairperson of Brooklyn For Peace. I am also a practicing pediatrician: I work in the Bushwick neighborhood in Brooklyn, with the New York City Health and Hospitals Corporation.

Brooklyn For Peace is a network of Brooklyn residents - parents, neighbors, and educators - alarmed by the growing militarism of our society and its effect on our lives and our children's future. We seek to inform ourselves and our community about issues of war and peace and to enable ourselves to respond effectively. We hope to give our children a role model of active response to problems which easily lead to hopelessness, cynicism, and despair. We are celebrating our 25th anniversary this year!

As a pediatrician, as well as a parent and grandparent, I frequently see young people in the challenging transition from adolescence to adult-hood. Registering to vote is an important landmark in the life of a young person. In encouraging my patients to do so, I can see how proud and happy they are to take this important step toward being contributing members of our democratic society. Also, as I see many immigrant families from other countries, I am continually inspired by how much they appreciate the opportunity to vote, and the importance of having their vote counted.

For these reasons, I am deeply concerned about the way in which the new options for voting technology are creating the serious danger that our right to vote may be stolen from us in a subtle but nevertheless very real way. Confirmed reports as well as suspicion of election fraud definitely lead to cynicism, despair, and discouragement with particpating in the democratic process. If a person feels that their vote is literally not counted, what is to motivate them to vote?

Having studied the new technology, I am convinced that the use of computerized electronic voting and vote-counting systems can compromise the integrity of the electoral result, and opens the possibility of election fraud. Citizen oversight of the election process is crucial to assuring that tampering of the results does not occur. The fact that the software for electronic voting is secret, as well as the vendors' claim that this is a trade secret right, is definitely very alarming. How can we allow a trade secret to override the public's right to know how our election equipment works? Yet even if the software was open to the public, voters should not have to read software to discover how the votes are handled. It is essential that non-technical "ordinary people" should be able to observe our election procedures with votes sufficient to understand them and witness that the procedures are fair and honest.

And although computer literacy is highly desirable, the fact is that many in the community (especially senior citizens) are not computer literate.

Additionally, we all know that no computer system can be guaranteed 100% secure. Crucial computer systems of the Department of Defense, the FBI, and major financial institutions have been compromised.

With regard to the option of voter-marked paper ballots with optical scanners to count them, I am concerned that our state and city cannot implement proper security procedures to protect the ballots. County boards of elections have been notoriously reluctant to allow citizens to secure the ballots by continuous observation between the end of election day and the certification of results. In addition, our county boards of elections are reluctant to perform sufficient hand-count audits of scanners to confirm that election outcomes are correct or to discover fraud or even innocent errors.

This has led me to conclude that OLDEST IS BEST! Although not free of maintenance problems and technical issues, mechanical lever voting machines supplemented with accessible ballot-marking devices (BMDs) for voters with special needs provide a superior voting system technology with fewer problems. The lever system has stood the test of time! Lever machines and Ballot Marking Devices can be more reliably kept secure, and have not engendered the same level of suspicion of fraud that electronic voting and vote-counting equipment has engendered.

In addition, the lever voting machines are generally very well-built and require relatively inexpensive maintenance. In a time of economic crisis and cutbacks, why should we waste money on a new voting technology rather than choosing the cost-effective route of maintaining the technology we now have?

Therefore, I urge the New York State legislature to rescind the requirement for counties to replace their lever voting machines. I urge our state to return the federal funds which New York has accepted for replacement of lever voting machines, and I urge every county to retain, maintain, and continue to use our lever voting machines.

I will also urge the New York City Council to pass a resolution to support such action by our state legislature.

Thank you for the opportunity to present this testimony. I look forward to the outcome of these hearings, and to your committee's recommendation.

Charlotte Phillips, M.D.
18 Wyckoff Street
Brooklyn, New York 11201
718-344-9913
c.phillips8@verizon.net
October 22, 2009

FYI

ithacajournal.com

November 30, 2009

New N.Y. voting system raises privacy concerns

By Cara Matthews
Albany Bureau

ALBANY -- Under New York's outgoing mechanical-lever voting system, election inspectors are posted outside the machines, waiting to reset them for each new voter.

Under the incoming system of marking paper ballots and tallying votes with optical scanners, which was piloted in dozens of counties this year, they clashed with voters' desire for privacy, election officials and other experts told a Senate committee Monday.

"Currently with lever machines, one inspector actually hovers around the voting machine waiting to set the machine for the next voter," said Monroe County Democratic Elections Commissioner Thomas Ferrarese, chairman of the state Election Commissioners Association's executive committee.

"We have learned in this new environment that we need to ask them to stand back and allow the voter privacy at the machine."

In Onondaga County, there were some "overzealous inspectors who insisted on helping voters scan their ballots or were simply standing too close to the scanner," according to testimony from Elections Commissioners Helen Kiggins, a Republican, and Edward Ryan, a Democrat.

Elections commissioners, state elections officials and voting-rights advocates said there were relatively few problems with the operation of the scanners and, unlike lever machines, they leave a paper trail. But a frequent complaint from voters was they were not getting enough privacy in filling out their ballots and scanning them into machines. Not every county offered "privacy sleeves" to carry ballots in, and not all voters were comfortable using them.

The ballots and scanners are New York's response to the federal Help America Vote Act of 2002, which required states to modernize their election systems and enable people with disabilities to vote independently. New York has until fall 2010 to get rid of all the old machines.

Nineteen of the state's 62 counties made the transition fully this year from lever machines to paper ballots and scanners, part of a pilot program to prepare for next year. Twenty-eight counties had a mixture of lever machines and the new system, including Tompkins County, where they were used by voters in the city of Ithaca.

Parts of Tioga and Chemung counties also used the scanners while Broome, Chenango, Schuyler and Steuben were among the counties that went exclusively to scanners.

Fifteen counties, including Rockland and Westchester counties, New York City and Long Island, did not participate.

New York is the only state that has not complied with HAVA, which was supposed to be in place by 2006. The U.S. Justice Department, which sued the state, and the courts approved a pilot program this year and ordered New York to be in full compliance in 2010.

There are elections next year for all statewide offices, the 212 members of the Legislature and Congress.

Monday's hearing was part of a series that the Senate Committee on Elections has been holding.

Among the other common complaints were that the ballot print and squares to fill in were too small, polling sites were not properly laid out to accommodate the new system, and many voters were not aware that there were statewide proposition questions on the flip side of the ballot.

Robert Brehm, co-director of the state Board of Elections, said there were more issues raised with lever machines than the optical scanners.

The League of Women Voters recommended that a top priority for the state should be enlarging the pool of trained election inspectors.

The commissioners said a new state law requiring street-finders or countywide maps in each election district is expensive to implement. The law, which took effect just before Election Day, would cost Onondaga County about $20,000 a year, Ryan said. The countywide street-finder is 320 double-sided pages, and it would have to be updated annually.

Erie County Elections Commissioners Dennis Ward and Ralph Mohr said state election laws and regulations should be updated to reflect current needs.

Under the new system, last-minute changes to the ballot due to litigation could make it impossible for boards of election to produce new ballots in a timely manner, said Ward, Democratic commissioner.

The state should provide at least three to four more weeks between the primary and general elections to allow enough time for lawsuits to be resolved, Ward said. There should be a minimum of three more weeks between the last day for filing designating petitions and primary day, he said.

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County FYI

First the Impossible, Now the Improbable, in NY-23

Northern NY News

Written by Richard Hayes Phillips, Ph.D.

CANTON, NY – As reported earlier this week, the St. Lawrence County Board of Elections has certified impossible numbers in the special election for New York's 23rd Congressional District. 93 "phantom votes," more votes counted than the number of ballots cast, were reported in six election districts, and negative numbers reported for the "blank ballots," or "undervotes."

Such numbers are a red flag, indicating that something is terribly wrong with the electronic vote tabulation system countywide. Further scrutiny of the election results reveals numerous precincts where the results, although not always mathematically impossible, are not credible.

On Friday, November 6, three days after the election, one of the involved campaigns obtained from the Board of Elections a spreadsheet of the preliminary (unofficial) election results, precinct by precinct. Absentee ballots had not yet been counted. This serves as an important "snapshot" with which to compare the final (certified) results.

As previously reported, voting machine failures at eight polling places

Gouverneur Times

in St. Lawrence County caused the Board of Elections to hand count those ballots. Realistically, there was no other choice but to do so. According to the Board, the locked voting machines were transported to a warehouse in Canton where the ballots were counted by hand. The problem with this procedure is that it is illegal under § 9-100 of New York State Election Law, which requires that the votes be counted at the polling place:

> § 9-100 At the close of the polls the inspectors of election shall, in the order set forth herein, lock the machine against voting, account for the paper ballots, canvass the machine, cast and canvass all the ballots, canvass and ascertain the total vote and they shall not adjourn until the canvass be fully completed.

An audit of the poll books and absentee voter lists for these eight polling places reveals that the final vote count cannot be correct in two of them. In Massena's 1st and 2nd districts, there were 565 actual voters at the polls and 26 absentee ballots, for a total of 591; but there were 575 votes counted for Congress and 11 "blank" ballots, for a total of 586, which indicates that 5 ballots were not counted. In Rossie, there were 138 actual voters at the polls and 6 absentee ballots, for a total of 144; but there were 147 votes counted for Congress and 4 "blank" ballots, for a total of 151, which indicates that 7 **extra** votes were counted.

For three of these polling places, the preliminary hand count could not have been correct. In Louisville, there were 885 actual voters at the polls, but only 691 votes were counted for Congress on Election Night. In Waddington, there were 754 actual voters at the polls, but only 347 votes were counted for Congress on Election Night. In Rossie, there were 138 actual voters at the polls, but only 94 votes were counted for Congress on Election Night. 53 votes were counted later. Bill Owens got 50 of them.

One possible reason for the short counts on Election Night is that the Sequoia/Dominion ImageCast machines have two slots and two bins for ballots. There is a slot which sucks a ballot into the optical scanner, much like a dollar bill is sucked into a vending machine, and after the ballot is scanned it drops into a locked box. There is another slot in the front of the machine which can be opened when the scanner breaks down and emergency paper ballots need to be segregated and counted by hand; these ballots drop into a separate locked box. It is possible that the Board of Elections initially counted the ballots from one box but not the other. But this is precisely why § 9-102.3(b) of New York State Election Law requires that the ballots be counted in public at the polling place, and why § 9-108.1 requires that the number of ballots be cross-checked with the poll books to be sure that all the ballots have been counted.

1 Tip of a flat belly:

Cut down 3 lbs of your belly every week by using this 1 weird old tip.

> § 9-102.3(b) Paper ballots and emergency ballots cast during voting machine breakdowns which have been voted shall then be canvassed and tallied, the vote thereon for each candidate and ballot proposal, announced and added to the vote as recorded on the return of canvass.

> § 9-108.1 The board of inspectors, at the beginning of the canvass, shall count the ballots found in each ballot box without unfolding them, except so far as to ascertain that each ballot is single, and shall compare the number of ballots found in each box with the number shown by the registration poll records, and the ballot returns to have been deposited therein.

Another problem with these voting machines is that it is mechanically possible to open both ballot slots, and both locked boxes, even while the optical scanner is operating. This opens the possibility that ballots

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could be deposited into the wrong ballot box, inadvertently or deliberately, and never be counted. An eyewitness who voted at the only polling place in Russell told me that she was not allowed to place her own ballot in the machine; a poll worker examined her ballot and placed it into the machine for her. This caused her to be concerned about both the privacy of her vote and the security of the vote count.

As previously reported, the number of "blank" ballots, or "undervotes," is calculated by subtracting the number of votes counted for a given office from the total number of ballots cast. In the Congressional race, the highest percentage of "blank" ballots anywhere in St. Lawrence County was in Russell's 2nd district. According to the poll book there were 590 actual voters at the polls, and there were 9 absentee ballots, for a total of 599, in Russell's 1st and 2nd districts combined. According to the certified results there were 334 ballots cast, of which 19 (5.7%) were blank, in the 1st district, and 264 ballots cast, of which 29 (11.0%) were blank, in the 2nd district. It is highly unlikely that 11% of the voters made no choice among three candidates in one of the most hotly contested races in the nation.

And these numbers are a minimum. As previously reported, "phantom votes," which are votes counted for an office with no actual voter, have corrupted the vote count in St. Lawrence County. "Blank" ballots, which are ballots cast with no vote the office, are the exact opposite; and as shown in Oswegatchie, they cancel each other out. For every "phantom vote" that enters the system, a "blank" is subtracted from the totals.

The second-highest percentage of "blank" ballots for Congress was in Hammond. According to the poll book there were 569 actual voters at the polls, and there were 81 absentee ballots, for a total of 650. According to the certified results there were 646 ballots cast, of which 60 (9.3%) were blank – again, a highly unlikely percentage for a hotly contested race. Moreover, the preliminary (unofficial) results had shown 305 votes for Owens, 206 for Hoffman, and 37 for Scozzafava. The final (certified) results show 298 votes for Owens, 228 votes for Hoffman, and 60 votes for Scozzafava. The difference, which should represent the 81 absentee ballots, is -7 for Owens, 22 for Hoffman, 23 for Scozzafava, and, by subtraction, 43 blanks. Whether the drop in Owens' vote total is an error or a correction is unknown. But there is simply no way that 43 (or even 36) of 81 voters who took the time and effort to cast an absentee ballot made no choice for Congress.

Hammond is not the only polling place where one candidate or another managed to lose votes subsequent to Election Day.

- In DeKalb's 1st district, where there were 355 actual voters at the polls, the preliminary (unofficial) results had shown 201 votes for Owens, 128 for Hoffman, and 26 for Scozzafava. The final (certified) results show 189 votes for Owens, 132 votes for Hoffman, and 34 votes for Scozzafava. The difference, which should represent 16 absentee ballots, is -12 for Owens, 4 for Hoffman, and 8 for Scozzafava – a net increase of no votes at all.
- In Lisbon's 1st district, the preliminary (unofficial) results had shown 146 votes for Owens, 149 for Hoffman, and 13 for Scozzafava. The final (certified) results show 121 votes for Owens, 159 for Hoffman, and 19 for Scozzafava. The difference, which should represent 19 absentee ballots, is -25 for Owens, 10 for Hoffman, and 6 for Scozzafava, shows instead a net decrease of nine votes.
- In Massena's 9th district, the preliminary (unofficial) results had shown 108 votes for Owens, 87 for Hoffman, and 2 for Scozzafava. The final (certified) results show 119 votes for Owens, 69 for Hoffman, and 4 for Scozzafava. The difference, which should represent 11 absentee ballots, is 11 for Owens, -18

for Hoffman, and 2 for Scozzafava – a net decrease of five votes.

There are also places where more, not fewer, votes were added to the totals than can be explained by the reported number of absentee ballots. This happened in 43 of 102 election districts. In 31 cases the discrepancy was only one or two votes, which could easily be due to corrections made during recanvassing of the vote totals as required by law. But some examples are not so easily explained.

- In Ogdensburg's 1st district, where there were 305 actual voters at the polls, the preliminary (unofficial) results had shown 141 votes for Owens, 103 for Hoffman, and 10 for Scozzafava. The final (certified) results show 167 votes for Owens, 119 for Hoffman, and 16 for Scozzafava. The difference, which should represent 9 absentee ballots, is 26 for Owens, 16 for Hoffman, and 6 for Scozzafava – a net increase of 48 votes. Even now, there are reportedly 16 blank ballots out of 318, or 5.0% of the total. Altogether, 318 is four votes too many. But more importantly, the electronic vote count on Election Night was short by 51 votes, or 16.7% of the actual total of 305. Either these were initially counted as blanks, or not counted at all, or some combination of the two.

- In Lisbon's 2nd district, the preliminary (unofficial) results had shown 114 votes for Owens, 110 for Hoffman, and 9 for Scozzafava. The final (certified) results show 116 votes for Owens, 133 for Hoffman, and 12 for Scozzafava. The difference, which should represent 7 absentee ballots, is 2 for Owens, 23 for Hoffman, and 3 for Scozzafava – a net increase of 28 votes. Thus the electronic vote count on Election Night was short by at least 21 votes, or 8.3% of the actual total. (The poll books do not reveal the precise number of voters at the polls, because Lisbon was a multiple-precinct polling place, as were Massena's 9th and 10th districts).

- In Canton's 9th district, where there were 323 actual voters at the polls, the preliminary (unofficial) results had shown 221 votes for Owens, 83 for Hoffman, and 10 for Scozzafava. The final (certified) results show 242 votes for Owens, 91 for Hoffman, and 22 for Scozzafava. The difference, which should represent 33 absentee ballots, for a total of 356, is 21 for Owens, 8 for Hoffman, and 12 for Scozzafava – a net increase of 41 votes. Even now there are reportedly 6 blank ballots out of a total of 362, which is exactly six votes too many. The electronic vote count on Election Night was short by nine; either these were initially counted as blanks, or not counted at all, or some combination of the two. But more importantly, if there were any "phantom votes" in the system, as occurred in Canton's 2nd, 4th, 6th and 7th districts, we have no way of knowing because the machine reported more "blanks" or "undervotes" than "phantom votes" and cancelled them out.

More examples, with somewhat less egregious numbers, could be cited for all of the categories presented in this article. But it suffices to show that, in addition to the six districts where "phantom votes" appeared in the certified results (Canton's 2nd, 4th, 6th and 7th districts, Massena's 14th district, and Oswegatchie's 2nd district), there were suspiciously high percentages

of "blank" ballots reported in Russell's 2nd district and in Hammond; extraordinary declines in the vote totals subsequent to Election Day in DeKalb's 1st district, Lisbon's 1st district, and Massena's 9th district; and lost votes on Election Night in Ogdensburg's 1st district, Lisbon's 2nd district, and Canton's 9th district. Each of these fourteen corruptions of the vote count can be attributed to false electronic vote tabulation. Together with the breakdown or freezing of the Sequoia/Dominion ImageCast voting machines at eight polling places, there is more than enough evidence in St. Lawrence County alone to show that the court-ordered "pilot" election in New York's 23rd Congressional District was an utter failure, and that the time-tested lever machines were much more reliable.

Richard Hayes Phillips, Ph.D., is one of the leading election fraud investigators in the United States. His book on the 2004 Ohio election, Witness to a Crime: A Citizens' Audit of an American Election, based on examination of some 30,000 photographs of actual ballots, poll books, and other election records, is available at http://www.witnesstoacrime.com

Last Updated on Friday, 27 November 2009 15:12

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ChiefKujo

Join Date: Nov 2009
Location: Watertown
Posts: 2
11-28-2009, 09:25 AM (Post 2 of 3)
Ref#9548.1 To Gouverneur Times Article
This is very impressive research.
Where is the Watertown Daily Times on this story?
Hey Andrew Cuomo! Don't you think you have a duty to investigate this?

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Join Date: Nov 2009
Posts: 12
11-29-2009, 05:59 AM (Post 3 of 3)
Ref#9548.1 To Gouverneur Times Article

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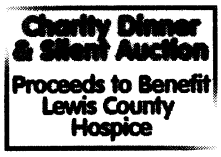

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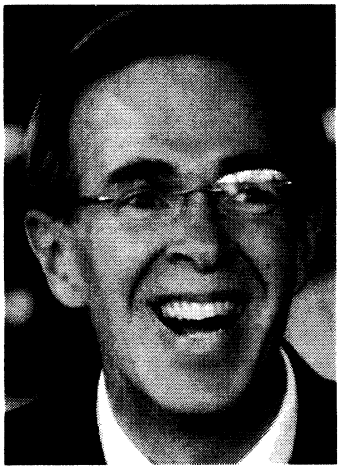
Hoffman Will Not Challenge Election

Northern NY News

Written by Contributor



Statement from Doug Hoffman:

Yesterday, the remaining ballots were counted in the 23rd Congressional District special election. The results re-affirm the fact that Bill Owens won.

Since, the morning of November 4th, many of my supporters have asked me to challenge the outcome of this race. Their concerns centered on the veracity of the new voting machines used, for the first time, in the majority of the eleven counties that make up the Congressional District. Over the past three weeks, we nearly cut Bill Owens lead in half. Sadly, that is not enough.

The shift in support since election night highlights one fact; the Boards of Elections, both state and county, need to work closely to ensure the seamless use of these machines in the 2010 statewide and midterm elections.

I would like to thank my supporters for everything they did over the past four months. They proved that average Americans can stand up and make their voices heard, all the way from Watertown to Washington. They proved that the voters are sick and tired of wasteful government spending, high taxes and an ever growing deficit. And most importantly, that when it comes to politics: principles do matter.

While we may have lost the election, this race proved that Americans are sick and tired of the status quo in both Albany and Washington.

Thursday, America celebrates Thanksgiving. It's a time to reflect on the bounty and the beauty of this nation and all we have to be grateful for. High on my list will be all those that supported me in this race.

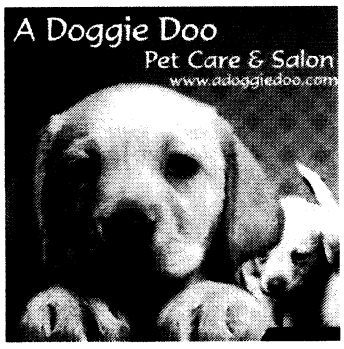
Gouvernaur Times

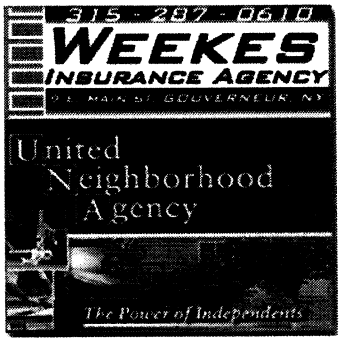
Poll

Should NY Hand-Count the Paper Ballots from the NY-23 Election?

- Yes
- No

Vote Results





I would also like to extend holiday wishes to all the residents of the 23rd Congressional District, to Congressman Owens and his family, and to all the media who tirelessly covered this race.

I plan to stay active in politics and in the weeks an months ahead hope to be able to personally thank all those who made this race so close and exciting.

Last Updated on Tuesday, 24 November 2009 16:14

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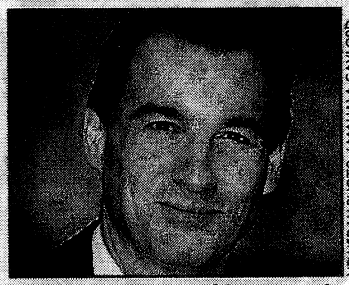
NEWSDAY, SATURDAY, NOVEMBER 28, 2009 www.newsday.com

Nassau needs machines for election

With special district elections scheduled for Dec. 1, 3 and 8, Nassau election officials had to scramble to borrow more than 150 voting machines from neighbors because they can't use most of their own.

Those elections in water, garbage, fire and other special districts require the same kinds of machines used in the general election on Nov. 3, but because of the tight races in some of last month's voting, all of Nassau's machines remain court-impounded and can't be used until a recount is completed. For example, disputed ballots have drawn out the county's top race, between Democratic County Executive Thomas Suozzi and GOP challenger Ed Mangano.



NEWSDAY PHOTO / MAHALA GAYLORD

PHOTO BY HOWARD SCHNAPP

Nassau voting machines are tied up during a recount of Nov. 3 ballots, including County Executive Thomas Suozzi's re-election bid against Ed Mangano, right.

"We'll probably borrow most, if not all, of the machines from Suffolk," Democratic elections commissioner William Biamonte said.

But John DeGrace, the Republican commissioner, said Friday he thought Nassau had enough surplus machines to cover the first two special-district vote days. "It's Dec. 8 — for those water districts and such — where we're sure to need additional machines," he said, "and it looks like Suffolk is where we'll get them."

In the main Board of Elections show, the paper ballot count is to continue Monday morning, with 623 of them from the 21st Assembly District to be scanned for errors before being added to the totals of the candidates. These are the last of the paper ballots — absentee votes or people saying they should have been allowed to vote at a polling site — to be reviewed.

Already more than 500 such ballots have been placed in box for a judge to declare which are valid votes. — SID CASSESE

Comm
Ex 1

Mangano ahead by 213

BY SID CASSESE
sid.cassese@newsday.com

As the tallying of paper ballots breaks for Thanksgiving — with the last 623 ballots still to be counted — Republican County Legis. Edward Mangano of Bethpage has a lead of 213 votes over incumbent Democratic County Executive Thomas Suozzi.

The totals following the count of absentee votes from the small portion — fewer than 15,000 registered voters — of the 10th Assembly District in Nassau are: Mangano 122,048; Suozzi 121,835. There were 220 paper ballots from the 10th AD, which has 19 election districts in the county.

Monday, when the Board of Elections reopens, the counting of the 21st AD's 623 ballots will begin. They are the last of the absentee ballots, officials said.

"We're looking real good," said Mangano, who has been at the Board of Elections almost every day since the election. "I'm looking forward to having the remaining ballots opened on Monday in order to bring this lengthy process to a conclusion."

Suozzi, still running the county, has appeared just once at the board since the Nov. 3 election. He said he would rather be ahead instead of trailing, "but we should know something much more conclusive in a few days."

William Biamonte, Nassau's Democratic elections commissioner, said more than 500 ballots already are scheduled to go before a judge to determine their validity, and he expects "the number might be as high as 600 before it's all over. Those ballots could be pivotal."

Republican commissioner John DeGrace agreed. "We think we will be ahead by even more votes after Monday, and it will be in the judge's hand after that," he said.

Most of about 9,000 paper ballots are absentee ones, with about 1,000 affidavits of voters who, for one reason or another, were not on the rolls at the site where they voted. "About half of the affidavits traditionally are invalid," said Lauren Corcoran-Doolin, the board's chief clerk.

Most of the challenges to absentee ballots concern the validity of the reason for it, and are about signatures not comparing to earlier ones.

Several ballots were invalid on their faces, where husbands had signed on the wife's ballot, and she signed his.

"That often happens, as some of these voters are really old," said Helen Goldmann, a longtime clerk at the board.

In another area, the tight race in Long Beach has confirmed the re-election of John McLaughlin, again giving Republicans control of the five-member City Council in the historically Democratic city.

Two Democrats, including one who will be the city's first Latino council member, were also elected, Biamonte said.

They are Mike Fagin and Len Torres.

NEWSDAY, THURSDAY, NOVEMBER 26, 2009 www.newsday.com

Suozzi trails Mangano by 160

Com Mb
K41

BY SID CASSESE
sid.cassese@newsday.com

With the heavily Republican 14th Assembly District's paper ballots all counted yesterday, Nassau County Executive Thomas Suozzi's bid for re-election was still 160 votes short of his Republican opponent, according to the Nassau Board of Elections.

After the counting of the 13th District, the tally stands at 121,910 for Republican Legis. Edward Mangano of Bethpage and 121,750 for Suozzi.

After finishing the 13th and 14th districts yesterday, the vote counters now have two more Assembly districts to review, the 10th and the 21st. Those two Assembly districts together have more registered Republicans than Democrats, election officials said.

William Biamonte, Nassau's Democratic commissioner of elections, said there is a total of about 830 absentee ballots left to be tallied. Officials said more than 500 have been set aside for a judge to decide.

PHOTO BY HOWARD SCHNAPP

Nassau County Board of Elections workers continue to count paper ballots in the race for Nassau executive. Republican Legis. Mangano hopes to upset incumbent Democrat Suozzi's re-election bid.

The tight race has attracted the attention of former Republican county executive Fran Purcell, who lives in Palm Beach Gardens, Fla.

The nine-year county leader places calls every day to his former chief deputy county executive Owen Smith, who has been monitoring the paper ballot count daily, while bringing pastry for both sides from the bakery in his Milleridge Inn complex. "Every night," Smith said of the calls. "He's really interested."

Purcell, who said he has known Suozzi since he was in high school and only met Mangano over the phone last week, said he liked both men.

"I think that both are good men, and whoever wins, the county will be in good hands," Purcell said in a telephone interview, adding that Mangano said he was 7 years old when Purcell became county executive in 1977.

Purcell said he remains interested in the county because he has a lot of family in Nassau.

"It's a big job, with a budget bigger than 11 states," Purcell said. "I'm willing to support and help whoever wins."

Back in the big counting room in Mineola, a table of three Democrats and three Republicans erupted in laughter. One Democrat, Jessica Taneja, looked around and said half jokingly: "Maybe we shouldn't laugh so much, people might think we're too friendly."

Comm Mtg
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NEWSDAY, TUESDAY, NOVEMBER 24, 2009

Suozzi narrows Mangano's lead to 122

BY SID CASSESE
sid.cassese@newsday.com

After half of the absentee ballots in the heavily Democratic 13th Assembly District were counted yesterday, the race for Nassau County executive got a little tighter with incumbent Thomas Suozzi trailing by 122 votes behind his GOP opponent, Legis. Edward Mangano of Bethpage, election officials said.

Steve Schlesinger, a lawyer representing Democratic candidates, said he would guess that Suozzi would at least pull even with the legislator once the heavily Democratic 13th District, which includes Suozzi's hometown of Glen Cove, is fully counted today.

But a smiling Mangano said at the Board of Elections yesterday, "I grow more confident each day that the process continues," noting that the 13th District is a heavily Democratic area. He was up 323 in the morning after the more Republican 15th District was counted.

As election officials began the count yesterday, a Democrat sounded rather gleeful after counting a batch of absentee ballots from Glen Cove.

PHOTO BY HOWARD SCHNAPP

Nassau County Board of Elections workers and lawyers continue to count absentee ballots in the race for county executive. Incumbent Thomas Suozzi is edging closer to Legis. Edward Mangano.

"That's 11-1 for the Democrat, and it included two registered Republicans and an Independent," the Democrat said as Republicans looked on quietly.

Later, at table one, Republicans initially objected to a ballot that had a questionable signature.

Keith Corbett, another attorney for Democratic candidates, said: "Hey, let's consider the voter's age [88] and that the initial signature was made more than 19 years ago."

GOP counsel John Ciampoli, who at first supported the objection, eyeballed the signature again after Corbett suggested looking at the L's on both the old and new signature. He looked closely and agreed they looked alike.

"I make rational decisions, not impulsive ones," Ciampoli said, laughing.

In the 15th District, registered Republicans outnumber Democrats 35,936 to 27,119. Voters with no party affiliation total 19,336, and Independents number 2,876.

In the 13th District, registered Democrats outnumber Republicans 39,180 to 27,412. Unaffiliated number 20,924; Independents, 2,702, according to the Nassau County Board of Elections.

Yesterday Mangano said Republicans told the State Supreme Court justice overseeing the count that they are willing to open all of the ballots [right now] and speed the process along, but so far the other side is not."

Thomas Garry, a top counsel for the Democrats, said: "What we were not willing to do was pull our lawyers from the table. We want to make sure every valid vote counts. The judge ... told us to continue the process. We expect to be finished by early next week."

Democratic Elections Commissioner William Biamonte said about 600 paper ballots have been challenged, with the two sides negotiating over some of the ballots. A judge will make the final decision on the rest.