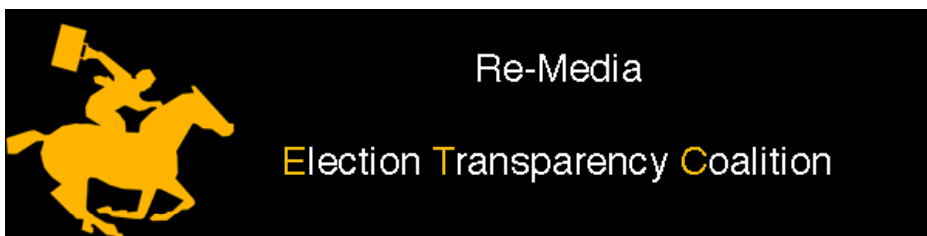


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March 12, 2009

Re: Save Our Lever Voting System

Dear Governor Paterson, Attorney General Cuomo and New York State's Legislators:

New York can keep our lever voting machines and avoid a huge unfunded mandate. Computerized voting equipment is insecure, and we should not buy it or use it. Please look at the evidence, documented in the endnotes below.¹

The Help America Vote Act ("HAVA") has already funneled billions of taxpayers' dollars to a handful of irresponsible vendors,² who in turn have delivered shoddy,³ unreliable, inaccessible⁴ software-based voting machines.⁵ New Yorkers, along with our local governments, all recognize that we don't want to spend our money on electronic voting equipment.

We urge you to return the \$50 million HAVA money that is earmarked for lever replacement, which New York got from the federal government. We would rather keep and maintain our time-tested, reliable, secure, transparent lever voting system.

Keeping the \$50 million, which is small fraction of our \$220 million in HAVA funds, would be penny-wise and dollar-foolish. New York has already wasted millions trying to certify software-based systems, which the evidence shows can never be made secure or reliable regardless of certification testing.⁶

Now that New York's lever voting system has been augmented with ballot marking devices (BMDs) for voters with special needs, we are HAVA-compliant.⁷ It is irresponsible, at this time of economic crisis, to waste our resources to purchase inferior, extortionately-priced computerized systems. We know the cost of the equipment will grow annually as vendors take advantage of our dependence on them to run elections.⁸

New York is the last state to consider buying electronic voting systems, and the first to independently test them prior to state certification. No system has passed our tests yet. Regrettably, testing a computer today can never guarantee that it will function in a reliable and secure manner tomorrow.⁹ Not only will the millions wasted on this endless certification process fail to make these machines secure, but millions more must keep flowing for high-priced technicians to service the conveniently substandard machines; price-inflated vendor software and supplies; climate-controlled warehouses; and additional costs related to these delicate computers¹⁰ all with the expectation that they will be obsolete soon, and we will have to buy replacements.

Because these computerized voting machines have been proven vulnerable to unpreventable fraud, they necessitate the costly administrative responsibility of hand counting the ballots again after election night¹¹ -- a procedure considered so inviting to ballot tampering that it has been prohibited for all of New York's history!

Our HAVA funds will not cover these additional expenses.¹² New York's local governments have begun to recognize HAVA and New York's Election Reform and Modernization Act (ERMA) as unfunded mandates, and have passed resolutions urging you to retain our lever machines.¹³ What vital services would you advise the counties cut to pay for new voting systems that no one wants or needs?

We urge you to use the evidence provided below to protect us, your constituents--our money, our democracy. Even your future legitimate claims to hold office are at risk from computerized elections. Concealed software-based vote counting precludes election commissioners from fulfilling their constitutional duties to detect and prevent error and fraud.¹⁴ Our election commissioners would no longer be able to guarantee fair and accurate results¹⁵ any more than they could if we blindfolded the 327,000 election officials, candidates, party representatives, poll workers and watchers who currently observe, understand and safeguard every step of our lever voting system.¹⁶ Many of our State and County Election Commissioners, cited in the endnotes, have publicly expressed approval for our levers, and most others, if asked, privately support keeping the lever machines.¹⁷

We also know that with our lever voting system, which now includes BMDs, we not only have a HAVA-compliant voting system,¹⁸ but a superior technology,¹⁹ which can be maintained at a reasonable, stable cost and can continue to serve New York for another century. New York has the safest, most reliable and the only transparent electoral system left in our nation. As the *last state* to possess such a voting system, we propose becoming the *first state* to do our share to help bail out the Federal government by returning part of our HAVA money. On behalf of the undersigned we ask you to

- consider the evidence, our constitutional history²⁰, and our democracy²¹;
- give the Federal government back its \$50 million for replacement of lever machines; and
- keep the lever machines.

Respectfully,

Andrea T. Novick, Esq.

Founder and legal counsel to The **Re-Media Election Transparency Coalition**, <http://www.re-mediaetc.org/>, on behalf of more than 1,800 New Yorkers to date who have signed this petition, http://electiondefensealliance.org/save_ny_levers, and the growing coalition of organizations who have joined with their counties and towns that have passed Resolutions, because *The Last Transparent Democratic Electoral System in the United States of America Cannot Be Allowed to Perish*²²

¹ Over three dozen independent computer scientists' reports from prestigious universities across the nation, http://sites.google.com/site/remediaetc/home/documents/Scientific_Studies_7_20_08.pdf, in addition to the National Institute of Standards and Technology (NIST) cited below, corroborate that the

software-based voting systems used across the nation are susceptible to undetectable fraud on a massive scale, enabled solely by the use of software: **"An attack could plausibly be accomplished by a single skilled individual with temporary access to a single voting machine. The damage could be extensive - malicious code could spread to every voting machine in polling places and to county election servers."**

California Secretary of State, Source Code Review of the Diebold Voting System, July 20, 2007
http://www.sos.ca.gov/elections/voting_systems/ttbr/diebold_source_public_jul29.pdf

² Memo sent to the Governor, State Comptroller, New York State Board of Elections, and members of the Legislature, dated July 24, 2007 regarding ineligibility of voting vendors to contract with NYS, ***New York State Law Prohibits the State from Entering into Contracts with Any of the Vendors Presently under Consideration,***
<http://sites.google.com/site/remediaetc/home/documents/VendorsProhibited.pdf> ,
see also What New York Election Commissioners have to look forward to if Computerized Voting Systems are Permitted to Replace our Existing Lever Voting System,
<http://sites.google.com/site/remediaetc/home/documents/ElectionProblemsCountiesAcrossNationforECsNY.pdf>

³ **"[T]he voting industry sells crap. And that's the problem."** SBoE Commissioner and Co-chair **Douglas Kellner**, June 19, 2008 SBoE meeting

⁴ *See*, <http://www.votersunite.org/info/AccuracyIgnored.asp> “ Furthermore, HAVA Section 301(a)(3), which requires that each poll site provide a means by which voters with disabilities can vote privately and independently, has been the driving force behind the widespread purchase of equipment that DOES NOT COMPLY with the very law it purports to satisfy.

The official report from the California "Top to Bottom Review" of voting systems shows that much of the "accessible" equipment doesn't even meet common-sense standards, and stories from poll sites are heart-wrenching. Yet, the fact that "accessible" equipment is inaccessible is being ignored by virtually all officials. Certainly no action has been taken.

“Voting system vendors are taking billions of tax-payer dollars and, in return, giving us inaccurate, inaccessible, unauditible, unreliable voting equipment that counts our votes in secret.”

⁵ *See* lists of thousands of software-based voting machines breakdowns as reported in the media at:
<http://www.votersunite.org/electionproblems.asp?offset=0&sort=&selectstate=&selectvendor=&selectproblemtype=>

⁶ The National Institute of Standards and Technology (NIST), **the very experts who advise the Federal government** on the writing of the certification standards to which New York is trying to adhere, **have rejected the notion that certified systems could be secure**, finding that:

"[T]esting to high degrees of security and reliability is from a practical perspective not possible."

Requiring Software Independence in VVSG 2007: STS Recommendations for the TGDC, 11/06,
<http://vote.nist.gov/DraftWhitePaperOnSIinVVSG2007-20061120.pdf> (emphasis supplied)

⁷ See endnote 18 and *see also*: **Discredited federal E-voting oversight commission issued an incorrect 2005 'legal advisory' helping to keep NY on a collision course with democracy**, <http://www.bradblog.com/?p=6956>, and the legal analysis referred to therein, at <http://sites.google.com/site/remediaetc/home/documents/EACAdvisoryShouldbeRevoked.pdf>

⁸ See endnote 13 and *see* **State Board to Counties: Buy new equipment fast or face price increases!**, Feb. 26, 2009 http://wheresthepaper.org/BuyFastOrFacePriceIncreasesFeb26_09.pdf, where vendors are already pushing NYS, like a good used car salesman, to go for that pig in a poke, using taxpayers' money.

"It all sounds familiar, too familiar. Taxpayers being asked to throw out millions of dollars worth of voting equipment, start over again, and pick up the tab. With no guarantee the new equipment will provide a solution to the problems. Technology can often offer a solution to a complicated process, in this case, accurately recording votes. But technology poorly conceived, designed, integrated and tested is a recipe for failure. In this instance, subsidizing the same outfits that couldn't get it right the first time, giving them more chances could lead to the further waste of millions upon millions of taxpayer dollars. And just as important, the further loss of confidence in our nation's ability to use technology to provide solutions for mission-critical applications, none more important to our nation than accurately recording each of our votes.

From the Dan Rather Reports, http://www.hd.net/transcript.html?air_master_id=A4755

⁹ Dr. Avi Rubin's Electronic Voting Security Blog, Aug. 7, 2007, "[Y]ou cannot certify an electronic voting machine the way you certify a lever machine. Once the voting machine goes through a lengthy and expensive certification process, any change to the software requires that it be certified all over again. What if a vulnerability is discovered a week before an election? What about a month before the election, or a week after it passes certification? Now the point is that we absolutely expect that vulnerabilities will be discovered all the time. That would be the case even if the vendors had a clue about security." <http://avi-rubin.blogspot.com/2007/08/secretary-bowens-clever-insight.html>

¹⁰ Additional costs include specialized ballot printing, climate controlled storage facilities with concomitant utility costs (consider environmental costs), extra security measures, monthly testing, air cushioned transportation, extensive audit administration, chain of custody procedures, frequent breakdowns, machine upgrade and unforeseen costs, including software updating and predictable obsolescence.

¹¹ Election Law section 9-211, and *see* Percentage-Based versus Statistical-Power-Based Vote Tabulation Audits, http://verifiedvoting.org/downloads/TAS_paper.pdf

¹² **Counties Struggle on Election Costs:**

"Elections have gotten very complex and federal and state legislation . . . keeps driving the cost of elections up," Larimer County Scott Doyle said. The vast majority of those costs are paid by county taxpayers. **Given the current economic pressures, "I don't know that counties can continue to bear the weight,"** Doyle said. (emphasis supplied)

<http://www.rockymountainnews.com/news/2009/jan/24/counties-struggle-on-election-costs/>

State and County Elections Offices Struggle with Economic Crisis,

http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Reports/Electionline_

Vendors are Undermining the Structure of U.S. Elections,

<http://www.votersunite.org/info/ReclaimElections.pdf>:

“Webster County, Iowa.

On-going fees charged by ES&S **have doubled the cost of elections. In 2005, the county budgeted \$49,000 for elections, but in 2007 the cost skyrocketed** to \$110,700 for only 29 precincts and 25,300 registered voters. According to County Auditor Carol Messerly **the increase was primarily because of the maintenance contracts for the new optical scanners and ballot-marking devices.** At this point, the county saw no realistic alternative to paying the exorbitant costs of maintenance since they had already bought the system.”

Finding themselves at the mercy of the vendor, county election officials' expressed their sticker shock, referring to the cost for a one year service warranty contract:

“It just about blew our minds away,” said Alice Nicolita, director of the [Fairfield] county Board of Elections. **“We just do not have the money,”** said Janie DePinto, elections board director. Holmes County officials, too, were in shock.

“This completely blind-sided the county,” said Ray Feikert, a Holmes County commissioner in northeastern Ohio. **“It’s kind of a back-door expense that no one saw coming.”**

Steven Harsman, president of the Ohio Association of Election Officials and director of the Montgomery County Board of Elections, understood the difficulty of running an election on new, complicated, unfamiliar electronic equipment. He pointed out how Diebold now **had the counties over a barrel:**

“The irony is that the small counties will have a bigger need for these contracts, but they won’t have the money to pay for them,” Harsman said. “Elections boards are going to county commissioners, and commissioners are kicking and screaming. It’s not a pretty situation at all. But when the dust settles, a high percentage of counties are going to need this, and county commissioners are going to have to find the funding.”

See also the various studies below, attempting to calculate the increased expenses related to software-based elections, all of which demonstrate the extraordinary expenses of software-based electoral systems and their limited life span. **Optical scanners estimated to last 15 years (or be replaced even sooner if federal certification process renders existing machines obsolete). Contrast this to lever machines which are so well built if properly maintained they will last another century.**

In addition to the ever-increasing operating and maintenance costs as software technology’s defects and weaknesses are continuously revealed, the inability of software-based technologies to accurately or securely count votes requires the additional and exorbitant administrative expense to hand count ballots just to try to determine if there was any basis for the unknowable and vulnerable software-based tallies. **Contrast this with transparent, immutable lever voting machines which can reliably demonstrate the accuracy of their count without having to undertake extensive weeks of hand counting.**

Invisible vote counting machines put our democracy at risk as well as our ability to pay the tax-guzzling costs experienced throughout the nation.

The Cost of Automating Elections, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1150267,
Onondaga Cost Report, <http://www.nyvv.org/newdoc/county/OnondagaCostRpt041907.pdf>, *NYVV Cost Reports*, <http://www.nyvv.org/newdoc/county/CmtsOnondagaCostRpt.pdf>, *Florida Election Cost Study*, http://www.votersunite.org/info/FloridaElectionCostStudy12_01_05.pdf, *Suffolk County's Overview of Cost Factors Associated with Electronic Voting Machines*,
<http://www.co.suffolk.ny.us/legis/bro/Reports/2006/Voting%20Machines.pdf>

¹³ Dutchess County Resolution:

<http://sites.google.com/site/remediaetc/home/documents/DutchessLeverRes.pdf>, Columbia County:
http://sites.google.com/site/remediaetc/home/documents/ColumbiaCtyLeverResoFeb12_09.pdf, Ulster County:
<http://sites.google.com/site/remediaetc/home/documents/UlsterReso.pdf>, Association of Towns Resolution: <http://sites.google.com/site/remediaetc/home/documents/AoTLeverResolution.pdf>
Schuyler County passed a similar resolution on March 9, 2009.

¹⁴ "[A] compromised machine [will] appear to work correctly when the system's audit reports are evaluated. Avi Rubin's Blog, *UConn VoTeR center report: Diebold AV-OS is vulnerable to serious attacks*, 10/31/06, <http://avi-rubin.blogspot.com/2006/10/uconn-voter-center-report-diebold-av-os.html>

If the software was manipulated, "The canvass procedure would not detect any anomalies, and would just produce incorrect results." California Voting Systems Technology Assessment Advisory Board Security Analysis of the Diebold AccuBasic Interpreter, 2/06, commissioned by California's SoS, Debra Bowen:
http://ss.ca.gov/elections/voting_systems/security_analysis_of_the_diebold_accubasic_interpreter.pdf

See also **NYS Board of Election Commissioner Douglas Kellner's** explanation of how New York's lever system successfully prevailed in a scandal in the 1940s:

"The fraud of the 1940s was uncovered because volunteers from the polling stations noticed that the numbers on their machines at the counting location were not the same as when they left the polling station. Similarly, any tampering with a lever machine today would be plainly visible to the volunteer preparing it for poll opening. **Becoming aware of fraud on an e voting machine would be much more difficult, because so much of their inner workings are invisible to all but the software programmers.**

Fighting fraud carried out by code is also particularly expensive. Some e voting systems run on 150,000 lines of code and to uncover whether fraud has occurred, or by whom and how, requires an army of programmers, a number of years, and millions of dollars. Even then, there is no guarantee that their examination will produce results." (emphasis supplied)

¹⁵ "I can only speak for myself, although I am certain that all other Commissioners in the State of New York feel as impassioned as I do. My main responsibility is to the voters, to ensure that my Board does all it can to implement the law as well as to guarantee fair, just, accurate elections. Up until now I have felt secure and confident that I have been able to do this. Through the use of the Automatic Lever Voting Machines, though aged, I am able to certify election results and I am certain of the accuracy by which we conduct our elections." -- **John A. De Grace, Nassau County BoE Commissioner**, Dec. 20, 2005 testimony to SBoE in NYC, <http://www.elections.state.ny.us/NYSBOE/HAVA/HAVAhearing NYC.pdf>

¹⁶ Under our current electoral system: calculating the number of election districts that would have watchers, clerks and inspectors, plus the election commissioners and the lever technicians/custodians, there are at least 327,000 people who currently observe and safeguard aspects of each election, all of whom will see nothing on software-based voting machines! *See* <http://sites.google.com/site/remediaetc/home/documents/LastTransparentElectoralSystemvic.pdf>

¹⁷ SBoE Commissioner Aquila (D), 6/19th SBOE meeting: "I support the lever machines." See also endnote 3, 14, 15, 18, 21 for additional statements regarding our lever voting system from other election commissioners.

¹⁸ HAVA Section 301(a)(1)(A) expressly states that so long as: "the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall..." comply with five federal standards, the system is HAVA-compliant. **As SBoE Commissioner Kellner testified in December, 2004:**

"The federal Help America Vote Act. "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."

While New York's lever voting system augmented with BMDs now satisfies all of HAVA's standards, the other two systems described above (DREs and optical scanners) do not. *See Federal Vote Counting Accuracy Mandate Is Ignored* at: <http://www.votersunite.org/info/AccuracyIgnored.asp> & *The EAC Need Not Continue Violating Federal Law* at: <http://www.votersunite.org/info/EACviolations.asp> & *Accessibility Features- Do They Really Allow Individuals with Disabilities to Vote Independently* at: <http://www.votersunite.org/info/accessibility.asp>, which demonstrate how both software-based voting systems are not meeting HAVA's accessibility requirement nor the error rate requirement.

Only New York's voting system satisfies and surpasses the minimum requirements of HAVA, providing New York with a far more secure and accurate counting process than HAVA requires. In the words of **State Board of Elections Commissioner Gregory Peterson**: "If you have something that works and something that doesn't work, I vote for the thing that works." October 3, 2008 SBoE meeting

See also endnote 7.

¹⁹ Professor Bryan Pfaffenberger received a Scholar's Award from the National Science Foundation to study the history of lever voting machines and is currently completing a book on the subject. In the course of his research he has developed an inspiring respect for the technology New York is about to cast off. Regarding the highlights of some of his findings he wrote:

"In my analysis, **the lever machine deserves recognition as one of the most astonishing achievements of American technological genius, a fact that is reflected in their continued competitiveness against recent voting technologies in every accepted performance measure.**

The mind balks, perhaps, at the suggestion that a century-old technology might be the equal of today's best technologies -- or even superior! -- but the fact is that the lever machine is not alone. U.S. freight railroads continue to use electromechanical signaling systems that were, coincidentally, developed during

almost exactly the same frame (1890s-1920). There is no sense of urgency to replace them. Their reliability has been proven in a century of service. They are perfectly adapted to the conditions of American railroading. They are easily understood and maintained by technicians with modest educational backgrounds.

Although lever machines do not produce an independent audit trail, this is -- as software engineers say -- a feature, not a bug. In the 1880s and 1890s, paper ballots emerged as the locus par excellence of election fraud; lever machines were expressly designed to take the human element out of every aspect of the vote recording and counting process in order to eliminate fraud that was gravely undermining Americans' confidence in their democracy. It is quite astonishing to realize that, while the lever machine was under development, inventors came up with just about every voting machine concept that has since been realized, including precinct-scan punchcard technologies, ballot printing machines, and even electromechanical systems that can be seen as predecessors of computerized technologies. All of these technologies produced paper records, however, and all were flatly rejected, both by voters and election officials, as letting the possibility of fraud in through the back door. **Today, there are widespread calls to bring paper back into the picture, but the reason is that people do not trust the machines.**

Having studied the history, I strongly believe that there would be no such call for paper if the ugly history of fraudulent practices enabled by paper ballots were known -- unfortunately, the American people have forgotten the lessons they learned a century ago, and I greatly fear that we will have to repeat them in order to learn them again. In New York, the people, in their wisdom, created a system of election administration AND a technology that solved the characteristic problems of American elections; to abandon lever machines for new technologies that will not gain voter confidence and, at the same time, re-introduce paper audit trails or paper ballots which have long proven to be prone to election fraud, amounts in my opinion to a potentially disastrous mistake". (Emphasis supplied) *See also* <http://oscar.virginia.edu/explorations/x14206.xml>

²⁰ ERMA violates two centuries of constitutional precedence,
<http://sites.google.com/site/remediaetc/home/documents/LitigationSummaryfinal109.pdf>

²¹ All that's at stake is the credibility of representative democracy in New York State." **Nassau County BoE Commissioner William Biamonte,**
http://blogs.trb.com/news/local/longisland/politics/blog/2008/06/nassau_vote_board_calls_3_in_5.html

²² <http://www.opednews.com/articles/The-Last-Transparent-Democ-by-andi-novick-090130-838.html>,
<http://sites.google.com/site/remediaetc/home/documents/LastTransparentElectoralSystemvic.pdf>