

Written Testimony for the New York State  
Assembly Committee on Election Law

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October 22, 2009



My name is Andi Novick. I am the founder and legal counsel to the Election Transparency Coalition. I want to thank the Assembly for this opportunity to be heard.

The purpose of this hearing is stated as follows: “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 associated libraries and fire districts.” However, it is not the Help America Vote Act (HAVA), but rather the State’s own Election Reform and Modernization Act of 2005 (ERMA) which is forcing us to surrender the lever voting machines we already own and replace them with ill-conceived, poorly designed vote counting machines. I’m particularly addressing myself not to the initial acquisition costs, but the annually increasing expense of conducting elections using these computers and the out-of-control costs to maintain these machines. It is ERMA, not HAVA, that will bankrupt our communities.

And for what? It wasn’t necessary to downgrade the superior technology of our lever machines for shoddily made software-driven computers, a technology- particularly as implemented- which is wholly at odds with the requirements of a democratic society. New York State already complied with HAVA once it installed ballot marking devices (BMDs) in every polling site. With the exception of some smaller counties, all of those monies came from the HAVA funds. But the *ongoing* cost of providing a means for citizens with special needs to *create* a ballot is minimal compared to the astronomical and unaffordable cost of requiring that all citizens use computers to actually *count* the ballots.

A 2008 report from Voters Unite documented:

Congress set the stage, and the vendors collected a heavy flow of federal funds that paid for much of the cost of equipment and installation. But **HAVA doesn't pay for subsequent years of maintenance, support, and assistance.... [V]endors exploit the local jurisdictions' dependency by charging exorbitant fees...** Now that the **local jurisdictions** have become dependent on high-tech devices to administer elections, they **are being crushed under the invoices from the vendors that maintain and support those devices.**<sup>1</sup> (emphasis added)

Software-based machines demand “exorbitant” maintenance costs, annually recurring fees that

have been reported to have “skyrocketed” in just a few years.<sup>2</sup> As documented herein, it is not the initial acquisition of equipment, but the spiraling costs associated with the demands of the optical scan voting machines that will “crush” our counties’ abilities to deliver essential services.

So-called ‘hidden’ and annually increasing costs, have caused officials across the nation to express outrage and shock:

**“On-going fees charged by ES&S have doubled the cost of elections”... “primarily because of the maintenance contracts” – the county seeing “no realistic alternative to paying the exorbitant costs of maintenance since they had already bought the system.”**

Referring specifically to service contracts: **“It just about blew our minds away,” “We just do not have the money,” “This completely blind-sided the county,” Pointing out that the vendors “had the counties over a barrel.”<sup>3</sup>**

**“Elections have gotten very complex, and federal and state legislation . . . keeps driving the cost of elections up.” “I don’t know how we’re going to stay afloat. The costs are eating us up” “truly staggering” “five times the cost of running the 2004 general election.”<sup>4</sup>**

These costs have risen annually, mushrooming after the warranty period expires. None of these costs are covered by federal or state funds. Furthermore “the myriad of breakdowns,” late deliveries, uncertain costs and other contractual breaches have destroyed the counties’ ability to properly administer their elections.

Adding insult to injury, these new vote counting computers are wholly inferior to our affordable and trusted lever voting machines. As explained in this testimony, New York’s lever voting system, now supplemented with BMDs- which create ballots that can be counted publicly at the polling site on election night - complies with HAVA, but more importantly complies with our higher constitutional standards that have protected voters in this State for centuries. In order to prevent error and fraud from subverting the will of the people, NY’s Constitution has been interpreted as requiring that every step of the casting and counting be completed under conditions of continuous and contemporaneous public scrutiny. In total disregard of these safeguards, ERMA requires that the essential steps of the election night count be concealed from even election officials. The invisibly tabulated software results are admittedly unreliable, necessitating the *additional expense* of a partial recount of some ballots, *after* error and fraud has been permitted to infect the count. This post-election-night so called “audit”relies on yet another step of the counting process that is unobservable by candidates and watchers, and is ineffective for purposes of determining the true count of the ballots cast on election night.

Lever machines have reliably proven themselves over a century, ensuring the accuracy of the election outcome. They require minimal, predictable and affordable maintenance. Parts are

readily available. With proper care the lever machines can last another century. Due to technological obsolescence or limited useful lives, software-based machines are not expected to last and will have to be replaced in short order at whatever price the vendor demands. In fact, New York's new voting machines may have to be replaced in as little as 5 years.<sup>5</sup> All of the above is documented at our web site, Resolved: NY Communities Want Levers, <http://nylevers.wordpress.com/> and at this article, *Down For the Count*.<sup>6</sup>

Moreover, much of the equipment being used across the nation doesn't even satisfy the minimal requirements of HAVA, but neither the Election Assistance Commission nor the Department of Justice seems at all concerned about the lack of compliance.

As a result, the **states have poured billions of taxpayer dollars into inaccessible, unreliable, inaccurate equipment** in a misguided attempt to avoid violating federal law. Voters have paid for equipment that has been shown to lose their votes or count their votes inaccurately. **Voters with disabilities have paid for equipment on which they cannot vote independently and privately.**<sup>7</sup> (emphasis added)

Vendors, such as Sequoia and ES&S:

are taking billions of tax-payer dollars and, in return, giving us inaccurate, inaccessible, unauditible, unreliable voting equipment that counts our votes in secret.<sup>8</sup>

You ask about the financial impact these computerized systems mandated by ERMA will have on New York. I ask you what essential services are we willing to cut to pay for these unsafe voting computers? We now have computers for our citizens with special needs, but if we are forced to spend more to replace the levers, must we forego funds needed for our children with special needs? Must we forego antiviral medication for our citizens to pay for anti-virus software? Is feeding hungry children less important than feeding the insatiable appetites of the voting machine vendors? What are we willing to trade off in order to use voting machines that have proven themselves untrustworthy; vulnerable to an infinite number of unpreventable exploits, and which even SBoE Commissioner Kellner has admitted are made like "crap."<sup>9</sup>

A vote counting machine has to be able to reliably and accurately record our votes. Our lever machines can do that. The voting computers New York will be using, admittedly cannot reliably or accurately count votes.<sup>10</sup> The only thing we had to do to comply with HAVA was to provide a means for our citizens with special needs be able to vote independently. If we were serious about that goal, we'd be using the funds we do have to ensure that all polling sites were accessible, rather than wasting precious resources to count the votes using computers that don't enable voters with special needs to vote independently and privately (\$170 million of the \$220 million in HAVA funds is ours to keep - only \$50 million was allotted for replacement of the levers). We already own superior and affordable voting machines. We should use them.<sup>11</sup>

But far worse than bankrupting this State, if ERMA is allowed to go into effect, our elected representatives will have done much greater damage: you will have rendered voting a useless formality.

### **The Election Reform and Modernization Act Renders Voting a Useless Formality**

The Election Reform and Modernization Act of 2005 (ERMA) eliminates the constitutionally necessitated transparency from New York's electoral system. State Board of Elections (SBoE) Commissioner Douglas Kellner admitted that the optical scan voting system New York plans on using is "not a transparent process."<sup>12</sup>

Excluding eyewitnesses (candidates, their representatives, authorized public watchers) from any single step of the electoral process enables those with unobserved access to alter the election outcome without being seen and hence with no proof of error or fraud. This is precisely what New York's courts have held and upheld - and yet ERMA's method of voting disregards this precedence, requiring that at least three critical steps be performed outside of public view:

- 1) The election night counting will be made by computers that have been secretly programmed. The voting vendors assert a proprietary right to keep the way in which the software has been directed to count the public's votes a secret, even from constitutionally authorized election officials!<sup>13</sup> (In contrast, lever machines are publicly controlled and the programming must be witnessed by officials and observers.)
- 2) Unlike lever machines' immutable mechanical technology and design, permitting us to see the process by which the levers count as well as the ability to physically see tampering or error, software-based systems - optical scanners and DREs - conceal the process by which votes are counted.<sup>14</sup>

"Unlike e-voting machines, which have all of its inner-workings hidden away as code, the working parts of lever machines are exposed to the world." - Commissioner Kellner<sup>15</sup>

Because the inner workings of the computer are not observable and the nature of software is mutable, this enables undetectable manipulation of the election results. This can occur during the programming or subsequently by one with momentary access to a single computer. Unlike lever machines, computers are vulnerable to systemic exploits, affecting all computers in a county. The overwhelming scientific evidence establishes that *certified*<sup>16</sup> software-based systems are susceptible to unpreventable and massive fraud.<sup>17</sup>

- 3) The unknowable, exploitable software-generated results are supposed to be verified after election night, using ballots that have been in the exclusive control of election officials. Neither candidates nor their representatives nor other watchers can observe ballots once they are removed from the polling site nor can they know whether the ballots that are

subsequently used to determine the election outcome, are the original ballots cast at the election.

Three critical steps – none of which the public or candidates can witness. This is not to disparage our honest election officials. This is the law. This is part of our constitutional scheme: our system of checks and balances.

Pursuant to New York's election laws in 1890, bipartisan election inspectors had been authorized to prepare the returns (or certificate) after an openly conducted canvass had been completed on election night. **Recognizing the opportunities for unobserved fraud or error, with no eyewitness and hence no remedy for mistake or fraud, the Election Law of 1896 closed that deficiency, forever barring any step of the electoral process from being unobserved.** The Court in *In re Stewart*,<sup>18</sup> upheld the new law stating:

"It can hardly be thought possible that it was the intention of the legislature to give to inspectors of election the power by a simple certificate to **determine the election**, regardless of the votes actually cast, and provide no remedy for a mistake or **false statement by the inspectors of the votes as actually polled, whether such mistake was intentional or unintentional.**" (emphasis added)

ERMA returns voting to its pre-1896 condition. There is no eyewitness evidence of how the computer counted the votes and the computer-generated tallies are known to be vulnerable to undetectable exploitation. Nor is there eyewitness evidence of whether the post-election paper ballots are the same ballots cast on election night, and yet those ballots will be used to verify the computer's results. As was the case before 1896, under ERMA election officials once again have control of the evidence that is supposed to verify and hence determine the outcome of the election. The *Stewart* Court recognized that such **a method of voting, as enacted by ERMA, rendered voting "a useless formality, as it depends upon the will of the inspectors of election as to who shall hold the offices, and not upon the vote of the people."**<sup>19</sup>

***What could "hardly be thought possible [by the] legislature" in 1897, became the law in 2005!*** The software programmers (or hackers) are free to "determine the election, regardless of the votes actually cast." That count will be confirmed by the 3% hand count of ballots which have been in the exclusive control of election officials, giving them back the power we had taken away 113 years ago when we recognized such power renders the voting process, in a word, useless.

The State had admitted that ERMA creates a non-transparent electoral system and acknowledges what all the scientific evidence corroborates: that even 'certified' optical scanners (or DREs) can be undetectably hacked. Commissioner Kellner candidly conceded that therefore, because the computers can't be trusted, "The system in New York is not to rely on the machines, but to rely on the paper."<sup>20</sup> **The paper he is referring to are the post-election night ballots, which two centuries of precedence have already declared worthless.**<sup>21</sup>

*In other words, the relevant facts establishing the unconstitutionality of ERMA are not in dispute: the method of voting enacted by ERMA is a “useless formality.”<sup>22</sup>*

### **The State’s Defense to Enacting an Unconstitutional Law**

The State’s defense to having created a method of voting which violates two centuries of election law in New York – precedence grounded in the requirements of our Constitution – is to ignore this history as if irrelevant, arguing instead that it’s too late: the State already agreed to a timetable by which to implement ERMA in Federal court.<sup>23</sup> The State’s *agreement* committing to a time schedule for ERMA was “so ordered,” as is routinely done. Claiming they are compelled by a “court order” to replace the levers, state officials take refuge behind what is in fact the State’s agreement to comply with it’s own law: the *only* law mandating the replacement of our transparent lever voting system with concealed computerized systems. The implication is that a federal court issued a *ruling* that New York must replace its lever machines, *as if* the State had familiarized itself with our distinguished legal history, made the arguments in Federal court and was rebuffed. But the State did no such thing.

**No court ever made a finding that our levers must be replaced and a “so-ordered” agreement is not the same as a ruling.** The State never sought such a ruling because it had already enacted ERMA. But ERMA is unconstitutional and **an agreement based on an unconstitutional law is null and void.**<sup>24</sup>

The Help America Vote Act (HAVA) does not compel the replacement of the lever machines nor does it require states, like New York, that already have existing strict requirements for the administration of its elections, to abandon those requirements in order to comply with the minimum requirements of HAVA:

The requirements established by this title are *minimum requirements* and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this title.<sup>25</sup> (emphasis added)

New York’s lever voting system derives from our rich history of stringent safeguards, deemed necessary to protect the integrity of our elections.<sup>26</sup> Every step of the electoral process is scrutinized by election officials overseen by observers, preventing the intervention of fraud and producing an accurate and complete count on election night. HAVA does not require these more rigorous standards. ERMA, which is the State’s version of HAVA, in striving to satisfy the inferior and minimal standards of HAVA, violates New York’s constitutionally established requirements. **Although not required by HAVA, ERMA necessitates the replacement of lever machines with admittedly less reliable computerized systems that conceal the entire election night vote counting process and invite opportunities for fraud, currently prevented by New York’s lever voting system.**

In an effort to justify its decision to mandate the replacement of the lever system, various representatives of the State have parroted the myth that HAVA outlawed lever machines, supported by the politically motivated and specious arguments of an advisory opinion from the discredited Election Assistance Commission (EAC).<sup>27</sup> While we know the claim that levers can never satisfy HAVA to be wrong, New York officials continue to propagate this misrepresentation.

As Commissioner Kellner has repeatedly pointed out<sup>28</sup> and continues to assert,<sup>29</sup> HAVA did not outlaw levers. In fact, HAVA *expressly* states that lever voting systems are legal and are not prohibited by HAVA:

“Each voting system used in an election for Federal office shall meet the following requirements... the voting system (**including any lever voting system**, optical scanning voting system, or direct recording electronic system) ...” (emphasis added)

“The funding provided under Title I can be used to replace punch card and **lever voting machines**, although **the use of either type of voting machine is not prohibited by HAVA.**” (emphasis added)<sup>30</sup>

Writing about out how the erroneous belief that HAVA banned levers has hurt the nation, the late John Gideon, in *Lever Machines Don't Have To Be Replaced According to The EAC*, decries the EAC's belated clarification, as reported in various media accounts in 2005, confirming that HAVA never outlawed levers:<sup>31</sup>

Jeannie Layson, spokeswoman for the Election Assistance Commission, said “states must require that the disabled have the ability to vote, and that machines meet certain auditing and accuracy requirements. But **there's nothing in the act saying that decades-old lever voting machines must go**, she said; that's a decision for the states to decide.”

**Counties have, for the past two years, been told by their state elections officials that the federal government has mandated that their old voting machines can no longer be used. ...** Most of these counties have, in some cases grudgingly, complied with what they thought was a federal mandate. **They bowed to the wishes of their state officials and scrapped their old systems for nice new, shiny electronic voting machines. ....**

[C]ounties have had to dig into their bank accounts to help pay for the cost of the new machines. They have also found that storage for the electronic machines is not cheap as they take space, need climate controlled storage, and require full time electrical power for their battery back-ups to stay charged. **This extra expense has come as a shock to local elections officials who have had to get the money from other sources including tax increases, levies, abandoning other plans for taxpayers' money, and consolidating polling places to cut the costs. ....**

Today's report is shocking. Not the content but the fact that it was made as late as it was. Billions of dollars of taxpayers' money has now been spent and will be spent in the future. Much of that money could have been better spent on schools, health-care, parks, and other local government issues." (emphasis added)

It has been four years since the EAC's public recognition of what the federal statute plainly states, to wit that lever machines are permitted under HAVA. We have the benefit of four more years of scientific evidence proving that 'certification' is a false panacea and won't make these high-maintenance computers safe to vote on.<sup>32</sup> And still, New York State continues to maintain its pretense and its support for what is at best a sham voting system and most importantly, contravenes New York's constitutionally rigorous requirements.

The only HAVA standard New York's superior lever voting system could not comply with was accessibility. However, **in 2008 New York installed Ballot Marking Devices (BMDs) in every polling site, thereby creating a voting system which augmented with BMDs satisfied HAVA.** Still New York's legislature refuses to consider our august constitutional history of election regulation and the ways in which ERMA destroys every safeguard that has protected New York's elections for over a century, and in some instances, two centuries.

If we destroy any of the safeguards erected and intended to be maintained about the voter, for his protection against improper influences ... we at once do an act in encouragement of the very evil sought to be prevented.<sup>33</sup>

By eviscerating these necessary safeguards ERMA encourages fraud, unconstitutionally depriving the voters of New York of their constitutional right to see that their votes are given full force and effect:

**The right of the elector to vote is conferred by the Constitution, and whenever he exercises that right in conformity with the methods prescribed by law he is entitled to see that his vote is given full force and effect in the determination of what persons have been elected to office. ... but any method of holding an election which would deprive the electors, free from fault or personal misfortune, of the right of casting their ballots and having effect given to the votes so cast, would plainly be unconstitutional.**<sup>34</sup>

(Emphasis supplied)

### **The Election Reform and Modernization Act Will Destroy our Democracy**

The requirements of a democratic voting system are determined by those fundamental principles embodied in New York's Law, as set forth in this testimony. HAVA is not a standard to aspire to; it is simply a hurdle to be overcome.

I have often written of the irony of ERMA as contrasted with the following two legislative



declarations:

The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.

....

**The people's right to know** the process of governmental decision-making and to review the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

The legislature therefore declares that **government is the public's business...**

McKinney's Public Officers Law § 84 (emphasis added)

**It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance** of public officials and attend and listen to the deliberations and decisions that go into the making of public policy. **The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.**

McKinney's Public Officers Law § 100 (emphasis added)

If the very vehicle by which we choose our public servants is not transparent -- the "people's right to know" subjugated to the self-proclaimed proprietary rights of a private vendor seeking to conceal the very information that a democratic people cannot forego-- then we have created a mockery of these two legislative declarations. The principles embodied in these declarations are not mere pronouncements of the legislature, but represent the venerable assumptions upon which our constitutional democracy rests.

I recognize such arguments sound lofty and unrealistic in the political climate of 2009. But basic fundamental principles are unwavering and no amount of silencing or spinning by a media oligopoly, nor the political realities of the time, can detract from that which is self-evident -- if we are willing to state the obvious.

We began with the fiasco of the 2000 presidential election. We now have evidence that had a full recount proceeded, it would have revealed George Bush was not elected by a majority of the voters.<sup>35</sup> Of course a recount is not a reliable way to determine election outcomes, but we also have evidence that Florida's punch card electoral system's failure was by design,<sup>36</sup> laying the groundwork for now-convicted felon, former Representative Bob Ney, to push through the

Orwellian-named Help America Vote Act. As was to become a hallmark of the Bush administration's tactics, bad policy and bad laws were rushed through with a feigned urgency. HAVA was hastily enacted in response to a fabricated crisis. The voting computers that "comply" with HAVA don't in fact comply with the very minimal standards of HAVA.<sup>37</sup>

It is now seven years since HAVA was enacted. We are more than three dozen scientific studies wiser. Study after study corroborates the finding of the dozens of computer scientist who have examined these voting computers, concurring that they are unsafe to use because of their vulnerability to undetectable fraud and error. But just as many continued to believe the sun rotated around a flat earth *notwithstanding the evidence*, too many New Yorkers continue to believe that certified computers are safe enough to vote on, so long as we engage in the "useless formality" that is ERMA's post-election-night verification procedure, called auditing. We ignore the scientific evidence, as well as the lessons of our history, at our extreme peril.

This is precisely how we arrived at this crucial moment in which New York, having the advantage of the accumulated scientific evidence, all of which serves to confirm the lessons of its own history, continues to proceed with eyes wide shut. Not only the scientific reports, but the experience of 49 states struggling under the yoke of vulnerably dangerous systems that require infusions of money the states can ill afford, and still New York is preparing to do the same thing while expecting different results. Einstein is attributed with having characterized such behavior as insanity.<sup>38</sup>

It's not only insane, it's illegal. The Legislature is charged with the affirmative obligation to enact rules that prevent opportunities for fraud:

"Experience has shown that too many elections have been touched, if not infused, by fraud, and that we need rules to keep the process honest. .... The purposed of Election Law rules is to ... defeat fraud."<sup>39</sup>

In studying New York's Election Law going back to the founding of this State I was impressed by the sagacity of our statutory and judicial laws and the diligent efforts of legislators and jurists struggling with the pervasive efforts to subvert the people's choice. Our experience has taught us that elections will always be the subject of criminal efforts, which is why it is the legislature's responsibility to close off even the opportunity for fraud. Ever respectful of the constitutional right of the public to have its public business conducted in an open transparent manner, successive generations of legislators and judges recognized that honoring the right of the public to "observe the performance of public officials"<sup>40</sup> was also the best means to defeat fraud. Not only must the public be able to *see* that the election results are fair and accurate, but such public scrutiny serves as an effective restraint against the relentless attempts to thwart the will of the people.

It struck me, while reading this history, that in enacting ERMA, the legislature has abdicated its

responsibility by creating a method of voting that encourages fraud. A method of voting that fails to prevent known opportunities for fraud disfranchises voters and is unconstitutional.

The object of election laws is to secure ... freedom of choice and to prevent fraud, and not by technical obstructions to make the right of voting insecure and difficult.<sup>41</sup>

There was no finding in the legislative record that New York's existing electoral system was wanting; no finding that our elections had, after more than a century of maximum safeguards, become vulnerable to subversion by fraud. Yes, New York had to comply with HAVA, but that required providing a means for citizens with special needs to vote independently. It did not require replacing New York's superior fraud-preventing voting system with fraud-enabling computers that at best, comport with what we now understand to be the sub-minimal standards established by HAVA.

We might excuse our elected representatives for not understanding how the transparency<sup>42</sup> and immutability of the mechanical lever system fundamentally differs from the secretly programmed opaque processes of a software-based machine. While there were studies demonstrating the unreliability of software-based voting systems in 2005, the majority of the studies have come out since 2005. Perhaps we can make allowances for our legislators' collective failure to read or comprehend New York's Election Law and the constitutional principles behind every aspect of our heavily safeguarded transparent electoral system, caught up as they were in 2005 with HAVA fever. After all, we were all born into a system that we now take for granted. But giving the 2005 lawmakers the benefit of the doubt, there is no longer any excuse for failing to acknowledge the evidence, read the law and assume one's responsibility to uphold New York's Constitution and the higher election standards that have served this State so well for so long.

Unfortunately, based on the conversations and communications the Election Transparency Coalition and others have had with our elected representatives, I fear New York's Legislature lacks the courage or conviction to do its job and repeal the unconstitutional law it enacted. But I would like the facts and the law placed on the record. The failure of my government to assume its responsibility to protect and defend the constitution does not excuse citizens from the burdens and moral challenges of self-government.

Historians will look back at those turning points which could have changed the course of history. This is one of those pivotal moments. The entire nation has swallowed the poison and accepted a method of voting which New York's sage history has deemed to be an exercise in futility; a "useless formality." New York is the only state that still has a viable and democratically-compliant system. We can respect our constitutional precedence and save our voting system. We can show leadership that will make us proud of our heritage. We can be a beacon to the rest of the country. Or we can choose to ignore our history and be doomed to repeat it. Although it is unlikely democracy can survive once voting becomes a "useless formality."

I therefore respectfully put this testimony on the record, placing you, our government, on notice of the fact that you have robbed the people (including yourselves) of the constitutional right to transparency and the right to a meaningful opportunity to vote. I want to make it perfectly clear that I object to the Legislature's having enacted a method of voting found so deficient more than a century ago that none of us need bother voting under the ineffective method created by ERMA. If New York's Legislature persists with its plan to implement ERMA, it will do so with the knowledge that it is acting in contravention of its authority as limited by the Constitution and in derogation of our inalienable rights.

**The principle of the public nature of elections, which results from the fundamental decisions of constitutional law in favour of democracy, the republic and the rule of law prescribes that all essential steps of an election are subject to the possibility of public scrutiny.<sup>43</sup>**

That was a quote from Germany's Constitutional Court, which earlier this year ruled that its computerized voting system was unconstitutional.

According to historian Richard Evans, in 1931-1932, if enough Germans of conscience had begun to say NO — history would have had an entirely different outcome.

I personally want to be on record as saying NO to all of our elected representatives who by this unconstitutional law will have to assume responsibility for your contribution to the destruction of our democracy and our right to be a self-governing people. If all of us do not protest this deprivation of our most fundamental right, then our silence speaks for us.

"A strict observance of the written laws is doubtless one of the high duties of a good citizen, but it is not the highest. The laws of necessity, of self- preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law would be to lose the law itself, with life, liberty, property, and all those who are enjoying them with us; thus absurdly sacrificing the end to the means." – Thomas Jefferson

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On behalf of the coalition of citizens, county governments, towns, other organizations and unions that are resisting ERMA's mandate

Resolved: NY Communities Want Levers, <http://nylevers.wordpress.com/>  
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ENDNOTES:

1. *Vendors are Undermining the Structure of U.S. Elections*,  
<http://www.votersunite.org/info/ReclaimElections.pdf>

2. Documentation of these spiraling and exorbitant costs as experienced throughout the nation are available at *Compare Levers and Scanners*: <http://nylevers.wordpress.com/chart/>

3. Quotes from county election officials in various states were taken from actual media reports, collected in *Vendors are Undermining the Structure of U.S. Elections*, above

4. Quotes taken from the article, *Counties struggle on election costs*, Rocky Mountain News,  
<http://www.rockymountainnews.com/news/2009/jan/24/counties-struggle-on-election-costs/>

5. Attendees at the April, 2009 State Board of Elections (SBoE) conference spoke on the condition of anonymity. NYSTEC, the engineering firm which serves as NYS's 'trusted advisor' for these computerized voting machines, admitted at the SBoE Conference that NY may not be using the optical scanners five years from now!

6. *Down for the Count*,  
<http://sites.google.com/site/remediaetc/home/documents/DownForTheCount.pdf>  
and Supporting Documentation available at:  
<http://sites.google.com/site/remediaetc/home/documents/DownForTheCountSupportDocs.pdf>

7. *The EAC Need Not Continue Violating Federal Law*,  
<http://www.votersunite.org/info/EACviolations.asp>

8. *Vendors are Undermining the Structure of U.S. Elections*,  
Executive Summary, <http://www.votersunite.org/info/ReclaimElectionsSumm.asp>

9. SBoE June 19, 2008 meeting,  
<http://www.elections.state.ny.us/NYSBOE/News/MeetingMinutes/CCTranscriptions06192008.pdf>

10. See video referenced at endnote 20, in which Commissioner Kellner, acknowledging that the vote counting computers can't be trusted to accurately count votes says: "The system in New York is not to rely on the machines, but to rely on the paper."

11. During the SBoE Conference referenced above, NYSTEC told the counties that they must purchase anti-virus software. NYSTEC also stated: "all the testing in the world won't make a

system foolproof.... on lever machines, there isn't much concern with hacking; they are trusted, unquestioned.... We don't like to spread fear, uncertainty and doubt" but the new machines "aren't bulletproof." With new voting technologies there are "all kinds of new things to worry about" but "there aren't many threats to lever machines." "Life is going to get very complicated," echoing the warnings of one Colorado election official, see endnote 4.

12. See, *New York's New Voting System Renders Voting a Useless Formality: Nullifying the Consent of the Governed*, (endnote 19) referencing Commissioner Kellner's admission that the optical scan voting system New York plans on using is "not a transparent process." Conceding that voting on software-based systems conceals how our votes are counted, Commissioner Kellner stated:

And therefore, because it's not a transparent process, we have to substitute for the transparency the certification process.

I wish to incorporate the full document, *New York's New Voting System Renders Voting a Useless Formality: Nullifying the Consent of the Governed*, available at: <http://sites.google.com/site/remediaetc/home/documents/NullifyingConsentoftheGoverned.pdf>, as part of the record I am submitting today, as well as the postscript to that document, available at <http://sites.google.com/site/remediaetc/home/documents/POSTSCRIPTNullifyingConsent.pdf>. I have included hard copies along with this testimony.

13. New York Constitution, Article 2, section 8

14. "We're going to be using electronic systems that operate in a manner that aren't fully transparent to the public ... the process by which it's counted is invisible." Commissioner Kellner, see transcript from the June 19, 2008 Board meeting, available at <http://www.elections.state.ny.us/NYSBOE/News/MeetingMinutes/CCTranscriptions06192008.pdf>

15. See endnote 23 in *New York's New Voting System Renders Voting a Useless Formality: Nullifying the Consent of the Governed*

16. See, *New York's New Voting System Renders Voting a Useless Formality: Nullifying the Consent of the Governed*, (at p 5)

17. See *New York's New Voting System Renders Voting a Useless Formality: Nullifying the Consent of the Governed*, particularly section entitled: Eternal Vigilance Means Resisting Unconstitutional Legislation That Thwarts the Possibility for Vigilance

18. *In re Stewart*, 48 NYS 957, 960 (NYAD 1 Dept. 1897), aff'd 9 E.H. Smith 545 (Court of Appeals, 1898)

19. *In re Stewart*, 48 NYS 957, 960. The Court of Appeals in *Stewart*, ruled that "each step [be] taken, and announcement made, in the presence of officials and watchers," upholding the 1896 legislation which prohibited the state's unobserved control over an important aspect of the electoral process. *Id* at 551 and see *New York's New Voting System Renders Voting a Useless Formality: Nullifying the Consent of the Governed*.

20. This video entitled, *It's Time to Take a Stand for Democracy*, <http://nylevers.wordpress.com/> is excerpted from a public forum held by the Village Independent Democrats on July 9, 2009. The speakers were State Election Commissioner Douglas Kellner, author Mark Crispin Miller and myself. Commissioner Kellner, having previously admitted that the new computers will not be transparent, candidly stated at this forum that the computers New York will be using under ERMA cannot be relied on to accurately or safely count votes and concedes New York's new voting system will instead have to rely on the post-election night paper ballots: acknowledging we have indeed returned to an electoral system in which the act of voting is a "useless formality."

21. The Court of Appeals has stated, specifically regarding the use of post-election night ballots in a judicial proceeding, that only "upon the condition of inviolability ... is the evidence of any value." *Dailey v. Livingston*, 79 NY 279 (Ct Appeals, 1879). See *New York's New Voting System Renders Voting a Useless Formality: Nullifying the Consent of the Governed*, particularly the section entitled: The Use of Non-adjudicated Post-election Night Ballots to Recount or Verify the Election Results is Unconstitutional

22. See *New York's New Voting System Renders Voting a Useless Formality: Nullifying the Consent of the Governed*

23. *U.S.A v New York State Board of Elections, et. al.*, Civil Action No. 06-CV-0263

24. In 2003 the Court of Appeals found the Governor had exceeded his constitutional authority in entering into an agreement authorizing casino gambling and the agreement was thus null and void. *Saratoga v Pataki*, 100 NY2d 80

25. HAVA, 42 USC 15484, Sec 304

26. See, *The Last Transparent Democratic Electoral System in the United States of America Cannot Be Allowed to Perish*, available at <http://sites.google.com/site/remediaetc/home/documents/LastTransparentElectoralSystemvic.pdf>

27. Notwithstanding the express language of HAVA and the public statements Election Assistance Commission (EAC) spokesperson Jeannie Layson (referenced in this testimony) as well as EAC Vice-Chair Ray Martinez addressing a VoteTrust USA Conference at Catholic University in Washington, DC on April 8, 2006, "Any state that does not take Title I funds can choose to keep their ...levers ... as long as they ... supply one disabled accessible machine per polling place"; the position of State Elections Commissioner Kellner, see endnotes 28 and 29 below; and the position of Hans Von Spakovsky, an attorney at the United States Department of

Justice, some in this State give more weight to a politically motivated and not surprisingly specious advisory opinion of the EAC..

A link to the advisory opinion as well as the letter from the State of Pennsylvania referenced below, is contained in the article: *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>. The legal analysis referred to therein, exposing the EAC's interpretation as unfounded and erroneous, was authored by me, as was the article. The legal memo, *New York's Voting System Satisfies and Surpasses HAVA*, is also available at, <http://sites.google.com/site/remediaetc/home/documents/EACAdvisoryShouldbeRevoked.pdf> and I request that it also be included as part of this record.

An advisory opinion of an agency is just that: an opinion. It does not carry the force of law. This particular opinion and this particular agency deserve the respect earned by this since discredited agency. Referring to the scandalous whitewashing of a report the EAC had authorized, but then changed when it didn't like the facts, prompted one of the authors of the pre-altered report to write in the Washington Post:

This is not the way an institution created to promote democracy should function...It should not be in the business of suppressing information or ideas...this agency's structure and procedures need to be seriously reexamined in light of this episode.  
(See Brad Blog piece for citations)

Placing this dubious advisory opinion in context further reveals its disingenuous and strained analysis. The EAC advisory was issued within one week of the State of Pennsylvania's asking the EAC for just such an opinion. The PA letter sheds some light on how the EAC could have come up with such an irrational interpretation, construing HAVA as rendering lever machines illegal under all circumstances, in disregard of the explicit language of the statute to the contrary. The letter is linked to in the Brad Blog article as well.

It seems back in 2005, Pennsylvania was getting a good deal of resistance from those advocating for the continued use of lever voting machines along with BMDs. But the State of Pennsylvania wanted to buy a new software-based system and those arguing in favor of HAVA-compliance by retaining levers supplemented with BMDs were interfering with the State's desire to replace the levers. Under Pennsylvania's statute the levers were legal so Pennsylvania needed the Federal statute to be construed as making the levers illegal. Pennsylvania's counsel wrote the fallacious interpretation claiming in essence that HAVA intended to ban levers, notwithstanding the clear language of the statute recognizing the legality of a lever voting system. The EAC adopted the interpretation as its own, smoothing the way for Pennsylvania to facilitate its plan.

As an update to that collaborative effort – four years later the State of Pennsylvania is still embroiled in litigation with the voters, who this year won a ruling permitting them to challenge the State's choice of electronic voting machines "that provide no way for Electors to know



whether their votes will be recognized.”

As discussed at length in my legal memo, the tainted EAC interpretation is legally erroneous. Following the EAC’s analysis to its self-serving conclusion, neither DREs nor optical scanners would satisfy the manufactured requirements relied on in reaching its unfounded and irrational conclusion.

28. 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 (emphasis supplied).

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.

29. See video referenced at endnote 20, in which Commissioner Kellner continues to assert that our lever machines, supplemented with BMDs are HAVA-compliant.

30. 42 USC § 15481

31. *Lever Machines Don’t Have To Be Replaced According to The EAC*, August 28, 2005, available at <http://www.americanchronicle.com/articles/view/2133>.

32. 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](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.

[E]xperience in *testing software and systems has shown* that testing to high degrees of *security and reliability* is from a practical perspective *not possible*.

Software can be programmed to appear to be in working order for certification testing, when in fact it has been compromised:

[C]orruptions can lay dormant until Election Day, thus avoiding detection through pre-election tests.

See, *New York's New Voting System Renders Voting a Useless Formality: Nullifying the Consent of the Governed*, for citations to these scientific findings.

33. *Nichols v. Board of Canvassers of Onondaga County*, 129 NY 395, 402 (Ct Appeals, 1891)

34. *People ex rel. Deister v. Wintermute*, 194 N.Y. 99, 108 (Court of Appeals, 1909)

35. see <http://www.commondreams.org/views01/1115-02.htm> and <http://www.nytimes.com/2001/11/12/politics/12VOTE.html>

36. Dan Rather reports, [http://www.hd.net/transcript.html?air\\_master\\_id=A4755](http://www.hd.net/transcript.html?air_master_id=A4755) (emphasis added):

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. NOW, BACK TO A CORE QUESTION: WAS THE RUSH TO THESE EXPENSIVE AND PERHAPS ILL-CONCEIVED NEW VOTING SYSTEMS NECESSARY?**

OUR INVESTIGATION TOOK US INTO THE HEART OF CALIFORNIA'S CENTRAL VALLEY, TO THE TINY TOWN OF EXETER, WHERE FOR OVER THIRTY YEARS SEQUOIA VOTING SYSTEMS, AT THIS FACTORY, MADE HUNDREDS OF MILLIONS OF PUNCH CARD BALLOTS- UP UNTIL 2003. **PUNCH CARD BALLOTS DOMINATED THE VOTING LANDSCAPE IN 2000. THEY WERE THE MOST COMMON VOTING SYSTEM IN FLORIDA.** THE SYSTEM SEEMED IDIOT- PROOF. YOU SIMPLY TOOK A STYLUS AND PUNCHED OUT HOLES- OR CHADS, AS THEY ARE KNOWN, AND THE CARDS WERE THEN RUN THROUGH A COMPUTERIZED TABULATOR. COULDN'T BE SIMPLER, OR SO IT SEEMED. **WHAT REALLY STRUCK VOTING EXPERTS ABOUT THE 2000 ELECTION IN FLORIDA WERE THE MANY TENS OF THOUSANDS OF BALLOTS THAT HAD OVERVOTES OR UNDERVOTES FOR PRESIDENT.** WHERE VOTERS APPEARED TO HAVE VOTED FOR MORE THAN ONE PRESIDENTIAL CANDIDATE OR NONE AT ALL. **OVER 50,000 SEQUOIA PUNCH CARDS STATEWIDE WERE DISCARDED** AS INVALID BECAUSE VOTERS APPEARED TO HAVE OVERVOTED. IN FACT, ON FULLY 17,000 OF THE SEQUOIA CARDS, VOTERS SEEMED TO HAVE VOTED FOR THREE OR MORE PRESIDENTIAL CANDIDATES! MEANWHILE, IN PALM BEACH COUNTY ALONE OVER 10,000 VOTERS HAD NOT VOTED FOR PRESIDENT AT ALL.

**EXPERTS SCRAMBLED FOR POSSIBLE EXPLANATIONS-** CONFUSED VOTERS, CONFUSING BALLOT LAYOUT- LIKE THE INFAMOUS BUTTERFLY BALLOT. **BUT NO ONE WAS LOOKING AT THE PUNCH CARDS THEMSELVES. WE RECENTLY MET UP WITH A GROUP OF FORMER SEQUOIA EMPLOYEES WHO ACTUALLY MADE THE PUNCH CARD BALLOTS, WHO FEEL THEY HAVE THE REAL ANSWER AS TO WHAT HAPPENED IN FLORIDA 2000- AND WHY. ....**

JOHN AHMANN, **THE BIGGEST PUNCH CARD EXPERT IN THE UNITED STATES SAYS THAT**

**SEQUOIA PACIFIC MADE THE BEST VOTING BALLOTS ANYWHERE. WE TOOK GREAT PRIDE IN THE QUALITY OF BALLOTS WE PUT OUT-- THERE WAS-- NO LEEWAY. IT HAD TO BE RIGHT AND IT HAD TO BE ON TIME. AND THEY TOOK A GREAT PRIDE IN DOING THAT FROM TOP TO BOTTOM. WELL, THE COMPANY TOLD CUSTOMERS THAT SEQUOIA PRODUCED, AND I QUOTE, "A NO DEFECT PRODUCT." NOW, WHAT DID THAT MEAN TO YOU? NO DEFECT? PUNCH CARDS WOULD PUNCH PROPERLY. THEY WOULD GO THROUGH THE CARD READERS PROPERLY. IT'S A NO FAULT WHAT THEY SAID. AND THEY DID IT FOR YEARS. THEY DID IT, THESE WORKERS SAY, UNTIL THE MONTHS LEADING UP TO THE 2000 PRESIDENTIAL ELECTION, WHEN THEY SAY THEY SAW MANY THINGS CHANGING, BUT NONE MORE TROUBLING THAN THE PAPER ITSELF**

....

**THE POLICY WAS WORKERS COULD REJECT ROLLS THAT WERE IMPERFECT OR DAMAGED AND THEY OFTEN DID SEND ROLLS OUT FOR SALVAGE TRYING TO INSURE TOP-QUALITY BALLOTS. .... WE HAD QUITE A BIT OF INPUT BUT TOWARDS THE END WE HAD NO INPUT WHATSOEVER. SO THINGS CHANGED. YES THEY DID. -ABSOLUTELY AFTER 1999, IT WAS ALL OVER. IT WAS LIKE WE WERE ALL PUT ON THE SHELF. AND YOUR OPINION DIDN'T AFTER THAT. EXACTLY. WHAT CHANGED IN 1999? THE PAPER CHANGED. THEY DECIDED THAT THEY WANTED TO GO WITH A CERTAIN BRAND. AND I THINK THAT EVERYBODY'S OPINION WAS THIS 2000 ELECTION WAS GOING TO BE OUR DEMISE. BECAUSE OF THE POOR QUALITY OF WHAT WE PUT OUT THE DOOR. FOR DECADES SEQUOIA HAD ORDERED ITS PUNCH CARD BALLOT PAPER FROM JAMES RIVER OR INTERNATIONAL PAPER. THE ONLY MILLS THAT HAD TRADITIONALLY OFFERED VOTING PUNCH CARD STOCK. IN 2000, THE COMPANY SWITCHED TO A NEW MILL, BOISE CASCADE WHICH HAD VIRTUALLY NO EXPERIENCE MAKING TAB CARD STOCK. WORKERS SAY THEY WERE TOLD TO STOP TESTING PAPER SAMPLES. TRADITIONAL QUALITY CONTROL STANDARDS WERE RELAXED. ....**

**BUT THE WORKERS SAY THE PROBLEMS THEY WERE HAVING WITH THE PAPER WENT BEYOND A MERE CHANGE IN SUPPLIERS. THEY SAY THEY WERE SUDDENLY SEEING PAPER ROLLS THAT WEREN'T CLEARLY EVEN BOISE CASCADE PAPER - BECAUSE THESE ROLLS HAD XEROXED BOISE SHIPPING LABELS RATHER THAN GENUINE ONES. WHERE WAS ALL THIS TERRIBLE PAPER COMING FROM?**

THEY SAY THEY WERE BAFFLED .... SOME OF **THE PAPER WAS GETTING** REWOUND AND SENT BACK. .... MANY OF THE WORST ROLLS, .... IT WAS **REJECTED** AND IT WAS TAKEN OUT OF THE PLANT AND STORED SOMEWHERE **AND THEN RELABELED AND BROUGHT BACK**. WELL LET'S JUST GO DOWN THE LINE IS THERE ANY **DOUBT IN YOUR MIND THAT THE COMPANY WAS AWARE THAT THE BALLOTS FOR THE 2000 GENERAL ELECTION WERE BEING MADE WITH INFERIOR PAPER?** YOU DON'T THINK THERE'S ANY DOUBT THAT THEY KNEW THAT? **NO DOUBT.** THEY WERE TOLD EVERY DAY. ....

WE ALSO TURNED TO A PAPER EXPERT, WITH SOME OF OUR UNANSWERED QUESTIONS WALTER RANTANEN IS PERHAPS **THE COUNTRY'S LEADING FORENSIC PAPER ANALYST. HE WORKS WITH TOP GOVERNMENT AGENCIES INCLUDING THE SECRET SERVICE AND THE F.B.I.** WORKING AT HIS LAB AT " INTEGRATED PAPER SERVICES" IN APPLETON, WISCONSIN, RANTANEN HAD A PUZZLE TO SOLVE: **WERE THE FLORIDA BALLOTS MADE OF BOISE CASCADE PAPER STOCK AS SEQUOIA SAYS?** THIS IS A BALLOT SAMPLE FOR A FIBER ANALYSIS RANTANEN ANALYZED THE FIBERS IN THE FLORIDA BALLOTS HE DISCOVERED NONE OF THE CARDS HAD THE COMPOSITION OF BOISE CASCADE TAB STOCK WHICH CONTAINS SOFT WOOD FROM THE NORTHWEST. HE ALSO SENT BOISE CASCADE A FLORIDA BALLOT SAMPLE. **BOISE CONFIRMED THE PAPER WASN'T THEIRS.** BUT THAT WASN'T THE LAST SURPRISE ABOUT THE FLORIDA BALLOTS THERE WERE NOT ONLY MYSTERIES ABOUT WHAT THE CARDS WERE MADE OF- BUT ALSO THE WAY CERTAIN FLORIDA BALLOTS WERE MADE. ....

**THE COMBINATION OF BAD PAPER AND INCORRECT BALLOT SPECIFICATIONS FOR PALM BEACH WAS A RECIPE FOR ELECTION DAY TROUBLE: A HIGH PERCENTAGE OF CHADS THAT MIGHT BE MISALIGNED, WOULDN'T PUNCH CORRECTLY. CHADS THAT COULD HANG, FALL OUT, OR GET STUCK. ANY OF THESE EVENTS COULD CAUSE A BALLOT TO BE DISCOUNTED. SEQUOIA HAD A SPECIAL QUALITY CONTROL MACHINE TO TEST WHETHER THOSE CRITICAL PROBLEMS WITH CHADS MIGHT OCCUR ON ELECTION NIGHT. LINDA EVANS RECALLS THE CHAD TESTING OF BALLOTS MANUFACTURED FOR THE 2000 ELECTION CHADS WERE FALLING OUT. CHADS WERE HANGING UP. WE'VE GOT A MACHINE THAT IT WE CALL A GANG PUNCH, WHICH IN A SENSE PUNCHES OUT ALL THE HOLES AT THE SAME TIME. YOU SLIDE THE CARD IN THERE AND YOU PULL DOWN THE HANDLE AND IT PUNCHES OUT ALL THE HOLES. THEY WEREN'T PUNCHING OUT. THEY WERE HANGING UP ALL OVER THE PLACES. THEY WERE AWARE OF THAT. OH, MANAGEMENT WAS AWARE OF IT. WE TOLD 'EM. ....**

WHILE OLDER SEQUOIA BALLOTS- MADE EARLIER, FOR ANOTHER COUNTY, PUNCHED PERFECTLY,

THE PALM BEACH BALLOTS MADE FOR THE 2000 ELECTION SHOWED A TROUBLING PATTERN: MANY CARDS SHOWED CLUSTERS OF HANGING CHADS- PRIMARILY IN THE COLUMN THAT CONTAINED THE PRESIDENTIAL CANDIDATES.

THE PATTERN WAS CLEARER IN SOME PRECINCTS THAN OTHERS. IT'S THE MORNING AFTER THE ELECTION IN 2000? .... MY BOSS JIM JOHNSON AND HE TELLS ME, "WE BLEW IT. THE BALLOTS ARE BAD IN FLORIDA. IT'S ALL OVER THE NEWS AND WHEN YOU GOT TO THE PLANT IN THE DAYS AFTER THE ELECTION, WHAT WAS THE SCENE THERE? IT WAS CHAOTIC. **THEY WERE MOVING STUFF, HIDING STUFF, GET RID OF THIS. HIDING STUFF? YEAH, BECAUSE THE NEWS PEOPLE WANTED TO COME IN AND TALK TO PEOPLE AND THEY WANTED TO TOUR THE PLANT.**

WE WERE TOLD TO GET RID OF EVERYTHING, ANYTHING THAT HAD FLORIDA ON IT HAD TO DISAPPEAR ....MY OWN PERSONAL OPINION WAS **THE TOUCH SCREEN VOTING SYSTEM WASN'T GETTING OFF THE GROUND LIKE THAT THEY-- LIKE THEY WOULD HOPE.** AND BECAUSE THEY WEREN'T HAVING ANY PROBLEMS WITH PAPER BALLOTS. **SO, I FEEL LIKE THEY-- DELIBERATELY DID ALL THIS TO HAVE PROBLEMS WITH THE PAPER BALLOTS SO THE ELECTRONICALLY VOTING SYSTEMS WOULD GET OFF THE GROUND -AND WHICH IT DID IN A BIG WAY.**

IT IS HARD TO IMAGINE AN EVENT AS DRAMATIC AS THE ONE IN FLORIDA 2000. AND WHETHER HOBSON AND THE WORKERS ARE RIGHT, **IT IS UNDENIABLE THAT IN THE MONTHS FOLLOWING THE 2000 ELECTION, SEQUOIA WENT FROM SELLING CARDS FOR PENNIES APIECE TO SELLING MANY MILLIONS OF DOLLARS WORTH OF TOUCH SCREEN EQUIPMENT IN FLORIDA ALONE. ....**

**WHAT'S MORE IMPORTANT TO YOU: KNOWING THAT YOUR VOTE IS RECORDED AS YOU CASE IT OR THE PROFITS OF VOTING MACHINE MANUFACTURERS? IT MAY SEEM LIKE AN OBVIOUS QUESTION, BUT WHEN CITIZENS TRY TO GET TO THE BOTTOM OF HOW THESE MACHINES- BOUGHT WITH YOUR TAXPAYER MONEY- EITHER WORK OR DON'T WORK MANUFACTURERS CONTINUALLY HIDE BEHIND THE WALL OF " TRADE SECRETS." ARE THESE MACHINES THAT DETERMINE WHO DECIDES OUR LAWS, WHO RUNS OUR STATES, AND WHO SITS IN THE WHITE HOUSE WITH THE POWER TO DIRECT OUR ARMED FORCES NO DIFFERENT FROM THE FORMULA FOR COCA COLA, OR MCDONALD'S SPECIAL SAUCE? WE DON'T THINK SO, AND THAT'S WHY WE TRIED TO GET ANSWERS TONIGHT. BUT, UNLIKE CONGRESS OR PROSECUTORS, WE AREN'T ARMED WITH SUBPOENA POWER, WE CAN'T FORCE COMPANIES TO PROVE THAT THEY TAKE CONCERNS ABOUT THEIR MACHINES AND THEIR**

BALLOTS SERIOUSLY **THE MESSAGE IS " TRUST US,"**....

37. See endnotes 7 and 8 herein.

38. “Insanity: doing the same thing over and over again and expecting different results.”  
Albert Einstein, (attributed)

39. *Gross v Albany*, 3 N.Y.3d 251, 261, 262 (Court of Appeals, 2004)

40. McKinney’s Public Officers Law § 100

41. *People ex rel. Hirsh v. Wood*, 148 N.Y. 142, 146-147 (Ct Appeals, 1895)

42. 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. .... they offer a level of accuracy, theft deterrence, and transparency that is missing from contemporary technologies. -- Professor Bryan Pfaffenberger, recipient of National Science Foundation Scholar’s Award granted for the study of the history of lever voting machines.

43. <http://www.bundesverfassungsgericht.de/en/press/bvg09-019en.html>