

**Assemblymember Joan L. Millman, Chair,
Assembly Standing Committee On Election Law**

**Assemblymember Catherine Nolan, Chair,
Assembly Standing Committee On Education**

**Assemblymember Barbara Lifton, Chair,
Assembly Standing Committee On Libraries And Education Technology**

Hearing in New York City, October 22, 2009

Lack of accurate information for the public and public officials

Testimony of Marjorie Gersten

Representing the Brooklyn Chapter of WheresThePaper.org

Thank you for holding this hearing and inviting the public to speak.

I am increasingly concerned that our state is moving ahead to replace our lever voting machines without accurate information -- about either the levers or the new equipment of paper ballots and optical scanners.

The public has not been informed, and worse, neither have our public officials. I want to briefly address three areas, and submit documentation to substantiate my points. I hope that you will be able to send this information to the leadership of the New York State Assembly as well as to your colleagues in the Assembly. Perhaps you could send the information also to Governor Paterson.

1. Parts and service for lever machines are easily available and inexpensive.

It is almost an urban legend that you can't get parts and service for lever voting machines. Except that people in suburban and rural parts of our state also have heard this repeatedly. And it is false.

I would like to submit into the public record this Press Release from the Voting Machine Service Center, Inc. which has been in business for over 32 years, and services the AVM lever voting machines used in most upstate counties. They state that they manufacture parts and supplies for these lever machines, and that "the AVM lever machines in the State of New York could be maintained indefinitely."

www.wheresthepaper.org/VotingMachineServiceCenterPressReleaseOct21_09.pdf

I would also like to submit into the public record this statement from International Election Solutions, which services the Shoup 3.2 lever voting machines used in New York City and Albany county. They state "We are capable to program, train election personnel, repair, and replace 3.2 Shoup Machine[s]. www.wheresthepaper.org/IntlElectionSolutionsOct22_09.pdf

To the best of my knowledge, the lever voting machines in Ulster county were renovated to nearly-new condition recently for an average cost of just over \$400 each, and such maintenance needs to be done once every four years. The average cost per machine, then, is just over \$100 per year.

"Nearly new" means that the insides are perfect, but there would still be dents visible on the outside metal casing.

I would also like to report that most of the parts needed by the lever machines are standard hardware items that can be ordered on the internet. A handful of parts have always been made in machines shops and would continue to be made to order by machine shops.

2. Lever machines can be broken. However, if our county maintenance personnel are not doing a proper job of keeping the levers in nearly-new condition, they won't do any better when they have to work with computers.

The main difference will be this:

When a lever machine is broken, everyone notices. When a computerized optical scanner is working improperly, dropping votes or crediting votes to the wrong candidate, no one will notice. As long as people can still slide their paper ballot into the slot, everything will look fine.

The lever machines were designed to FACILITATE quick visual inspection and simple mechanical tests, so that they are easy to maintain and inspect. They cannot switch votes. The low undervote rate in New York State tells us that they work very well. In 2004, our undervote rate was under 1%, and in 2008 it was similar.

In contrast, computers are impossible to inspect visually. They require expensive, time-consuming tests by making up test ballots and feeding them through the scanner.

The scanners are allowed to handle up to 4000 ballots on election day, according to New York State's Regulation 6210.19. Yet no one will test that many ballots in their pre-election tests, and errors that kick in after a few hundred or thousand ballots are cast will never be detected by pre-election testing. We need realistic testing, but we cannot afford it.

3. People say "the paper ballots will protects us." That would be true if the votes on the paper ballots were to be hand-counted immediately upon close of polls while under continuous observation by observers.

However, 97% of paper ballots will be counted only by computer, invisibly, via software that cannot be inspected by any candidate or voter or even our county election officials. The ballot

programming is on little memory sticks or memory cards that will be secured on the Dominion scanner with a piece of sticky paper (called a "tamper evident seal") that can be lifted up and stuck down again instead of tearing to pieces when it is peeled off.

I do not believe that a 3% spot-check of scanners, combined with 97% invisible computerized vote-counting, will protect anything except errors and fraud.

At the Sept. 17, 2009 meeting of the New York State Association of Counties, Aimee Allaud, Elections Specialist, NYS League of Women Voters, said "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." She also said, "...newer technology can provide better verifiability..." However, New York State will not have rigorous procedures -- 3% spot-check is not rigorous. To give a sense of what 3% means, ATM transactions are verified 300% to 500%.

We will not have citizen oversight because our state law allows the voted ballots to be out of observers' view for up to 15 days with no oversight whatsoever.

Regardless of what new technology can or cannot provide *theoretically*, we should not move ahead to replace our lever voting machines based on theoretical possibilities.

The reality is that our nation faces an economic downturn. Our people are out of work. Our tax base is shrinking. Our state faces a deficit this year that will be \$2 to \$4 billion, depending on whether you listen to the New York State Division of the Budget or the State Comptroller. We will face an \$18 billion deficit within 3 years.

The likelihood of rigorous procedures in the foreseeable future is zilch. No county can afford them, no county has invited its citizens to observe the paper ballots between the end of the election day and the 3% audit that takes many days after the election.

Given these circumstances, it is urgent for our state to reconsider the path we are on immediately.

I urge you, Chairwoman Millman, Chairwoman Nolan, Chairwoman Lifton, and Chairman Kavanagh, together with your committees, to try to spread light on these issues to other officials.

I urge you to do everything in your power, and to use all your influence, to halt our misguided plans to replace our lever voting machines until we can afford to handle the new technology as securely as it needs to be handled, and until our state law and regulations require professional-quality security for both voter-marked paper ballots and precinct-based optical scanners.

Thank you.