

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

---

UNITED STATES OF AMERICA,  
Plaintiff

**DECLARATION OF  
JOEL TYNER**

v

Case No. 06-CV-0263  
(GLS)

NEW YORK STATE BOARD OF ELECTIONS;  
PETER KOSINSKI and STANLEY L. ZALEN,  
Co-Executive Directors of the New York State  
Board of Elections, in their official capacities; and,  
STATE OF NEW YORK,

Defendants

---

Pursuant to 28 U.S.C. sec 1746, **Joel Tyner**, declare as follows:

1. For the last four years I have been a County Legislator in Dutchess County for District #11, representing Clinton and Rhinebeck; I've just been re-elected for another term.
  
2. Since early 2005 have been pushing for the most accurate voting systems possible here for Dutchess County and across our state and country. I've testified at a New York State Board of Elections public hearing in Carmel, Putnam County, and have also submitted a number of resolutions over the years on this issue, including one last

month asking the U.S. Department of Justice and federal courts to not force the New York State Board of Elections to engage in such a headlong rush to select voting machines.

3. I have been convinced of the accuracy of hand-counted paper ballots; see the petition I started on this at [www.petitiononline.com/hndcount](http://www.petitiononline.com/hndcount); click on “View Signatures” to see comments from a number of other local residents who agree— like Poughkeepsie's Kurt Hornick, Pat Lamanna, Sally Luther, Doug McComb, John Mizzi, Denise Relyea, and Doreen Tignanelli, Hyde Park's Pete Conklin, Milan's Jose Reissig, Pawling's Nik Colvin, Red Hook's Bill Griffith, Wappinger's Rich Carlson, and dozens of others across the country. Nationally, Rep. Maurice Hinchey, Rep. Lynn Woolsey, Rep. John Conyers, Rep. Dennis Kucinich, Rep. Maxine Waters, Rep. Jim McDermott, and Rep. Barbara Lee have all co-sponsored H.R. 6200, introduced in September of last year-- legislation that would make sure that presidential elections are conducted on paper ballots, counted and posted at the precinct level with the process open to all observe-- the way much of New Hampshire voters have voted for hundreds of years. Countries like Canada, Australia, France, Ireland, Austria, Sweden, Finland, Denmark, Italy, Greece, and dozens of other countries across the planet accurately, inexpensively, quickly, and democratically count votes in their elections by hand this way, as Michael Moore pointed out years ago.
4. The fact is that our right to vote includes the right to see that our votes are received and accurately counted, and secret vote counting is not only unconstitutional, but is

un-American. All touchscreen and optical scan voting machines, sold by the same handful of vendors, count the votes using secret software— while we the taxpaying public are never permitted to know or see how these machines are programmed to count our votes. This is beyond absurd— from the sublime to the ridiculous. The fact is that there have been literally thousands of breakdowns and failures of these computerized voting systems over the past five years; the vendors selling these systems have been found ineligible to do business in our state because they have been found to be irresponsible, unethical, and guilty of multiple offenses that violate our state's laws thereby precluding the New York State Board of Elections from contracting with them; see Andi Novick's evidence presented in these two papers: [www.wheresthepaper.org/Memo1NYSvendorsProhibited.pdf](http://www.wheresthepaper.org/Memo1NYSvendorsProhibited.pdf); [www.wheresthepaper.org/UpdatedProcurementVendorIrresponsibility070822.pdf](http://www.wheresthepaper.org/UpdatedProcurementVendorIrresponsibility070822.pdf).

5. Finally, here below is the resolution I submitted November 20, 2007 addressing this issue for the

Dutchess County Legislature to pass:

WHEREAS, the League of Women Voters of New York State, New York Public Interest Research Group, and New Yorkers for Verified Voting strongly oppose a proposal made by the Department of Justice in early November calling for the federal courts to consider taking control from the state and to select new voting systems for New York for the September, 2008 primary elections; the New York State Board of Elections has until December 6th to reply to the Justice Department's motion, and

WHEREAS, the U.S. Department of Justice position was made in a motion submitted to the federal court reviewing New York's implementation of the Help America Vote Act; in addition to asking the court to consider taking over the voting machine selection process, the Justice Department also called for all the state's lever machines to be replaced with

new systems in less than a year in time for the September 2008 primary elections; the League of Women Voters of New York State, New York Public Interest Research Group, and New Yorkers for Verified Voting have also stated that the Department of Justice's position endangers numerous safeguards for new voting systems enacted state law, such as mandating that the computer code from voting systems be held in escrow in case of suspected problems with machines, and

WHEREAS, Dutchess County taxpayers and New York State taxpayers should not be forced to pay for voting systems that gut important protections already won in state law; the Department of Justice has stated that voting machine vendors won't be required to reveal the computer codes running their machines if problems arise with their systems; this could seriously undermine public confidence in election results, and

WHEREAS, the Department of Justice has made an incredible claim that while New York State residents have a right to require far higher voting system standards than those set by the Federal Government, that New York State residents also somehow have no right to demand that voting machine vendors actually meet them; this makes no sense, as the Department of Justice is forcing New York to use voting machines that have failed again and again in other states, regardless of state laws designed to protect our votes, and

WHEREAS, the Poughkeepsie Journal reported November 6th that, "the Justice Department said in a motion filed with federal District Court that the court should consider taking away control of the machine-replacement process from the Board of Elections if it doesn't show it can make 'immediate progress'; the New York State Board of Elections has been lobbying for the court and Justice Department to allow New York until 2009 to fully implement the Help America Vote Act; voting-rights advocates warned that forcing the state to have new equipment in place so quickly [by next September] could lead to large-scale problems on primary day and Election Day next year due to a lack of time for comprehensive poll-worker training and voter education", and

WHEREAS, the fact is that the Department of Justice's proposal to force a wholesale replacement of the state's lever machines in less than a year is also likely to result in mass confusion at the polls; lines for voting in Presidential years are already out the door in many locations; chaos will be probable when each voter has to be taught how to vote over again in a new system and poll workers have to be trained on how new systems work, and therefore be it

WHEREAS, Newsday reported November 7th that the Democratic Elections Commissioner of Nassau County William T. Biamonte stated that this type of a federal takeover of a state election board, as recently concluded in Alabama with a special master appointed last year to oversee that state's compliance with the Help America Vote Act, is "bizarre and unworkable" and that his Board of Elections would "need a minimum of 11

months working time to get it down, and New York City would probably need longer," and

RESOLVED, that the Dutchess County Legislature requests that the Department of Justice and the U.S. Federal District Court handling this case allow the New York State Board of Elections and counties like Dutchess County to make decisions about voting machines without pressure from the Department of Justice unilaterally removing crucial safeguards regarding voting machines already made law in our state, and be it further

RESOLVED, that a copy of this resolution be sent to the U.S. Department of Justice, the U.S. Federal District Court handling this case, the New York State Board of Elections, and our county's Board of Elections.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ \_\_\_\_\_

**Joel Tyner**

Executed on December 12 , 2007