

**Hearing, Elections Committee, New York State Senate
Senator Joseph Addabbo, Jr., Chair
Monday October 5, 2009, Yonkers, New York**

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 four areas, and submit documentation to inform this committee. I hope that you will be able to send this information to the leadership of the New York State Senate as well as your colleagues in the Senate. Perhaps you could send this information also to the other house, the Assembly, and to Governor Paterson.

1. HAVA allows continued use of levers if supplemented by accessible equipment in each poll site.

Public officials have heard for years from vendors and their public relations firms that HAVA, the Help America Vote Act of 2002, prohibits continued use of lever voting machines. The widespread belief in this falsehood shows that no one reads legislation.

I urge you to distribute this paper that quotes the relevant portions of HAVA in order to inform our legislators, Governor, county election commissioners and Deputies, and staff.

"Federal law (HAVA) allows continued use of Lever Voting Machines if supplemented by accessible equipment for Voters with Disabilities"

http://www.wheresthepaper.org/HAVA_Allows_Levers.pdf

2. 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 letter 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/VotingMachineServiceCenterletterJan23_09.pdf

I would also like to submit into the public record this fax 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/Shoup_IntlElectionSolutionsMar18_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 Shoup 3.2 machine 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.

3. Lever machines can be broken. However, if our county maintenance personnel are sinners when it comes to doing a proper job of keeping the levers in nearly-new condition, they will not become saints when they have to work on 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.

4. 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 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, we should not move ahead to replace our lever voting machines based on theoretical possibilities. It is time for our public officials to get more realistic.

Our nation faces an economic downturn. Our people are out of work. Our tax base is shrinking. Our state faces a \$2 billion deficit this year, \$18 billion in 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, Chairman Addabbo, and your committee, to try to spread light on these issues to other officials, and to try 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.

Thank you.