

Abstract Memo II
Alternative Voting Systems That Are HAVA-compliant, NYS-compliant and
Democracy-compliant

Government and the Means by Which we Elect It Must be Open, Transparent and
Accountable to the People

In a democracy the most important guarantee of government accountability is the right of citizens to control their government through elections. Elections are the mechanism by which we assert our right to self-governance. As provided in the Declaration of Independence, governments are instituted by the people in order to protect their rights: holding government accountable to the people is the duty of the citizenry. Accordingly the people are ultimately responsible for the government and therefore cannot surrender control of the process of their elections: not to the government nor to any private corporations, particularly ones asserting secret proprietary rights to the very information that would provide knowledge about how their computers are processing our elections and counting our votes.

The only voting systems the New York State Board of Elections (SBOE) is considering at the present time are privately owned computerized systems which count our votes in secrecy. The vendors who have created these voting systems assert alleged trade secrecy rights to hide from the public the very information the people are entitled to: how our elections are processed and our votes counted. Surely the public's vital interest in transparency and accountability trumps a private corporation's claim to conceal the critical information citizens must have to know their elections are fair and honest. And yet 49 states have permitted the people's elections to be run on these private computers, controlled by corporations insisting on the right to conceal from the public all information about the means by which we elect our public servants--the very people of whom we are to expect transparency and accountability.

New York, the only state which has not privatized its elections, must be a beacon for the rest of the nation. New York is in a fortunate position: we have not yet made the mistake of contracting with vendors who oppose transparency and we have a Governor who has embraced a vision for increased government transparency and the highest ethical standards. As the only state not to have succumbed, it has become necessary to act boldly and alone in order to preserve the freedom this nation has enjoyed for over 200 years.

Transparency and accountability are the life blood of a democracy. This is indeed consistent with the legislative declaration contained in New York's Public Officers Law, § 84:

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 and that the public, individually and collectively and represented by a free press, should have access to the records of government in accordance with the provisions of this article.

Elections run on private voting systems whose corporate owners deny access to information that rightfully belongs to the people by "shrouding it with the cloak of secrecy or confidentiality" cannot be tolerated. The government is indeed the public's business and it is for the people to know that their government was fairly and honestly elected. They cannot do that without access to the necessary information.

Fundamental to the long-term survival of a democratic society is the recognition that government derives its legitimacy from elections the people trust. We cannot trust what we cannot see; and faith has no place in our secular republic. Only a citizen-owned process can legitimize government through the consent of the governed.

A Publicly Owned and Controlled Voting System Ensuring Transparency and Oversight Is the Only Means of Protecting Democracy

The best option for democratic elections remains a full manual hand count of all paper ballots: only then can regular citizens know, without having to rely on experts or government officials, how their votes were processed and counted. However, in light of the fast track the State Board of Elections is pursuing to begin certification testing of these vendors' machines and given the current resistance within government to prepare citizens to hand count their ballots, there is only one computerized voting system New York can consider: A publicly-owned, open source paper ballot optical scan voting system combined with sufficient public in the hands of the people.

Open Voting Solutions is a company that has developed an open source optical scan voting system. Unlike the closed proprietary software the major voting vendors chose to use, open source software is open and free under the General Public License. Open source software does not need to be archived like proprietary software because it is already publicly available to be examined: a far more desirable solution than what our current source code escrow law provides in New York. Moreover, using an open source

code product would obviate the efforts by Microsoft to undermine our laws in order to assist the voting vendors who can't otherwise comply with New York's escrow requirements. Open Voting Solution, the only one to have shown respect for New York's laws, has created a voting system which doesn't rely on Microsoft. All of the software is available for inspection.

Open source code optical scanners begin to restore some of that transparency which would be eliminated by private vendors who bar the public from access to any source code information. The advantage of open source software is that it is available for public inspection by anyone with some level of computer literacy, not just those designated to see the escrowed source code pursuant to a non disclosure agreement. While this is still not the full public scrutiny that manual hand counting would allow, in that the general public still needs to rely on experts to scrutinize the source code, it is clearly more desirable than excluding the public from access to the very information that directs all functions of the voting machines, including vote counting.

Transparency and oversight by the public is enabled by releasing the ballot images of our scanned paper ballots for public inspection and requiring a partial hand count on election night, thereby allowing for a check against the invisibility created by the computer while providing for an inexpensive and comprehensive audit by the public as well as by election officials.

The systems offered by the major vendors deprive the public of transparency and hence the ability to monitor/oversee their elections. Only a publicly owned and controlled electoral process can be considered constitutionally acceptable.