

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

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UNITED STATES OF AMERICA,  
Plaintiff

**MOTION**  
Case No. 06-CV-  
0263 (GLS)

v

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

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**MOTION OF**

**ARISE (New York); Citizens for Voting Integrity (New York); Connie Hogarth Center for Social Action at Manhattanville College (New York); Del4Change (New York); Dutchess Peace Coalition (New York); New York Citizens for Clean Elections; Northeast Citizens for Responsible Media (New York); Peacemakers Voting Integrity Project (New York); Rhinebeck Democratic Committee (New York); Shandaken Democrat Club (New York); Ulster County Democratic Women (New York); Where's The Paper (New York); Ulster County Legislator Susan Zimet; Ulster County Legislator Gary Bischoff; Dutchess County Legislator Joel Tyner; Ulster County Legislator Peter Liepmann; Professor Mark Crispin Miller, New York University, author, *Foiled Again: The Real Case for Electoral Reform*; Professor Steven Freeman, University of Pennsylvania, author, *Was the 2004 Presidential Election Stolen? Exit Polls, Election Fraud, and the Official Count*; Harvery Wasserman, Free Press Senior Editor, columnist and co-author with Robert Fitrakis of *How the GOP Stole America's 2004 Election and is Rigging 2008*; Robert J. Fitrakis, Executive Director Columbus Institute for Contemporary Journalism; Abbe Waldman DeLozier and Vicke Karp, authors "*Hacked! High Tech Election Theft In America*"; Pokey Anderson, journalist, broadcaster; Election Defense Alliance (national); Nancy Tobi, New Hampshire Fair Elections Committee; AUDITAZ (Americans United for Democracy Integrity and Transparency in Elections, Arizona); Voter Confidence Committee (California); Protect California Ballots; Video the Vote (Florida); Coalition for Voting Integrity (Pennsylvania), Rady Ananda, J30 Coalition (Ohio); Coalition for Visible Ballots (Texas)**

**FOR LEAVE TO APPEAR AS *AMICI CURIE***

The above described *amici curiae*, through their undersigned counsel, hereby respectfully move for an order granting leave to appear as *amici curiae* and to file the memorandum of law and the supporting declarations submitted herewith.

*Amici* represent a broad group of citizens dedicated to the preservation of our most fundamental right to fair and honest elections. The *amici* represent elected officials, published authors, organizations from New York and numerous other states that have witnessed first hand the undermining of our democratic electoral process by computerized voting systems. As the declarations of many of these *amici* reflect – their work, commitment to democracy, as well as what they have produced – qualify them as true experts and leaders in this area of election integrity. It is the evidence they have so diligently sought to bring before the public that we wish to make available to the Court in considering the vital issue before it of how New Yorkers will vote in 2008.

The extensive documentation provided in the *amicus* brief, as well as in the declarations, reveal the debacle Americans have witnessed as a result of computerized voting systems used throughout the nation in the years since the enactment of HAVA. The evidence of the unacceptably high rate of failed voting systems as well as the dozens of independent studies conducted by computer scientists, exposing the ease with which these voting systems can be so readily tampered with as to alter the outcome of an entire election, is alarming.

The *amicus curiae* brief hopes to assist the Court by providing the documented evidence of the thousands of incidents reported by the mainstream media and citizens, which have included the failures of tens of thousands of computerized voting machines.<sup>1</sup> In the past five years these machines have caused the loss of millions of votes.<sup>2</sup> The *amici* will also provide the

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<sup>1</sup> <http://www.votersunite.org/electionproblems.asp>

<sup>2</sup> *Landslide Denied: Exit Polls vs. Vote Count 2006*, [http://electiondefensealliance.org/landslide\\_denied\\_exit\\_polls\\_vs\\_vote\\_count\\_2006](http://electiondefensealliance.org/landslide_denied_exit_polls_vs_vote_count_2006), Freeman and Bleifuss, *Was the 2004 Presidential Election Stolen? Exit Polls, Election Fraud, and the Official Count* (2006).

Court with the more than two dozen independent studies<sup>3</sup> which have found such extensive vulnerabilities in the security of these systems as to render them unsafe for use in our democratic elections. Much of this documentation has been presented to the New York State Board of Elections ("SBOE") as well as the Office of General Services and the Office of the Comptroller<sup>4</sup> but has been ignored by all of the offices of government with which I have attempted to communicate. It is vital that the Court have this relevant evidence in order to assist it in ruling on the motion before it.

These very voting systems which have been found "inadequate to ensure accuracy and integrity of the election results"<sup>5</sup> are the same ones the United States is urging New York State ("State") purchase in order to be HAVA-compliant for 2008. *Amici* agree with the United States that the State should be HAVA-compliant for the 2008 election, but not by purchasing these flawed and vulnerable voting systems.

*Amici* agree that the State must provide accessible voting devices in all polling places for the 2008 election, but insist that the mandate for these devices cannot be satisfied by the thoroughly discredited DRE technology and that only Ballot Marking Devices (BMDs) are acceptable. *Amici* have argued that as long as BMDs are in every polling places, the existing lever voting machines are HAVA-compliant, but that in the event the Court disagrees with this interpretation of the statute, New York would still be able to be HAVA-compliant for the 2008 election by hand counting the two Federal races<sup>6</sup>, thus rendering the United States' application for the appointment of an outside party to compel HAVA-compliance, moot.

As the United States' memorandum has made clear, HAVA recognizes the State's right to

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<sup>3</sup> Exhibit "A" entitled 12-07TechReportsRananda.pdf.

<sup>4</sup> Exhibit "B", Vendor Non Responsibility and "C", Updated Procurement Vendor Irresponsibility.

<sup>5</sup> [http://www.sos.ca.gov/elections/voting\\_systems/ttbr/red\\_overview.pdf](http://www.sos.ca.gov/elections/voting_systems/ttbr/red_overview.pdf)

<sup>6</sup> In 2008 each New York ballot will contain, at the federal level, two contests: presidential electors and U.S. House of Representatives.

hand count paper ballots, as long as BMDs are provided in every polling place producing a paper ballot identical to the paper ballots marked by able voters. Thus, were the Court to direct a hand count of the two Federal races<sup>7</sup>, the defendants would not have to choose between purchasing failed computerized systems or remaining in violation of a federal statute.

*Amici* have outlined how simple and feasible it would be for New York to return to a hand count for two races. A number of the amici represented herein have experience in the administration and logistics of hand-counted elections and have analyzed the public documents for New York's counties. Based on their calculations, New York State can hand count the two Federal races for the 2008 election in less than four hours, requiring only four citizen-counters in each polling place.<sup>8</sup>

*Amici* anticipate that the county election commissioners will express grave concern that an insufficient number of people would be available to count. With all due respect for the difficult job of our election commissioners, we submit that, with our democracy hanging in the balance, a will can find a way. A transparent, secure voting process observable by the people is the bedrock protocol of democracy. *Amici*, both local and national groups, have attested in their declarations to their willingness to assist the recruiting and training of volunteers for New York's 2008 election.

There are funds available for administration and training. Were New York to switch from a lever voting system to a hand counting HAVA-compliant voting system for the Federal election, New York would be entitled to use the Title I monies to organize, prepare and administer a proper hand-count election, HAVA Section 102 (a) (1).

It is respectfully submitted that permitting *amici's* motion for leave " presents no

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<sup>7</sup> In 2008 each New York ballot will contain, at the federal level, two contests: presidential electors and U.S. House of Representatives

<sup>8</sup> See exhibit "G" for a summary of what would be required to hand count the two Federal races in NY, exhibit "E", NY\_HCPB, a spread sheet detailing the needs of the NY counties, exhibit "F", NY08Registration&Turnout Projections, and the Berman, Ananda and Tobi declarations. Time, cost projections included.

prejudice to any party", *Zell/Merrill Lynch Real Estate Opportunity Partners Ltd. P'ship III*, 1996 U.S. Dist. LEXIS 3242 at \*11. *Amici* represent the citizens, who have the greatest interest in how their elected officials determine the means by which they will seek their reelection. The *amici* herein collectively bring an extraordinary amount of expertise in this area as demonstrated in the annexed declarations. Moreover, the expertise represented by these *amici*, in addition to the voluminous documentation provided – revealing the danger to our very democracy should such machines be permitted to stand between the citizens and their right to freely cast their ballots and know their ballots were received and accurately counted – can only be "of aid to the court and offer insights not available from the parties" *United States v El-Gabrowni*, 844 F. Supp. 955, 957 n.1 (S.D.N.Y. 1994) as well as to "assist the court in evaluating the defendant's motion ....in that it will provide an additional perspective not otherwise available to the court." *Onondaga Indian Nation v. New York*, No. 97-CV-445, 1997 U.S. Dist. LEXIS 9168 (N.D.N.Y. June 25, 1997) at \* 4.

For all the foregoing reasons, the *amici curiae* request that this Court issue an order granting them leave to appear as *amici curiae* and to file the attached memorandum of law, the annexed declarations and exhibits.

Request is hereby made for amicus curiae to participate in oral argument, by  
Jonathan D. Simon, Esq.\*

Dated: December 13, 2007

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Andrea T. Novick

\* *Pro Hac Vice*  
pending

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