



New Yorkers for Verified Voting

New York State Board of Elections
Neil Kelleher, Commissioner
Helena Moses Donahue, Commissioner
Douglas Kellner, Commissioner
Evelyn Aquila, Commissioner
Peter Kosinski, Co-Executive Director
Stanly Zalen, Co-Executive Director

40 Steuben Street
Albany NY 12207

October 5, 2007

Dear Commissioners and Co-Executive Directors,

New Yorkers for Verified Voting (NYVV) has reviewed the draft RFP document (version 8.1) for Ballot Marking devices. Our comments follow. Suggested changes to the proposal language are in bold where we have suggest additions and in strikethrough where we recommend deletions. A rationale is provided for each comment.

1) Modify current Section 2.1 to:

**2.1 Must possess no capability to electronically record
or tabulate a vote.**

Rationale: The term ballot marking device describes a device with one capability only – to provide an accessible means of marking a physical paper ballot. The current language would allow devices whose primary purpose is vote recording and tabulation to be used for a purpose for which they are not intended.

There is no evidence that electronic voting devices which tabulate votes could successfully have their vote recording and tabulation functions disabled. No state has ever attempted to use such devices with this primary function disabled, and the lack of any evidence from the field that it can be successfully accomplished is sufficient reason to stay away from this unsound technical proposal. It is a grave mistake to use technologies for purposes for which they are not intended, or to suppose that a primary function can be disabled while ancillary functions are used successfully.

Further, the abbreviated testing regimen for BMDs proposed by the Board of Elections is extremely weak and incapable of determining if an existing vote tabulation function has indeed been fully disabled, nor is it comprehensive enough to determine that even if apparently disabled, the device would operate reliably under real world election conditions.

2) Modify current Section 2.7.6 to:

2.7.6 Provide a feature to permit a voter to independently verify **the markings on the paper ballot which are used to manually count votes after it has been marked**, including voters who are blind or visually impaired.

Rationale: It is crucial that the markings which are used to count the votes are the same ones used to verify the ballot to the voter. The current proposed language in 2.7.6 would allow separate encodings, such as a barcode, be used to verify the ballot even though those encodings are not used to count the votes on that ballot. In this case the blind or visually impaired voter would not be verifying that part of the ballot which is counted, but rather a separate encoding that may not correspond to the marks which are actually counted.

2) Remove current Section 2.6.8:

~~2.6.8. Printer access to replace consumables such as ink or paper shall only be granted if it does not compromise the sealed printer paper path.~~

Rationale: A ballot marking device produces a paper ballot which can be removed from the device and independently verified and counted. Sealed printer paper paths are not part of such devices.

3) Modify current Section 2.7.20 to:

2.7.20. The BMD shall allow **all voters, including voters who are blind or visually impaired**, to approve or reject the paper **ballot**.

Rationale: Since the primary purpose of a Ballot Marking Device is to provide accessible voting, every opportunity must be taken to be explicit about the ability of voters with visual impairments to be able to access the same functions and capabilities that any other voter can.

The proposed language says paper “record” which implies that something other than the paper could be the official ballot. This is not so – the only ballot when using a Ballot Marking Device is the paper ballot. The word ‘record’ must be replaced by the word ‘ballot’.

4) Modify current Section 4.4.4 to:

4.4.4. To demonstrate the ability of **all voters, including voters who are blind or visually impaired**, to independently verify their ballot after the BMD has marked the ballot.

Rationale: Same as above. Since the primary purpose of a Ballot Marking Device is to provide accessible voting, every opportunity must be taken to be explicit about the ability of voters with visual impairments to be able to access every function and capability that any other voter can.

Sincerely,

Bo Lipari
Executive Director
New Yorkers for Verified Voting