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*VotersUnite takes no position in the debate on whether or not to replace lever machines in New York. Our goal is to make complete and accurate information available to those responsible for making decisions regarding elections.*

New Yorkers for Verified Voting recently posted and publicized “an analysis of HAVA requirements to replace lever machines.”<sup>1</sup> Some individuals have asked VotersUnite to respond to NYVV’s assertion that:

“there are two sections of HAVA, Title I Section 102, and Title III Section 301, that are clear and unambiguous about the requirement to replace mechanical lever machines.”

VotersUnite does not agree that these sections unambiguously require replacing levers.

NYVV first cites Section 301(a)(2), which requires that every voting system used in a Federal election “shall produce a permanent paper record with a manual audit capacity for such system.” NYVV asserts that “Lever machines have no such capability.”

While NYVV is correct that many lever machines do not produce a paper record, the term “voting system” is defined in HAVA Section 301(b) to include not only the equipment, but also “practices and associated documentation.” So, for example, HAVA explicitly states that jurisdictions using hand-counted paper ballots and mail-in ballots may use voter education to meet the requirement that a voting system must warn voters of overvotes.

The tally sheet on which poll workers manually record the results that they copy from a lever machine’s mechanical counters is comparable to the tally sheet on which poll workers record the results in jurisdictions that hand-count paper ballots. In hand-counted paper ballot jurisdictions, this document and the practices of the poll workers in producing the document are regarded as an integral part of the “voting system.”

With lever machines, the audit performed with the manually-copied tally sheets consists of opening the locked lever machines and making visual comparison of the tally sheets to the numbers on the machine’s counters, a procedure performed before observers. Also, we note that the term “audit” in HAVA has been generally accepted to require significantly less than it requires in the financial world; a reprint of a tally report by a Direct Record Electronic (DRE) voting machine has been accepted as an audit of the original tally report.

The second section cited by NYVV is Section 102. NYVV asserts:

“HAVA Title I, Section 102 requires that states which take Federal funding to replace lever machines and punch card systems must use the funds to replace these machines. New York State has accepted and used these funds. HAVA clearly states that in this case lever machines must be replaced.”

However, NYVV omits the fact that HAVA provides an alternative to replacing the machines. Section 102(d) “Repayment of Funds for Failure To Meet Deadlines” states that if a jurisdiction does not meet the deadline for replacing its punch card or lever system, it shall repay the replacement funds. Note that this alternative does not include repaying Title II funds used for meeting HAVA requirements, such as purchasing accessible devices.

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<sup>1</sup> <http://www.nyvv.org/newdoc/2009/LeverMachinesAndHAVA020909.pdf>