

**Testimony of Andi Novick before NYC Voter Assistance Commission,
June 28, 2007**

I am speaking to you as a citizen, as an attorney, as the founder of Northeast Citizens for Responsible Media (www.re-media.org), a media reform organization which has taken the issue of our elections & democracy as its priority issue as New York moves towards deciding which voting system to use, but most importantly as a citizen.

The discussion in NY has centered on which of the two types of machines offered by the same private vendors should NY choose. I would like to broaden that discussion to refocus us on the issue of which type of voting system best serves the democratic process and the citizens of New York.

In a national Zogby poll conducted last year (<http://www.bradblog.com/?p=3276>), responses revealed overwhelming public attitudes that have been ignored by our election officials and elected officials across the country, but in New York, which has not yet committed to a voting system, there is still the opportunity for those with authority to stop and listen and I'm imploring you to further that effort.

The Zogby poll responses demonstrated wide-spread public awareness of the potential for manipulation and fraud in electronic computerized voting machines. The possibilities for tampering with both the touch-screen DRE and the paper ballot optical scanner (PBOS) – the only two options under consideration in New York – have been documented in numerous government studies, as well as University studies, that have found both DREs and PBOSs can be rigged without

detection. (See Memo to Governor's office included, specifically endnotes 2, 3, 4,6). The Zogby poll responses demonstrated that the public too is widely aware of the potential for manipulation and fraud in electronic computerized voting machines:

- Almost 2/3 of the population sampled reflected this awareness, which was the same among Democrats and Republicans.
- Perhaps the most impressive number in the Zogby poll was the near universal response- 92%- of citizens stated that they believed they were entitled to view and obtain information about how election officials count the votes.
- There was also overwhelming objection to private vendor specific software used to count votes outside the public observation. 80% of those surveyed agreed that computerized voting should be transparent to the public. That secret, proprietary software, meaning secret vote counting, is totally unacceptable.

And yet, notwithstanding our deliberateness in New York in waiting to make a decision and notwithstanding all we have learned from the mistakes of other states, privately controlled voting machines using secret, proprietary software are the *only* options the State Board of Elections (SBOE) is getting ready to start testing for certification. That would be both DREs and Optical Scanners, offered by private vendors who assert secret proprietary rights to the source code- the very information which directs the functioning of the computer, including vote counting.

Yes it's true that NY law provides for escrowing that source code, but not only as

we saw last week in Albany are private vendors ignoring NY's law and trying to rewrite it in their self-interest so as to abolish or minimize the escrow requirement, but even if NY holds to its escrow requirement, that means a few election officials get to see the secret source code under a non disclosure agreement – meaning the public- whose elections these are – *recall government of the people, by the people, for the people* – never get to know how their vote is being counted. The citizens of New York would never know the very information 92% of the people in the Zogby poll believe they have a right to! And indeed they do: Because once the counting of the vote is controlled by private corporations and the government that contracts with these private vendors to count our votes, one has to ask- what happened to democracy? Where are the safeguards; the checks and balances? What's happened to free and fair elections?

Proprietary intellectual rights are fine in certain situations. I don't need to know what secret recipe Coca Cola uses. But these proprietary rights of corporations have no place in our elections – the mechanism by which a self-governing people preserve their independence. To keep secret the very information that shows me and you how our votes are being counted- deeply offends my patriotism.

Our Constitution is not based on trust. Quite the opposite. It provides a system of checks and balances precisely because it is our duty to stay vigilant and not just trust that the government is doing what it says it's doing. Once the government enters into non disclosure agreements with private corporations- to control and count our sacred ballots- the public is quite literally cut out of its own election process.

There are alternatives which are not being discussed in NY and it's not too late to entertain them. I came down here today in the sincere hope that you will encourage the exploration of some of these more democratic alternatives before New York makes a fool of itself by choosing the same machines the rest of the country has, without the benefit of the excuse of having rushed into its decision.

Personally I am a great fan of the people and believe that adults are fully capable of counting to 300 or 500 or even higher. In *most* democracies of the world, elections are hand counted. I recognize that there had been ballot stuffing when we hand counted in the last century and that New York installed our beloved lever machines as a response to the fraud that occurred when we hand counted. But there are protocols we could institute today, particularly in the age of surveillance cameras, that could greatly reduce manipulation in hand counting, the most advanced means we know of to preserve citizen oversight and protect the integrity of the count.

There will always be fraud in elections, that is a given. But the level of fraud that can be committed with computerized voting is so greatly enhanced that Tammany Hall will start to look like the good ole' days. It took a lot of people on the ground to participate in the theft of elections when we hand counted. With electronic computerized voting, it takes only a few and on a far more massive level never before possible. The National Institute of Standards and Technology (NIST), the federal government's technical advisers, have stated that one person is all that is needed to rig an entire state-wide election. (See endnote 3 to the memo to the Governor's office submitted herein, referencing the NIST report,

<http://vote.nist.gov/DraftWhitePaperOnSIinVMSG2007-20061120.pdf>, which found DREs *"are vulnerable to errors and fraud and cannot be made secure."* *"The DRE provides no independent capability to detect whether fraud has not caused errors in the records..... a single... programmer ...could rig an entire statewide election"*. See also that same endnote for the report of California's Voting System Technical Assessment and Advisory Board (VSTAAB) http://ss.ca.gov/elections/voting_systems/security_analysis_of_the_diebold_accubasic_interpreter.pdf, (confirming the findings of the Hursti Hack, Black Box Report Security Alert: July 4, 2005 Critical Security Issues with Diebold Optical Scan Design (1.94w), 2005, <http://www.blackboxvoting.org/BBVtsxstudy.pdf>) which found that Optical Scanners can be hacked without detection. The California report, commissioned by California's Secretary of State, warns: *"successful attacks can only be detected by examining the paper ballots. There would be no way to know that any of these attacks occurred; the canvass procedure would not detect any anomalies, and would just produce incorrect results. The only way to detect and correct the problem would be by recount of the original paper ballots."* And see endnote 4 of the memo to the Governor's office referencing the Government Accountability Office's (GAO) reports, which have on two occasions expressed **concerns that the problems with electronic voting systems are so pervasively problematic they "could damage the integrity** of ballots, votes and voting-system software by allowing unauthorized modifications." October 2005 Report <http://www.gao.gov/new.items/d05956.pdf> And the more recent study, released March 7, 2007, <http://www.gao.gov/new.items/d07576t.pdf>, wherein the GAO Information Technology Architecture and Systems Director, Randolph C. Hite, testified that electronic voting systems can break an election!

"[E]lectronic voting systems are an undeniably critical link in the overall election chain. While this link alone cannot make an election, it can break one. The problems that some jurisdictions have experienced and the serious concerns that have surfaced highlight the potential for continuing difficulties in upcoming national elections if these challenges are not effectively addressed". Note no distinction was being drawn in the GAO study between DREs and PBOs: all computerized electronic voting systems are a threat to our democratic election system, but only PBOs can be checked with a hand count (were such a hand count required by law, whereas DREs with a paper trail can be rigged so that the paper trail and electronic count could be made to match and both be wrong, see *See Technology Review: How to Hack an Election in One Minute* <http://www.technologyreview.com/Infotech/17508/>).

I further recognize that it will take more time to raise awareness of the benefits of a tightly controlled , transparent, full hand counting protocol, but there is yet another alternative that will permit New York to have greater control over their elections by preventing the dependence on private vendors which has resulted across the nation as a result of the anti-democratic privatization of our elections. We can customize and adopt our own publicly available open source software, to be used in optical scanners purchased by New York State.

Such a state-controlled PBOS voting system can be intentionally designed to be open and under full public control – not the control of private vendors (nor limited to the SBOE under a non disclosure agreement). Employing what is known as open source software, which can be customized to New York's higher standards and installed on state-owned optical scanners, would not only save New York tens of millions of dollars (cutting out the middleman Diebold or ES&S-type vendor) but would enlist our own state employees in maintaining and running the voting systems –public servants accountable to the public under the Laws of New York (see the Public Employees Federation Union's resolution opposing privatization and supporting optical scanners run and maintained by state employees, http://nyvv.org/doc/PEF_opscan_res1.pdf). And we can avoid not only vendor-dependence, but the use of equipment and programming that has been exposed across the nation for its poor design and security flaws. (See the memo Governor's office included herein, specifically endnote 8, <http://www.votersunite.org/electionproblems.asp?sort=date&selectstate=ALL&selectvendor=&selectproblemtype=Machine+malfunction>). In Oklahoma, the only state to have taken control of its elections from private corporations, there has not been a single reported problem in any election-problem database for recent elections (see the memo to the

Governor's office included herein, specifically endnote 9). The open source system devised by one company, Open Voting Solutions (OVS) , permits the same machine used by abled voters to be used by disabled voters. Election workers can change a standard machine to a handicapped machine and vice versa. This flexibility helps make full handicapped support feasible in all polling places. Clearly open source PBOS in our precincts is a win/win for New York, but is not at the present moment among the options the SBOE is about to start testing!

Richard Johnson, the CEO of OVS is among those who wish to testify before you today and he can explain more about that system so I will leave those details to him. I would just like to add in conclusion that the fact that the SBOE is still, in 2007 -- given everything we know about touch screen-DREs' vulnerability to manipulation without detection, poised to certify for purchase at least one DRE is a disgrace. Even PBOSSs, which can also be manipulated without detection, are worthless unless there is legislation mandating a means to check the computer, which in the end is still a computer whether the source code is open or concealed and must be checked for error, accuracy and manipulations. Such a check must be **made on election night BEFORE the unofficial numbers are released.** (See also [A RETURN TO SANITY – WHY WE MUST ELIMINATE COMPUTERIZED CONTROL OF OUR ELECTION](#)

SYSTEM: Moreover the federal government has now admitted (in the NIST report) that even with the most rigorous overhaul of the current DREs "they would not mitigate the threat of malicious code inserted by an insider at the voting machine company,". And see the memo to the Governor's office, endnote 10: Even an optical scan system owned by New York and designed for transparency and security, we would need a partial hand count on election night, like the UBS verification protocol described at - <http://electiondefensealliance.org/files/UPSEndFaithBasedVoting.pdf> which needs to be considered an integral and essential aspect of New York's voting system and any legislation would need to reflect that.)

The broader issue I am addressing today is the privatizing of our elections- that is

purchasing equipment from private vendors who assert secret proprietary rights to the very information citizens are entitled to. **This has no place in a democracy.** New York should purchase its own optical scanners, utilizing publicly available open source software (obviating, by the way, all the fights going on now in the SBOE and the Legislature, over what needs to be escrowed and what needs to be deferred to Microsoft's and the Vendors' desire for secrecy) and New York must require a check and balance against even our own state-controlled open source voting system with a partial hand count on election night or other access to confirming the ballots, sufficiently to check the computers: all systems need to be checked in a functioning democracy. Only then can the people and the election officials all have assurance that the optical scanners did their job and counted the votes as cast.

Thank you

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