

New York Rolls Out Uncertified Voting Systems for 2009 Elections

ALBANY -- At a May 12th Commissioners' meeting, after collaborating with the US Dept. of Justice, the New York State Board of Elections cavalierly decided to risk the disenfranchisement of *nearly a million of the state's voters*, by allowing what one commissioner called a "huge pilot" of *uncertified* software-driven electronic vote-counting systems around the state in 45 of its 62 counties.

Here are the links to the Commissioners' resolution, and other documents containing the details of the plan:

- Authorizing Resolution 05/12/2009 (PDF 50KB)¹
- Pilot Plan Narrative 05/12/2009 (PDF 65KB)²
- Timeline 05/12/2009 (PDF 492KB)³
- County Participation Spreadsheet 05/12/2009 (PDF 42KB)⁴

Over 900,000 voters (read: *guinea pigs*) could be affected by these irresponsible tests, which one county election commissioner, perhaps unwittingly, compared to filling out lottery tickets.⁵ Gambling with the votes of a million New Yorkers is hardly a way to instill public confidence.

The plan contains almost no provisions for manual recounts of the paper ballots to check the computer tallies, other than those that might be obtained through the courts. The only exceptions are for contests with a margin of victory of 1% or less. Full recounts of those contests will be conducted, but we bristle at the suggestion that the victory margin reported by the uncertified voting system will be the one used to determine whether or not the hand count to check the system will take place.

Commissioner Douglas Kellner made a motion at the May 12th meeting to allow any candidate to ask for and obtain a full hand recount. His fellow commissioners defeated it by a bipartisan 3 to 1 vote.

Apparently Kellner's colleagues believe that:

- any candidate can convince a judge that a voting machine didn't count her votes -- even without evidence to support such a claim;
- the judge will also believe that the paper ballots have been preserved *inviolata* and thereby allow them to be hand counted to find out who really won an election (contrary to a number of previous decisions by the highest court in the State -- not to mention the highest court in the land); and
- the court would gladly spend taxpayers' money for such high-minded purposes as convincing losers of elections, and their supporters, that they really lost fair and square -- even given the amount of money *already spent* on the new voting systems.

¹ <http://www.elections.state.ny.us/NYSBOE/hava/InterimResolution05122009.pdf>

² <http://www.elections.state.ny.us/NYSBOE/hava/DOJFinalPilotPlanNarrative05122009.pdf>

³ <http://www.elections.state.ny.us/NYSBOE/hava/DOJProposedMergedPilotTimeline05122009.pdf>

⁴ <http://www.elections.state.ny.us/NYSBOE/hava/CountyElectionsParticipationSurvey05172009.pdf>

⁵ <http://www.post-journal.com/page/content.detail/id/530386.html?nav=5018>

But the voters of New York deserve more than just naive speculation about the ease of obtaining hand counts from a potentially partisan and cost-conscious judiciary. They deserve the actual hand counts if and when they are needed.

So what if the margin of victory happens to be slightly more than 1% (say 1% + 1 vote for example), and the courts deny the recount request? In that case the hand count reverts to only a 3% spot check, per Election Law § 9-211 -- part of the Election Reform and Modernization Act of 2005 that brought us this mess in the first place. If there are no discrepancies found in the spot check, the election could be certified -- which is more than can be said for the voting systems that actually produced the election results.

Unfortunately, the math is unequivocal⁶: in many elections, a 3% audit⁷ can reveal **absolutely NO discrepancies**, and the outcome of the elections can still be **absolutely wrong**. If that happens, no one will be the wiser.

One other potential safeguard remains for the million voters who will be subjected to this foolish experiment: the long-awaited and yet to be promulgated State Board of Elections auditing regulations known as Part 6210.18. For well over a year now, we have been involved in the drafting of these regulations. They offer the only hope for anything better than the ill-considered 3% spot checks in the Election Law.

A year ago⁸, many of New York's good government groups wrote to the Board⁹ asking for these regulations to reflect best practices. But so far, progress has been slow to non-existent in this area, even as the mad rush to run real elections using potentially fake voting systems continues.

All that said, while the value of certification has been greatly exaggerated, we think it might be fair to say that **if done properly**, certification can prove that a voting system **can** work -- not that it actually **will** work. This weak assurance is of course not sufficient, but it's better than no assurance at all. The only way to be sure to prevent the disenfranchisement of New York's voters by untrustworthy computers, is to hand count 100%, at least until the systems are certified.

We'll be following this story and reporting on efforts to fix this latest debacle and avoid the **Floridization** of New York's elections. We don't think this is what New Yorkers signed up for when the State accepted \$50-million in federal funds to replace its lever voting machines under the Help America Vote Act of 2002 (HAVA). The State has not been able to certify a voting system to replace the levers since then, and as always, it's important to read the law first.

In New York, the law has been decidedly **anti-recount**. So paper ballots or no paper ballots, the software counts will rule -- just as they did in Florida's 2000 election which brought us *Bush v. Gore* and ultimately, HAVA itself. Ironic, huh?

The Board did agree to present the matter to the State's Citizens' Election Modernization Advisory Committee. While their opinions are as yet unknown, and probably not binding, at least one member of the group has gone on record as favoring 100% hand counts of ALL votes counted by ANY uncertified voting system. This is in direct conflict with 3 out of the 4 State Board of Elections Commissioners who represent our two major political parties, but unfortunately may no longer be faithfully representing the voters.

⁶ <http://www.verifiedvotingfoundation.org/article.php?id=6483>

⁷ <http://www.wheresthepaper.org/NYAuditGraphs.pdf>

⁸ <http://e-voter.blogspot.com/2008/06/new.html>

⁹ <http://www.nyvv.org/newdoc/audit/AuditLtrSBOE061608.pdf>