

FREDERIC M. UMANE  
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GREGORY C. SOUMAS  
JUDITH D. STUPP  
MARYANN YENNELLA  
COMMISSIONERS

MARCUS CEDERQVIST  
EXECUTIVE DIRECTOR

GEORGE GONZALEZ  
DEPUTY EXECUTIVE DIRECTOR

PAMELA GREEN PERKINS  
ADMINISTRATIVE MANAGER

## BOARD OF ELECTIONS

IN  
THE CITY OF NEW YORK  
EXECUTIVE OFFICE, 32 BROADWAY  
NEW YORK, NY 10004-1609  
(212) 487-5300  
FAX (212) 487-5349  
[www.vote.nyc.ny.us](http://www.vote.nyc.ny.us)

### AGENDA COMMISSIONERS' MEETING TUESDAY, FEBRUARY 17, 2009 AT 1:30 P.M.

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1. Minutes
  - a) 1/27/09
  - b) 2/3/09
2. Marcus Cederqvist
  - a) HAVA Update
3. Steven H. Richman
  - a) March 10, 2009 State Government Information and Education Day in Albany
4. John Naudus
  - a) Draft 2009 BMD Ballot Canvassing Procedures for the February 24, 2009 Special Election
5. John Ward
  - a) Comparative Expenditures

#### For Your Information

- NYS Board of Elections Weekly Status Report for the Weeks of February 6, 2009 Through February 13, 2009
- Flyer Schedule for Public Demonstrations
- Ellis and Cornell v. DiResto and DiResto v. Ellis, Supreme Court, Queens County, Index Nos. 1400/09 and 1411/09
- *Hudson-Catskill Newspapers*: County may petition to stick with levers (2/2/09)
- E-mail from Teresa Hommel, Chair of Task Force on Election Integrity - Community Church of New York, requesting information regarding the lever machines



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JOHN J. WARD  
FINANCE OFFICER

DATE: February 17, 2009  
TO: Commissioners

FROM: John Ward  
Finance Officer.

RE: Vacancies

					Inc.	New.
1	Jean Lettiere	Adm Assoc.	S.I.	Dem.	\$46,878	\$44,646
2	Assistant General Counsel				\$75,000	
3	Valerie Marshall	Adm. Asst.	N.Y.	Dem.	\$39,440	\$37,562
4	Robert Helenius	VMT	Bklyn	Rep.	\$27,818	\$26.493

FYI



State of New York  
**STATE BOARD OF ELECTIONS**

James A. Walsh  
Chair  
Douglas A. Kellner  
Chair  
Gregory P. Peterson  
Commissioner  
Evelyn J. Aquila  
Commissioner

40 STEUBEN STREET  
ALBANY, N.Y. 12207  
Phone: 518/474-6367 Fax: 518/486-4546  
website: www.elections.state.ny.us

Todd D. Valentine  
Executive Director  
Stanley L. Zalen  
Executive Director  
Kimberly A. Galvin  
Special Counsel  
Paul M. Collins  
Deputy Counsel

February 13, 2009

Honorable Gary L. Sharpe  
United States District Court  
for the Northern District of New York  
James T. Foley U.S. Courthouse  
445 Broadway, Room 441  
Albany, New York 12207

Re: *United States v. New York State Board of Elections, et al.*  
Civil Action No. 06-CV-0263 (GLS)

Dear Judge Sharpe,

We enclose herewith Status Report of the Defendant New York State Board of Elections for the week ending February 12, 2009.

Respectfully submitted,

s/ \_\_\_\_\_  
Kimberly A. Galvin (505011)  
Special Counsel

s/ \_\_\_\_\_  
Paul M. Collins (101384)  
Deputy Special Counsel

**HAVA COMPLIANCE UPDATE**  
**Activities & Progress for the Week of 2/6/09 – 2/13/09**

Following is a detailed report concerning the previous week's progress in implementing the terms of the Court's Orders.

**PLAN A**

**Overall Compliance Status Summary**

Overall, activities and progress toward HAVA compliance are in jeopardy per the project timeline for Plan A.

**Contracting with Voting System Vendors**

Status of tasks in this category: *on schedule*

- Contract negotiation sessions have been scheduled for next week between SBOE and Avante, ES&S, and Sequoia. Escrow accounts, licensing agreements, pricing increases, performance bonds, and other matters will be discussed.
- ES&S complied this week with SBOE's requirement of escrow account replenishment. It is SBOE's understanding that Sequoia/Dominion will comply on 2/16/09.
- A letter was sent to Premier indicating that their contract would be cancelled for convenience, effective 4/9/09.

**Testing, Certification, and Selection of Voting Systems & Devices**

Status of tasks in this category: *in jeopardy and behind schedule*

- Overall progress of testing by SysTest:
  - SBOE continues to await the resumption of testing by SysTest, due to the EAC's suspension of their certification. As previously noted, this creates an ongoing negative impact upon all essential testing activities for the State of New York.
    - The EAC and NVLAP on-site inspection at SysTest Labs is still scheduled for 2/18/09 – 2/20/09.
    - SysTest continues to work on the development of the remaining test cases needed for release to vendors. No new test cases were provided for NYSTEC review or approved for release to vendors this week.

NEW YORK STATE BOARD OF ELECTIONS

- ES&S and Dominion continue to review the completed test cases in detail and are discussing them via email with NYSTEC for clarification as needed.
- NYSTEC has continued their work on the Crypto and GenSec test cases this week.
  - Additional technical information is being gathered from vendors for the Crypto test case, and this test case is expected to be completed within a week or so.
  - Further technical information is also being gathered from vendors for the GenSec test case, primarily in the area of encryption. Additionally, the entire test case is in the process of being reorganized. Completion is anticipated within approximately two weeks.
  - During the time that NYSTEC is working on the test cases noted above, key areas of evaluation and any potential “show stoppers” are being discussed with vendors via ongoing weekly conference calls.
- NYSTEC’s work to identify policies and procedures necessary for the integration of electronic voting equipment into County Board and SBOE functions continued this week.
  - A working session was held to further develop the security policy.
  - Working meetings continued this week on a draft of the ES&S workflow, relative to pre-election, election, and post-election tasks and activities; a follow-up session is scheduled for 2/18/09.
  - NYSTEC is also continuing their work on developing draft quarterly maintenance procedures.
- NYSTEC is in the process of preparing a document outlining issues and recommendations concerning the requirements for a valid ballot mark, the use of encryption, and language requirements.

**Delivery and Implementation of Voting Systems & Devices**

Status of tasks in this category: *in jeopardy & in danger of being behind schedule*

- Nothing new to report in this category this week.

NEW YORK STATE BOARD OF ELECTIONS

**HAVA COMPLAINT PROCESS**

**McFeely HAVA Complaint**

- SBOE has requested a follow-up meeting with the NYC Board of Elections to discuss the 11/3/08 memo summarizing the NYSVoter discussions to date, in an effort to continue work toward a resolution of these issues. Potential meeting dates were identified, and a response was requested by 2/20/09.
- The NYC Board has reached out to the SBOE's IT Unit indicating that authorization has been given to work together on a method for receiving death, felon, and duplicate files. The NYC Board's plan is to work on the 3 types of files through their existing process, and modify their records accordingly.

(F.Y.I.)



# You are invited NYC...

The Board of Elections in the City of New York will be hosting public demonstrations of the two poll site voting systems that are being evaluated for use in Fall 2009 and beyond.

Find an event near you.

## **BROOKLYN**

**Tuesday, February 17, 2009**  
**6pm – 8:30pm**

Brooklyn College  
Student Center  
Gold Room, 6<sup>th</sup> Floor  
Campus Road between E. 27<sup>th</sup> St.  
and Amersfort Pl.  
Brooklyn, NY 11210

## **MANHATTAN**

**Wednesday, February 25, 2009**  
**6pm – 8:30pm**

Associated Blind  
Selis Manor  
Auditorium  
135 W. 23<sup>rd</sup> Street  
New York, NY 10011

## **BRONX**

**Wednesday, February 18, 2009**  
**6pm – 8:30pm**

Bronx Library Center  
Auditorium  
310 East Kingsbridge Road  
(at Briggs Ave.)  
Bronx, NY 10458

## **QUEENS**

**Thursday, February 26, 2009**  
**6pm – 8:30pm**

LaGuardia Community College  
Little Theater  
31-10 Thomson Ave.  
(on Thomson Ave. between 31<sup>st</sup> St.  
and Van Dam St.)  
Long Island City, NY 11101

## **STATEN ISLAND**

**Thursday, February 19, 2009**  
**6pm – 8:30pm**

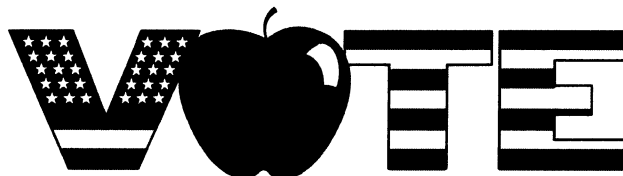
Office of the Commissioner of Jurors  
Jury Room  
126 Stuyvesant Place  
Staten Island, NY 10301

**For more information,  
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(866-868-3962)

**Or visit us online at:**

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*Comm Mtg  
Ryz*

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS**

**In the Matter of the Application of**

**Index No. 1400/09**

**NOREEN ELLIS and HAROLD CORNELL,**

**Petitioners,**

**-against-**

**GLENN DIRESTO, et als.,**

**Respondents.**

-----x  
-----x

**In the Matter of the Application of**

**Index No. 1411 /09  
(Justice Flug)**

**GLENN DIRESTO,**

**Petitioner,**

**- against -**

**NOREEN ELLIS, et als.,**

**Respondents.**

-----x

**MEMORANDUM OF LAW  
OF OBJECTORS ELLIS and CORNELL**

RECEIVED  
GENERAL COUNSEL  
BD. OF ELECTIONS  
IN THE CITY OF NEW YORK

2009 FEB 11 PM 5:42

**MARTIN E. CONNOR**  
**Attorney for Objectors Ellis and Cornell**  
**61 Pierrepont Street, #71**  
**Brooklyn, New York 11201**  
**Telephone: 718-875-1010**  
**Facsimile: 718-875-6044**



## **STATEMENT OF THE FACTS**

Undisputedly, each and every sheet of the independent nominating petition filed by the candidate Glenn DiResto contains the name "Families First" as the name of the independent body making the nomination. (The cover sheet also contains the name "Families First Party", as does the candidate's Certificate of Acceptance. The cover sheet and Certificate of Acceptance are not seen or signed by the voters.) One of the officially established parties in New York State is the Working Families Party.\*

The Board of Elections invalidated the nominating petition because it used part of the name of a recognized political party, namely the "Families" in the Working Families name. The Board did not reach the other objection put forth by the Objectors: that the use of a five-pointed star as part of the symbol on the nominating petition also rendered the nomination invalid.

### **POINT I - THE USE OF ALL OR PART OF THE NAME OF AN ESTABLISHED PARTY AS THE NAME OF AN INDEPENDENT BODY ON THE SHEETS OF AN INDEPENDENT NOMINATING PETITION RENDERS THE PETITION INVALID**

#### **The Statute**

Section 6-138(3)(a) of the Election Law provides:

The name selected for the independent body making the nomination shall be in English characters and shall not include the name or part of the name or an abbreviation of the name or part of the name, nor shall the emblem or name be of such configuration as to create the possibility of confusion with the emblem or name of a then existing party, or the emblem or name of an independent body selected by a previously filed independent nominating petition for the same office.

As the cases cited *infra* make clear this language has long been contained in the Election Law and its predecessor statutes. A discussion of the 1992 amendment found in Election Law § 6-138(3)(b) also in contained *infra*.

#### **Precedents from the beginning of the Election Law**

In Carr v. Moran, the Third Department held that a candidate who used the name Independent Democratic Party on his independent nominating certificate could not be listed on the ballot and that there was no authority for the county clerk (predecessor to the Board of Elections) to list the candidate with a substituted party name. 94 App.Div. 493 (1904). Interestingly, the court in Carr discussed the distinction between a party name that includes part of the name of an established political party and the case of a conflict in names with a previously filed independent nominating petition. Apparently the 1901 Election Law permitted a substitution in the later case. Id. at 496. (See discussion *infra*.)

In 1905, the Court of Appeals affirmed the invalidation of an independent candidacy under the name of Social Democratic Party, the name used by New York's Socialists, because of the use of the word Democratic. In re Social Democratic Party, 182 N.Y. 442.

#### **Mid-century precedents**

In Marcantonio v. Heffernan, the trial court held an independent petition invalid solely for the reason that the name chosen for the independent body was United Laborite Party. There was then an officially recognized American Labor Party. 192 Misc. 868 (S.Ct. NY Co. 1948). The Appellate Division affirmed unanimously and granted leave to appeal. 274 App.Div. 880 (First Dept. 1948). The Court of Appeals affirmed unanimously. 298 N.Y. 661.

In a related case the United Laborite Party candidates sought to have the court direct the

Board of Elections to place their names on the ballot with the substituted name United Local Party. The courts held that no such a remedy was provided for by the Election Law and the nominating petitions were invalid notwithstanding their compliance with all the requirements of the Election Law except for the selection of a name that used part of the name of an established political party. Donnellon v. Heffernan, (S.Ct. NY Co.), affirmed, 274 App.Div. 880 (First Dept.), affirmed, 298 N.Y. 656 (1948).

### **The Conservation Party cases**

In 1970, candidates were nominated throughout the State by an independent body which selected the name Conservation Party. Challenges were made on the grounds that this name used part of the name of an officially established party, the Conservative Party.

In an "enlightened" decision attempting to modernize the law, Justice Walter J. Mahoney (a former long-term State Senator) held that the candidate for Congress of the Conservation Party should have his name placed on the ballot under a new party name to be selected by him. The court placed great emphasis on the total absence of fraud in the nominating petition McCarthy v. Lawley, 64 Misc2d 13 (S.Ct. Erie 1970). The Appellate Division reversed insofar as the court below had permitted the candidate to remain on the ballot under a new party name. 35 A.D. 126 (Fourth Dept. 1970).

Meanwhile in Albany another court weighed in to find that the terms Conservation and Conservative had different meanings. Another Justice Mahoney (A. Franklin Mahoney) rejected the objections to the Conservation Party nominating petition of the United States Senate candidate that had been filed by J. Daniel Mahoney, the State Chair of the Conservative Party. The court held the petition to be valid. Ottinger v. Lomenza, 64 Misc.2d 103 (S.Ct. Albany

1970). The Appellate Division unanimously reversed and invalidated the petition. 35 A.D.2d 747 (Third Dept. 1970).

In Franco v. Board of Elections, the Supreme Court invalidated a nominating petition for district court judge on three different grounds, one of which was that the use of the name Conservation Party constituted use of part of the name of an established political party, the Conservative Party. 64 Misc.2d 19, at 22-23 (S.Ct. Nassau 1970). The court held in its decision:

“But the intent of those who seek to use it and the effect of the name sought to be used is not the test. The test is whether the name “Conservation Party” includes the name or part of the name of the already existing “Conservative Party.” In this court’s view, it does and it is, therefore, prohibited by the statute.”  
Id. at 23.

The Appellate Division affirmed, but addressed only a different issue in holding the nominating petition invalid. 35 A.D.2d 679 (2d Dept. 1970)\*\*.

In two other cases that year, the Second Department affirmed decisions below that declared Conservation Party nominating petitions invalid. Montano v. Meisser, 35 A.D.2d 678; Montano v. Meisser, 35 A.D.2d 726.

All of these cases were decided together by the Court of Appeals (as well as an apparently otherwise unreported case, Krupsak v. Lomenza). A divided court affirmed each of the decisions that held the nominating petitions invalid. McCarthy v. Lawley, 27 N.Y.2d 754 (1970).

#### **Cases involving previously filed independent petitions**

The prohibition as to the use of names and emblems in an independent nominating petition also, by the language of Election Law §138(3)(a), also extends to use of names or

emblems that conflict with those of previously filed independent nominating petitions. Absent undertaking elaborate historical analysis of the minute changes in the statute, suffice it to say that the saving provision justified in Carr, supra, at 496, somehow was eliminated in revisions to the Election Law of 1901 adopted in 1922.

Thus, the cases subsequent to 1922 held that an independent nominating petition that selected a name that was the same as all, or a part of, the name selected by a previously filed independent nominating petition for the same office was invalid. See, eg., Gleason v. Tutunjian, 154 A.D.2d 834 (Third Dept. 1989). See also, Carey v. Chiavaroli, 97 A.D.2d 981 (Fourth Dept. 1983); McDonough v. Tutunjian, 136 Misc2d 1039 (S.Ct. Rensselaer), *reversed*, 133 A.D.2d 923 (Third Dept.), *leave denied*, 70 N.Y.2d 796 (1987). But, see, Matter of Schwamm, 172 Misc. 162 (S.Ct. NY Co. 1938), *affirmed*, 255 App.Div. 831 (First Dept. 1938).

The change in the New York City Charter in the late 1980's mandated non-partisan City Council special elections such as the instant election contest. In one of the first such elections held in 1991, three candidates found, after they had filed their petitions, that they had all used the word "Neighbors" or "Neighborhood" in their independent body names. Strict application of the precedents would have removed two from the ballot. In a magnanimous gesture, the first to file offered to permit the other two to change their party names, it was stipulated and "so ordered" in Supreme Court thus avoiding an unfair result.

In the Election Reform Act of 1992 (Chapter 79 of the Laws of 1992), the Legislature acted to remedy the unfair situation whereby a nominating petition would be invalidated because it contained a name that was the name, or part of the name, of an independent body whose petition was filed a mere hour before. The same relief was provided with respect to the party

emblem chosen. Enlightened as the 1992 legislative proponents were, they were unaware that they were restoring the law to its pre-1922 provision.

The 1992 law added Election Law § 6-138 (3)(b):

Notwithstanding the requirements of paragraph a of this subsection, if the emblem or name selected for an independent body on any independent nominating petition is the same as that selected by any previously filed independent nominating petition for the same office, the board of elections with which such later petition was filed shall, not later than two days after the filing of such later filed petition, send notice of such duplicate selection of emblem or name by first-class mail, to the candidate for such office who was nominated by such later petition, and that candidate to whom such notice is required to be sent may file with such board of elections, not later than seven days after such notice was mailed, a certificate selecting a different emblem or name.

By its plain language, this section does not afford any relief or comfort to a candidate filing an independent nominating petition that selects all, or part of, the name or emblem of an established political party. The sponsor's memorandum for Chapter 79 of the Laws of 1992, at I.(L), makes it plain that the section is intended to apply only where the name or emblem conflict is between those of independent bodies. (Memorandum attached hereto).

The rationale for making a distinction in the result between independent nominating petitions that poach on established parties' names and/or emblems and those that infringe on names and emblems of "a previously filed independent nominating petition" is apparent. Before the candidate or independent body prints their petition or collects signatures, they may readily know the names and emblems of established parties. In the case of a previously filed independent petition, a candidate only learns the party name and emblem of his or her opponent(s) after they have begun petitioning or filed their signatures.

In the instant election, two candidates (Chapey and Gulluscio) named their independent bodies "Community First", a fact they discovered after collecting thousands of signatures in 12 cold January days and filing them with the Board of Elections.

However, everyone knew that there was an established party named Working Families before petitions were printed and circulated in this election. The distinction made between the two situations in Carr, supra, at 496, holds as true today as it did 105 years ago.

**POINT II – USE OF ALL OR PART OF AN  
ESTABLISHED PARTY’S EMBLEM  
INVALIDATES AN INDEPENDENT  
NOMINATING PETITION**

While there is a paucity of cases dealing with the use of an established party’s emblem on an independent nominating petition, the prohibition of Election Law § 6-138 (3) (a) includes the use of the emblem as well as the name, or part of the name, of an established party. Similarly, the relief provided in § 6-138 (3) (b) for use of the name, or part of the name, of a previously filed independent nominating petition, also applies to the use of its emblem.

That the five-pointed star is the emblem of the Democratic Party is unquestionable. See, Ritzer v. Elliot, 73 Misc.2d 252 (S.Ct. Chautauqua 1973). Courts have enjoined the unauthorized use of a party’s emblem in campaign materials. See, Rich v. Storer, 186 Misc. 87 (S.Ct. Putnam 1945); Ritzer, supra.

Counsel can find no case where an independent nominating petition was declared invalid because of the use an established party’s symbol. No case was found that left a petition valid under the same circumstance.

The Objectors urge the invalidity of the petition because of the use of the star since use

of the emblem violates the same prohibition that, in the case of the party name, renders a petition invalid. The same policy concerns present in the use of a party's name apply to the use of its emblem. As the trial court in Donnellon, 193 Misc. at 98, stated:

“...it might be pointed out that the reason for rejecting a proposed party name which copies that of an existing name is because of the likelihood that voters will be misled by the resemblance. That same confusion might well have induced the signatures to the petition.”

The same may be said for a candidate who uses an established party's emblem.

#### SUMMARY

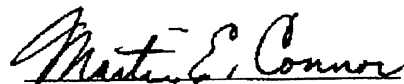
The Board of Elections declared the nominating petition of candidate DiResto invalid on account of the use of a part of an established party's name. Thus, DiResto bears the burden of proving his petition to be valid. Under the clear precedents he cannot do so.

#### CONCLUSION

The Board of Elections ruling should be upheld by the Court.

Dated: Brooklyn, New York  
February 10, 2009

Respectfully submitted'



Martin E. Connor

Attorney for Ellis and Cornell

\*An established political party in New York State is a party whose candidate for Governor received at least 50,000 votes at the last election for that office.

\*\* Clearly the Westlaw print of this case is in error in noting the decision as that of the Third Department. The venue below, as well as the names of the Justices on the panel proves the decision to be that of the Second Department.



S 7922  
1/83

NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION

submitted in accordance with Assembly Rule III, Section 1 (c)

- (x) Memo on original draft of bill
- ( ) Memo on amended bill

**BILL NUMBER:** Assembly A11505                      Senate S7922

**SPONSORS:** Member(s) of Assembly: Rules (Vitaliano)

Senators: Brunc

TITLE OF BILL:

An Act to amend the election law, the public service law and the tax law.

PURPOSE OR GENERAL IDEA OF BILL:

To facilitate ballot access for candidates, set the political calendar, enhance voter registration programs and set contribution limitations for nomination and election to public offices.

SUMMARY OF SPECIFIC PROVISIONS:

- I. BALLOT ACCESS CHANGES (with effective dates):
  - A. Requires that the party call (list of party positions to be elected at the primary) be filed two weeks before the first day to petition.(eff. 1/1/93)
  - B. Changes the form of the witness statement so that the election district, ward, Assembly District, town or city and county are placed below the signature of the witness so that the information can be completed or altered after the witness has signed.(eff. 1/1/93)
  - C. Reverses the court decision (Rutter) which required that the Assembly District of the witness must be supplied outside of New York City and Nassau County.(eff. 1/1/93)
  - D. Requires the State Board of Elections to prepare and distribute sample forms of petitions and cover sheets. (eff. 20 days after bill becomes law)
  - E. Reverses the court decision (Peccoraro) which required separate summaries of signatures and pages to be place on the cover sheets for candidates who have the same number of signatures and pages.(eff. immediately)
  - F. Customary abbreviations of addresses of witnesses or signers are permitted. (eff. immediately)
  - G. Committee on Vacancies is no longer mandatory on petitions. (eff. immediately)

003027

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S 7922

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## SUMMARY (Cont.)

H. Understatement, in a witness statement, of the number of signatures on a page is no longer a fatal defect. (eff. immediately)

I. Specifically permits adding a space to the petition to permit legible printing of the names of signers. Omission of the space or omission of the name, if there is a space, does not invalidate the signature. (eff. immediately)

J. Provides that the provision of the statute with respect to cover sheets shall be construed liberally. (eff. immediately)

K. Reduces designating and nominating petition signature requirements for statewide office from 20,000 to 15,000; designating petition signature requirements for citywide office in New York City from 10,000 to 7,500 and designating and nomination petition signature requirements for borough or county office in New York City from 5,000 to 4,000. (eff. 1/1/93 except presidential electors. (eff. immediately)

L. If two independent candidates for the same office file petitions with the same name or emblem, the candidate who files later can choose a new name or emblem rather than have the petition invalidated. (eff. immediately)

M. Codifies court decision (Pell) which extended deadline for candidates, whose petitions were invalidated, to bring court proceedings. (eff. immediately)

## II. VOTER OUTREACH

A. Establishes a program of distribution of voter registration forms at state agencies. (eff. 120 days after bill becomes law)

B. Provides that the state department of taxation and finance shall include registration forms in the material it sends taxpayers. (eff. 120 days after bill becomes law)

C. Directs the Public Service Commission to try to arrange with utilities to include registration forms in their mailings to customers. (eff. 120 days after bill becomes law)

D. Create a simplified registration form for registered voters who have moved to a new address within the county. (eff. 60 days after bill becomes law)

E. Adds colleges and universities to the provision which directs local boards of elections to work with school districts to implement voter registration programs. (eff. immediately)

F. Permits persons who will be 17 by end of calendar year to register to vote before their birthdays. (eff. immediately)

G. Establishes a task force which is required to report by March 1, 1993 on the feasibility and advisability of shortening or eliminating the present 25-day registration deadline. (eff. immediately)

## III. CAMPAIGN FINANCE

A. Reduces contribution limits as follows for: statewide and citywide office in New York City to \$12,000 for major party primaries and \$25,000 for general elections; for state senator to \$4,000 for primaries and \$6,250 for general elections; for member of assembly \$2,500 each for primaries and general elections. Establishes a new contribution limit of \$4,000 for minor party primaries for statewide and citywide office. (eff. 1/1/93 except 1/1/94 for New York City)

B. Establishes a new contribution limit to party committees of \$62,500. (eff. 1/1/93)

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PAGE 3 A11505/S7922  
SUMMARY (Cont.)

C. Permits contributions of up to 2,500 from partnerships to be reported as a contribution by the partnership, rather than require it to be attributed to the individual partners. (eff. immediately)

**IV. POLITICAL CALENDAR**

A. Lengthens the time period for the state committee meeting to designate candidates for statewide office from one week to three weeks. (eff. immediately)

B. Changes the deadline for filing certificates of party nomination made without a primary from seven weeks before the general election to one week after primary day. (eff. immediately)

C. Changes deadline for state board of elections to certify the general election ballot in 1992 from September 28th to October 1. (eff. immediately)

**V. MISCELLANEOUS**

A. Adds state senator to the list of public offices for which candidates with two or more party nominations are entitled to additional lines on the ballot if they also file independent petitions. (eff. immediately)

B. Provides that in cases in which there is a disagreement among the commissioners of election on the validity of an absentee ballot, the board of elections shall wait three days before opening the ballot in order to provide time for an interested party to bring a court proceeding. (eff. immediately)

C. Clarifies that state committee members and assembly district leaders elected for two year terms last year continue to represent the districts from which they were elected for the balance of the term for which they were elected without regard to the reapportionment. (eff. immediately)

**JUSTIFICATION:**

This bill makes significant improvements in New York's nationally notorious ballot access laws. It also makes a good start toward establishing a more effective voter registration system and reduces some of the most outrageously high contribution limits in our campaign finance laws.

**PRIOR LEGISLATIVE HISTORY:**

This is a new bill.

**FISCAL IMPLICATIONS:**

Minimal.

**EFFECTIVE DATES:**

As noted in summary above.

AJE:jk:5/1/92

CL029

FYI

<http://www.registerstar.com/articles/2009/02/02/news/news02.txt>

## County may petition to stick with levers

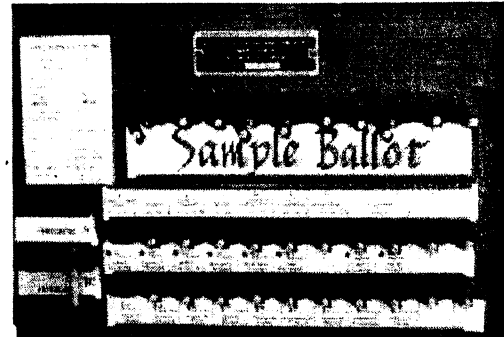
2/2/09

By John Mason  
Hudson-Catskill Newspapers

COLUMBIA COUNTY - Archimedes asked only for a lever and a place to stand, and he would move the world.

The Columbia County Board of Elections last week seconded that motion, saying in effect, who needs touch screens, optical scanners or paper ballots, when good, old levered voting machines beat any other electoral technology known to the franchised world.

A resolution asking that levered voting machines continue to be used in New York state will be considered by the Board of Supervisors at its Feb. 11 meeting.



Robert Ragaini/Hudson-Catskill Newspapers Lever voting machines may be around a little longer in Columbia County.

The resolution, which is addressed to the state Legislature and Board of Elections, passed the board's County Government Committee unanimously Tuesday. The idea behind it is that the electronic ballot marking devices would continue to be available for disabled voters and others wishing to use them, while most voters would continue to use the levered machines.

Under the state's Election Reform and Modernization Act of 2005, levered machines would be prohibited and would have to be replaced by computerized voting systems, either touch-screen or optical scanners.

In her agenda for the meeting, Democratic Election Commissioner Virginia Martin summed up concerns the county Board of Elections has with the optical scan machines that the county would use under ERMA.

The machines, she stated:

n Have not been certified by New York state and are unlikely to be certified in time for fall elections.

n Do not have a track record of successful use, as do the levered machines.

n Would require the county to spend "considerable sums, well in excess of \$50,000 at the minimum in 2009 alone, and many thousands of dollars each subsequent year they are employed, sums that are far above the cost that would be incurred by the continued use of our lever machines."

n Do not provide the transparency of the voting process that levered machines do.

n Are not required by the Help America Vote Act.

The resolution calls on the state to reverse ERMA, notes that Columbia County has successfully used lever-style machines for many decades, declares their continued use to be in the best interest of the public and says their required elimination is "unnecessary, inappropriate and costly to ... county taxpayers."

A similar resolution was passed by the Dutchess County Legislature in December 2008. This has occurred as dissatisfaction with the electronic machines, which have been adopted in every state but New York, has been growing.

Martin told the Register-Star she heard that Pennsylvania is going back to levered machines, and that Los Angeles County is switching from electronic machines to paper ballots.

"The New York State Board of Elections has set very high standards for computerized voting machines," she said. "Sequoia [the voting machine manufacturer] is hopeful the machine will be certified. The problems the testers are finding are with the software and documentation. There are those who believe computerized voting is not hack-proof."

A lawsuit by New York Voters for Open, Transparent, Electoral Reliability and Security challenges the constitutionality of ERMA.

Having levered machines and ballot-marking devices for disabled voters is enough to put New York in compliance with HAVA, Martin said. "ERMA is the only problem."

Supervisor John Musall, D-Hudson1, asked if it was true that lever machine manufacturers were going out of business, meaning there would be no parts, and Supervisor Phil Williams, D-Livingston, said he had heard a new startup would be making the parts.

The measure passed unanimously with little discussion.

In 2008, the county complied with HAVA by purchasing 52 Sequoia Imagecast optical scan and ballot marking devices at the cost of close to \$600,000. Ninety-five percent of the costs were borne by New York state, meaning the county ponied up \$28,000.

Supervisor Doug McGivney, D-Kinderhook, said Sequoia "is in breach of contract," and the county should get the money back.

The optical scanning devices have still not been certified by the state, and McGivney said Sequoia hasn't paid into the escrow account; without the escrow, the state can't expend any funds testing the machines to certify them.

In addition to the resolution going before the supervisors, McGivney is also presenting a

Columbia County may petition to stick with levers

resolution to the New York Association of Towns Resolution Committee. Both resolutions would go to the county's state legislators.

Rhinebeck's Andi Novick, of Northeast Citizens for Responsible Media, has been corresponding with Bryan Pfaffenberger, a professor of science, technology and society at the University of Virginia. He's working on a book, "Machining the Vote," on the history of the lever machines.

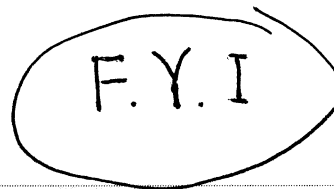
In an e-mail to Novick, Pfaffenberger wrote, "In my analysis, the lever machine deserves recognition as one of the most astonishing achievements of American technological genius, a fact that is reflected in their continued competitiveness against recent voting technologies in every accepted performance measure.

"With as many as 28,000 parts, their mechanisms reflect an agonizingly difficult period of development, spanning more than twenty years, 1888 to 1919, in which interlocking mechanisms had to be developed that were capable of dealing with the enormous complexity and variety of American elections," Pfaffenberger stated. "The result was a machine that captures in its immutable mechanical operations the voting rules that the American people, in their wisdom, developed in order to capture the will of the people ...

"In New York, the people, in their wisdom, created a system of election administration and a technology that solved the characteristic problems of American elections," he wrote. "To abandon lever machines for new technologies that will not gain voter confidence and, at the same time, re-introduce paper audit trails or paper ballots which have long proven to be prone to election fraud, amounts in my opinion to a potentially disastrous mistake."

To reach reporter John Mason, call 518-828-1616, ext. 2272, or e-mail [jmason@registerstar.com](mailto:jmason@registerstar.com).

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**Marcus Cederqvist**


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**From:** Teresa Hommel [tahommel@earthlink.net]  
**Sent:** Tuesday, February 17, 2009 9:47 AM  
**To:** WEBMAIL\_CederqvistM  
**Subject:** re lever voting machines, HAVA, and the statement from NYVV and LWV NYS

Marcus Cederqvist  
 Executive Director  
 Board of Elections in the City of New York  
 32 Broadway  
 New York, NY 10004

Dear Mr. Cederqvist:

The Agenda book of February 10, 2009 included a statement comparing lever voting machines and optical scanner voting systems, received from Wanda Warren Berry on behalf of the League of Women Voters and New Yorkers for Verified Voting.

That statement has elicited some responses which may be of interest to the Commissioners.

"HAVA does not require replacement of lever voting machines"  
[www.wheresthepaper.org/ResponseToNYVVFactSheet.pdf](http://www.wheresthepaper.org/ResponseToNYVVFactSheet.pdf)

"The League of Women Voters' voting system standards adopted in 2006 were for electronic systems, and never were intended to apply to non-electronic systems such as lever machines"  
[www.wheresthepaper.org/rebut\\_NYVV\\_LWVNYS\\_Feb12\\_09.htm](http://www.wheresthepaper.org/rebut_NYVV_LWVNYS_Feb12_09.htm)

"Why Keep the Lever Voting Machines"  
 Attached Word document

The Commissioners may be interested to know that Dutchess and Columbia counties have passed resolutions advocating retention of the lever voting machines.

Dutchess County Resolution to Keep Lever Machines, 12/4/08  
[www.wheresthepaper.org/DutchessCtyLeverResoDec4\\_08.pdf](http://www.wheresthepaper.org/DutchessCtyLeverResoDec4_08.pdf)

Columbia County Resolution to Keep Lever Machines, 2/12/08  
[www.wheresthepaper.org/ColumbiaCtyLeverResoFeb12\\_09.pdf](http://www.wheresthepaper.org/ColumbiaCtyLeverResoFeb12_09.pdf)

Sincerely yours,

Teresa Hommel  
 Chair, Task Force on Election Integrity, Community Church of New York  
 10 St. Marks Place  
 New York NY 10003



John Gideon and Ellen Theisen  
Co-Directors

[www.VotersUnite.org](http://www.VotersUnite.org)

*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>



Teresa Alice Hommel, February 12, 2009  
www.wheresthepaper.org/rebut\_NYVV\_LWVNYS\_Feb12\_09.htm

**The League of Women Voters' voting system standards adopted in 2006 were for electronic systems, and never were intended to apply to non-electronic systems such as lever machines.**

*Electronic and mechanical systems have different vulnerabilities & security requirements:*

- *Lever Voting Machines implement "Will of the People" Tallies With Confirmation of Each Vote via an X under the Lever*
- *Optical Scanner Systems implement "My Vote is Manually Recorded by Me, and Electronically Counted"*

THE ISSUE

New Yorkers for Verified Voting and the League of Women Voters of New York State recently published a paper<sup>[i]</sup> that intended to apply the national League's voting system standards to lever voting machines. (I will call the national League simply "the League".)

The paper asserts that lever machines "do not meet current standards for voting systems" and do not have the "higher level of ... accountability<sup>[ii]</sup>" that optical scanners offer.

However, the League's standards that the paper quotes are an out-of-context portion of the League's position--which I worked to write and get adopted--that was never intended to be applied to non-computerized voting technology.

WHY IT MATTERS

In the New York controversy between keeping our mechanical lever voting machines versus switching to paper ballots and optical scanners, some people have forgotten the difference between mechanical devices and computers.

Computers are software-dependent. Meaningful audits of computer results must be software independent—hence the need for independent paper records of each voter's votes.

Mechanical machines can be audited in much simpler ways, since programming errors and tampering can be visually detected by merely looking in the back of the machine and by simple mechanical tests. Confirmation that a vote has been counted is visually apparent to the voter when an X appears under the lever after the voter pushes it down to register a vote. (Each lever connects to a counter, and each counter connects to an X which appears when the counter advances to register the vote.)

Applying computer standards and requirements to mechanical devices is inappropriate. Opposing the continued use of lever machines because they don't meet computer standards and requirements is also inappropriate.

20-20 HINDSIGHT

I was part of the small group that passed both the League's 2004 and 2006 positions. I was credited with negotiating the 2004 SARA test (Secure, Accurate, Recountable and Accessible). However, in 2004 the

Georgia LWV, in defense of their Diebold DREs without paper trails ("paperless DREs"), insisted that their DREs' reprints of tally reports constituted "recounts."

Because the proponents of the 2006 position were reacting against support for paperless DREs, we were not careful enough with the language. None of us at the 2006 convention was thinking about non-electronic voting technology at the time we advocated and passed the 2006 position. Indeed the question of non-computerized voting equipment did not come up because we were focused on the dangers of paperless DREs that the League was aggressively supporting.

In hindsight is clear that the 2006 Resolution needed to have one phrase revised so it more explicitly stated that it was setting standards for electronic voting systems, specifically DREs and optical scanners.

### HOW DID NYVV's and LWVNYS's SELECTIVE QUOTING COME ABOUT?

The League published a "Report on Election Auditing" in January 2009 that selectively quoted--and changed the meaning of--their position on voting equipment adopted at their 2006 biannual convention, known as the CARL Resolution.

The CARL Resolution was written to oppose touchscreen voting machines without a paper trail, which the League supported at that time. The CARL Resolution said [emphasis added]:

Whereas: Some LWVs have had difficulty applying the SARA Resolution (Secure, Accurate, Recountable and Accessible) passed at the last [2004] Convention, and

Whereas: Paperless electronic voting systems are not inherently secure, can malfunction, and do not provide a recountable audit trail,

Therefore be it resolved that:

The position on the Citizens' Right to Vote be interpreted to affirm that LWVUS supports *only voting systems that are designed so that:*

1. they employ a voter-verifiable paper ballot or other paper record, said paper being the official record of the voter's intent; and

...

This wording was in reaction to the League's 2004 and pre-2004 positions. In the quote above, the underlined italic phrase was understood at the time to mean "*supports electronic voting systems only if they are designed so that*".

It is wrong to say that the 2006 convention intended to oppose lever voting machines because they lack a per-voter paper record of votes. It attributes to the CARL Resolution a meaning that was not intended by the 2006 League delegates that adopted it. ([www.leagueissues.org/](http://www.leagueissues.org/))

### THE TIME LINE

In 2003 the League published a position in support of paperless DREs that was adopted without the League's consensus process that is normally required before taking a national position.

The pre-2004 position was quoted and replaced in the 2004 SARA resolution:

"Whereas there is strong disagreement among League members on the interpretation of the position on 'Citizen's Right to Vote' that the LWVUS has taken on whether a Voter Verified Paper Audit Trail should be a requirement with Direct Recording Electronic Voting,

Be it resolved that LWVUS remove the following wording from its interpretation:

The LWVUS supports an individual audit capacity for the purposes of recounts and authentication of elections for all voting systems. The LWVUS does not believe that an individual paper confirmation for each ballot is required to achieve these goals. An individual paper confirmation for each ballot would undermine disability access requirements, raise costs and slow down the purchase or lease of machines that might be used to replace machines that don't work. The experts that we have consulted say that there are many safeguards other than an individual paper ballot confirmation that can protect the sanctity of the ballot and that other issues are far more important in safeguarding our election systems.

The LWVUS interpretation of the position on 'Citizen's Right to Vote' will now read: In order to ensure integrity and voter confidence in elections, the LWVUS supports the implementation of voting systems and procedures that are secure, accurate, recountable, and accessible."

In order to win support of the Georgia League, advocates of the SARA test agreed that a reprint of a tally report by paperless DREs would be acceptable as compliant with the requirement of "recountable." However in the pre-vote floor debate, the Georgia League opposed the SARA test anyway, but the delegates adopted it.

The 2006 resolution, called the CARL Resolution, was intended to alter the 2004 position and SARA test which had failed to reverse the League's support for paperless DREs. In 2005 and 2006, when the CARL resolution was being prepared, advocates still believed that

1. if DREs had a paper trail then jurisdictions would audit their DREs' results and determine if hand-to-eye-counted tallies of the paper trail matched the electronic tallies from the DREs. (However, no jurisdiction has yet wanted to allow continuous observation of the chain of custody of their paper trail and then count the votes on it.)
2. voters would be able to accurately verify the paper trail. (However, Sarah Everett's Rice University studies of May, 2007, <http://chil.rice.edu/research/pdf/EverettDissertation.pdf>, later dashed hopes that voters would have the skill to verify accurately.)
3. vendors of DREs could be induced to provide reliable paper trails. (However, this has not yet happened.)

The web site [www.leagueissues.org/](http://www.leagueissues.org/) which was created in 2006 by Genevieve Katz, a CARL advocate from the Oakland CA League, makes clear that both the context and text of the CARL resolution was intended to support a paper trail for DREs. Her web site says:

The attendees at the 2006 LWV Convention, held June 9-13 in Minneapolis, MN, voted to approve a resolution to strengthen the previous resolution passed in 2004, regarding verifiable paper audit trails for DREs. This resolution is presented below:

Sometime during the week of July 13, 2006, the LWVUS published this resolution on their website.

-- NEWS from the LWV Convention 2006 -- "CARL" Resolutions amended and passed at the 2006 Convention of the LWVUS:(on U.S. Voting Systems Under HAVA)

Whereas: Some LWVs have had difficulty applying the SARA Resolution (Secure, Accurate, Recountable and Accessible) passed at the last Convention, and

Whereas: Paperless electronic voting systems are not inherently secure, can malfunction, and do not provide a recountable audit trail,

Therefore be it resolved that:

The position on the Citizens' Right to Vote be interpreted to affirm that LWVUS supports only voting systems that are designed so that:

1. they employ a voter-verifiable paper ballot or other paper record, said paper being the official record of the voter's intent; and
2. the voter can verify, either by eye or with the aid of suitable devices for those who have impaired vision, that the paper ballot/record accurately reflects his or her intent; and
3. such verification takes place while the voter is still in the process of voting; and
4. the paper ballot/record is used for audits and recounts; and
5. the vote totals can be verified by an independent hand count of the paper ballot/record; and
6. routine audits of the paper ballot/record in randomly selected precincts can be conducted in every election, and the results published by the jurisdiction.

Motion #555, by LWV of Minnesota. Motion APPROVED by Card Vote: Yes 439, No 269, Illegal 4.

#### MY STATEMENT

As a member of the group that worked to wean the League of Women Voters of the United States away from paperless DREs, I attest that no one foresaw or intended that the 2006 position would be applied to non-electronic voting systems such as mechanical lever machines.

---

[i] [www.nyvv.org/newdoc/2009/LWVNYVV\\_LeverStatement020909.pdf](http://www.nyvv.org/newdoc/2009/LWVNYVV_LeverStatement020909.pdf) February 9, 2009

[ii] The paper mentions "accessibility" in this phrase in addition to accountability, but in fact lever voting machines and optical scanners offer the exact same accessibility in that they both work in combination with accessible ballot marking devices for voters with disabilities and/or non-English language.

## **Why Keep the Lever Voting Machines?**

New York should keep its mechanical lever voting machines, rather than switching to PBOS (voter-marked Paper Ballots and precinct-based Optical Scanners).

For nearly six years we have worked for PBOS in order to keep electronic voting machines (DREs) out of New York. We have said, "IF WE HAVE TO REPLACE OUR LEVER VOTING MACHINES, we should choose PBOS." At this time it appears that no DREs are likely to be certified or purchased in New York. It is very late in the process to say, "Stop! Let's not computerize at all!" But that is what we are saying.

The reasons for keeping our lever machines are as follow, and each of these issues is discussed separately below.

1. Lever machines are more secure.
2. Lever machines are easier to manage, and less expensive to maintain and use than any other voting technology.
3. The higher cost of computerized elections will force elections to compete against other essential services for money that we don't have.
4. Voter-marked paper ballots can easily be kept secure after the close of polls by being in public view and continuously observed--but this requires us to recruit large numbers of election observers to watch them. We would also have to change state election law to require counties to change their procedures to enable this kind of continuous observation.
5. Proper audits of the optical scanners' computerized vote counting are needed to confirm that the computers operated properly. Such audits can take a long time (like the statewide recount in Minnesota recently) and can cost a lot. We would also need to change state law so that our audits provide statistical confidence, rather than being merely a spot-check.

The obstacles to keeping our lever machines are as follow. Each of these issues is discussed separately below.

1. Our State Board of Elections made an agreement in federal court with the U.S. Department of Justice to replace the lever machines, and this would have to be revised.
2. Our state election law requires the lever machines to be replaced when the State Board of Elections finishes testing the optical scanners and "certifies" them. This law would have to be revised.

3. Proposed federal legislation might require paper ballots and might not specify that this requirement is for computerized voting systems so that the computers can have a software-independent audit. Our Congressional Representatives and U.S. Senators would have to be educated to understand that computers and mechanical machines have different security requirements, and that it is inappropriate to apply computer standards to mechanical machines.

## **Security**

No computer is as secure as a mechanical lever voting machine. One reason is, simply, that mechanical machines have to be tampered one at a time, which can take up to 5 hours per machine. Another reason is that any technician can look inside the machine and see the tampering, or run simple mechanical tests and detect it.

If the master copy of programming for optical scanners is corrupt, every system would be loaded with it in the normal course of election setup and no one would visually see the problem. In contrast, lever machines work by the use of metal rods and gears, and as each machine is separately set up by the bipartisan pair of technicians, they can easily visually see any errors in the setup as they install it.

Once the programming of computerized voting equipment such as optical scanners is set up, it can be changed in a few seconds by replacing a tiny flash memory stick or a memory card the size of a postage stamp. In contrast, once the metal rods and gears of a lever machine are set up for an election, they can't be changed quickly.

Lever machines are not immune to tampering or breakage, but such problems would ordinarily show up in pre-election Logic & Accuracy testing, and could be fixed. Between L&A testing and election day, a technician would need hours alone with each machine to tamper with it. In contrast, a computer with a corrupted memory stick or card could work one way during testing and a different way on election day.

New York may have a problem now because, statewide, some of our Boards of Elections may not have maintained their lever machines adequately in anticipation of replacing them, or perhaps to help hasten replacement by making the lever machines seem to be hopelessly old, broken and impossible to repair. Nevertheless, these machines were made to be easy to maintain, and can be brought to nearly-new condition.

A note about wireless communications: New York State bans wireless communications in our electronic voting systems. Some years ago a technical inspector could have looked inside a computer and seen the components for wireless communications if they were there. But in recent years the technology for wireless communication has been miniaturized and embedded in other components such as the motherboard. An inspector can no longer visually detect whether a computer contains wireless components. This will make it harder to ensure that our computerized voting equipment is secure and legal under New York State law.

Because of the ease of corrupting all the computerized equipment in a jurisdiction, post-election audits need to show that all machines worked 100% accurately. A single discrepancy can

indicate a widespread problem. Also, a discrepancy of a single vote is serious. A Yale University study showed that if each machine in a jurisdiction switched an average of one vote per machine, the outcome of many races could be altered. [www.wheresthepaper.org/ACM.pdf](http://www.wheresthepaper.org/ACM.pdf)

## **Money**

Elections with computers cost more than elections with mechanical machines. We don't--and won't--have the money to convert to computerized equipment properly or use it properly.

The economic crisis in our cities, counties, states, and nation will not be "fixed" in the near future. The federal bailout money our state will receive will tide us over for a year, and then we will face the same deficits again. Will we get a second bailout? An annual bailout? When the bailouts stop, community will be pitted against community. Essential service will be pitted against essential service.

Our nation's economy cannot be fixed by bailouts, extending unemployment benefits, and giving food stamps to more people. Our jobs have been sent offshore for nearly 20 years now. Our nation has lost much of our manufacturing and our family farms. We don't have a healthy economic base. People can't pay taxes if they don't have incomes. People can't "buy things to keep the economy running" if they don't have jobs.

This is not the time to switch to more expensive elections. How will we pay for the required audits of our Optical Scanners? Will we lay off teachers? Municipal workers? Cops? Will we close fire houses? Hospitals? Senior centers? Parks? Libraries? Stop paving our streets? Cancel some bus or subway lines?

## **Observers**

Elections conducted with paper ballots require many observers as well as election procedures that facilitate continuous observation. The voted ballots and other election materials need to be publicly visible continuously, and observers need to watch them continuously, from the time voting stops until the election audits are completed and the winners are certified. This span of time can be several days, weeks, or months.

If there is a gap in public observation, it is hard or impossible to prove that tampering with the ballots did not occur, or to prevent suspicions.

A citywide election in New York City requires approximately 30,000 poll workers, and we cannot get enough people to do this work. Many fewer people volunteer to be election observers. Can our political parties recruit sufficient people to be post-election observers to watch the voted ballots and election materials?

Will our state lawmakers modify our election law to require our counties to allow citizens to observe? Will our counties modify their procedures, or design new procedures, to facilitate observers? How much will it cost to do this? Is anyone lobbying on this issue?

## **Audits**

Elections that are run with computers are controlled by software, which cannot be observed, and therefore such elections need to be verified by software-INDEPENDENT audits. In practice this means hand-to-eye counting of the votes on the voter-marked paper ballots to confirm that the hand-to-eye tallies are the same as the software-controlled computer tallies.

New York law now requires a 3% "audit" which amounts to a spot-check. 3% is inadequate to achieve "statistical confidence."

Will our state lawmakers work with specialists in election auditing to provide us with better audit requirements? Is anyone lobbying on this issue?

### **Lever voting machines cost less, require fewer observers, and don't use software**

Our counties don't have to spend one extra dollar to use lever machines, because we already have them. And lever machine technicians earn very little, in contrast to computer technicians.

Lever voting machines are rarely tampered with because it takes too much time to do it. For this reason these machines do not require a group of observers to sit and watch them continuously.

Lever voting machines don't use software, so software-independent audits are not needed.

### **What needs to happen so we can keep our lever machines?**

#### **U.S. Dept. of Justice and Federal Court**

The U.S. Department of Justice sued New York State because we had not complied with the federal requirement to have accessible voting equipment in each poll site to assist voters with disabilities.

New York agreed to replace our lever machines, but the question of whether this was required by federal law was not addressed. If enough New Yorkers demand it, our state could be pushed to try to negotiate a new settlement with the U.S. Dept. of Justice and the Federal Court.

The money that New York State accepted for replacement of the lever machines would have to be returned to the federal government. The money we accepted and spent for acquisition of accessible machines would not have to be returned.

#### **New York State Election Law**

Our state election law requires the lever machines to be replaced when the optical scanners are finished being tested and certified. This law would have to be changed. With sufficient popular demand, our state legislature could be pushed to change this law.

Suggested changes are:

#### **Why Keep the Lever Voting Machines?**



1. Ban DREs to bring our law up to date with current knowledge of the failures of DREs.
2. Require the counties to keep their lever machines, and provide a modest authorization of funds to bring their lever machines up to nearly-new condition, since many counties have not been maintaining them fully in the last few years in expectation of replacing them.

### **Proposed Federal Law**

Proposed federal legislation might require paper ballots and might not specify that this requirement is for computerized voting systems so that the computers can have a software-independent audit.

We would have to start now to educate and lobby our congressional representatives and U.S. senators to understand that computers and mechanical machines have different security requirements, and that it is inappropriate to apply computer standards to mechanical machines.

###

RESOLUTION NO. 208413

RE: REQUESTING NEW YORK STATE TO PERMIT THE CONTINUED USE OF LEVER VOTING MACHINES

The Dutchess County Legislature offers the following and moves its adoption:

WHEREAS, for many decades Dutchess County has successfully used mechanical lever style voting machines, with very few problems, and is desirous of continuing to do so, and

WHEREAS, New York State enacted the Election Reform and Modernization Act of 2005 (ERMA) and other laws that require all lever machines to be replaced and prohibit the use of any lever machines in any future elections in New York State, and

WHEREAS, Dutchess County believes that the continued use of lever style voting machines is in the best interest of the public and should be permitted to be used in future elections, and

WHEREAS, the Dutchess County Legislature passed Resolution No. 207026, requesting New York State to allow Dutchess County to continue the use of the lever voting machine, and

WHEREAS, the New York State legislation relating to voting machines far exceeds the federal requirements of HAVA (Help America Vote Act), and

WHEREAS, the state's statutorily required elimination of lever style voting machines is unnecessary, inappropriate, and costly to Dutchess County taxpayers, now, therefore, be it

RESOLVED, that the Dutchess County Legislature hereby requests the New York State Legislature and the New York State Board of Elections to enact laws, rules, and regulations that specifically authorize the continued use of lever style voting machines, and, be it further

RESOLVED, that a copy of this resolution be forwarded to Governor David A. Paterson, Senators Stephen M. Saland and Vincent Leibell, Assemblymen Thomas Kirwan, Joel M. Miller, Kevin Cahill, Greg Ball, and Marcus Molinaro, member-elect of the Assembly Frank Skartados, Co-Executive Directors of the New York State Board of Elections Todd Valentine and Stanley Zalen and New York State Board of Elections Commissioners James Walsh, Douglas Kellner, Evelyn Aquila and Gregory Peterson.

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 8<sup>th</sup> day of December, 2008, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 8<sup>th</sup> day of December, 2008/

  
BARBARA HUGO, CLERK OF THE LEGISLATURE

# Roll Call

<i>District</i>	<i>Last Name</i>	<i>Yes</i>	<i>No</i>
District 15 - Towns of Poughkeepsie and Wappinger	Higgins	✓	
District 14 - Town of Wappinger	Goldberg	✓	
District 25 - Amenia, Stanford, Washington, Pleasant Valley	Fettes	✓	
District 19 - Towns of North East, Stanford, Pine Plains, Milan	Cooper	✓	
District 8 - City and Town of Poughkeepsie	Rolison	✓	
District 1 - Town of Poughkeepsie	Doxsey	✓	
District 2 - Towns of Pleasant Valley and Poughkeepsie	Horn	✓	
District 3 - Town of La Grange	Sears	✓	
District 4 - Town of Hyde Park	Nash	✓	
District 5 - Town of Poughkeepsie	Keller-Coffey	✓	
District 6 - Town of Poughkeepsie	Flesland	✓	
District 7 - Town of Hyde Park	Kuffner	✓	
District 9 - City of Poughkeepsie	White	✓	
District 10 - City of Poughkeepsie	Jeter-Jackson	✓	
District 11 - Towns of Rhinebeck and Clinton	Tyner	✓	
District 12 - Town of East Fishkill	Weiss	✓	
District 13 - Towns of LaGrange, Union Vale, and Wappinger	McCabe	✓	
District 16 - Towns of Fishkill, East Fishkill and City of Beacon	MacAvery	✓	
District 17 - Town and Village of Fishkill	Miccio	✓	
District 18 - City of Beacon	Forman	✓	
District 20 - Town of Red Hook	Mansfield	✓	
District 21 - Town of East Fishkill	Horton	✓	
District 22 - Town of Beekman	Hutchings	✓	
District 23 - Town/Village of Pawling, Beekman and East Fishkill	Kelly	✓	
District 24 - Towns of Dover and Union Vale	Wassell	✓	

**Present:** 25                      **Resolution:** ✓                      **Total:** 25      0  
**Absent:** 0                              **Motion:** \_\_\_\_\_                      **Yes**              **No**  
**Vacant:** \_\_\_\_\_                      **Abstentions:** \_\_\_\_\_

REQUESTING NEW YORK STATE TO PERMIT THE CONTINUED USE OF LEVER VOTING MACHINES

**Date: December 8, 2008**


**Resolution: 208413**



**Resolution**  
**Board of Supervisors**  
**County of Columbia**  
**New York**

RESOLUTION NO. 72-2009

February 11, 2009

BY SUPERVISOR   
COUNTY GOVERNMENT  
CHAIRMAN: LEO PULCHER

AUTHORIZING THE COLUMBIA COUNTY BOARD OF SUPERVISORS TO REQUEST THAT THE NEW YORK STATE LEGISLATURE AND THE NEW YORK STATE BOARD OF ELECTIONS ENACT LAWS, RULES, AND REGULATIONS THAT SPECIFICALLY AUTHORIZE THE CONTINUED USE OF LEVER-STYLE VOTING MACHINES

UPON, recommendation of the County Government Committee at a meeting held on the 27<sup>th</sup> day of January 2009;

WHEREAS, for many decades Columbia County has successfully used mechanical lever-style voting machines, with very few problems, and is desirous of continuing to do so; and

WHEREAS, New York State enacted the Election Reform and Modernization Act of 2005 (ERMA) and other laws that require all lever machines to be replaced and prohibit the use of any lever machines in any future elections in New York State; and

WHEREAS, Columbia County believes that the continued use of lever-style voting machines is in the best interest of the public and should be permitted to be used in future elections; and

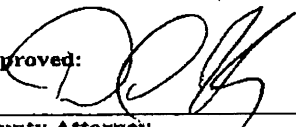
WHEREAS, the New York State legislation relating to voting machines far exceeds the federal requirements of HAVA (Help America Vote Act), and

WHEREAS, the State's statutorily required elimination of lever-style voting machines is unnecessary, inappropriate, and costly to Columbia County taxpayers;

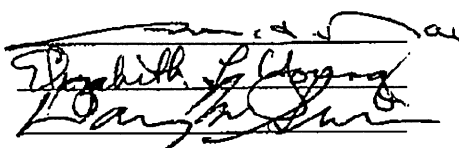
NOW, THEREFORE BE IT

RESOLVED, that the Columbia County Board of Supervisors hereby requests the New York State Legislature and the New York State Board of Elections to enact laws, rules, and regulations that specifically authorize the continued use of lever-style voting machines; and be it further

RESOLVED, that certified copies of this resolution be forwarded to governor David Paterson, New York State Senator Stephen Saland, Members of the Assembly Tim Gordon, Peter Lopez, and Marcus Molinaro, Co-Executive Directors of the New York State Board of Elections Todd Valentine and Stanley Zalen, and New York State Board of Elections Commissioners James Walsh, Douglas Kellner, Evelyn Aquila, and Gregory Peterson, the Columbia County Attorney and the Columbia County Treasurer.

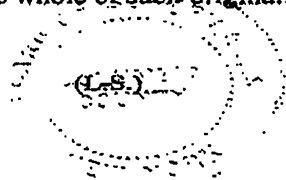
Approved:   
\_\_\_\_\_  
County Attorney

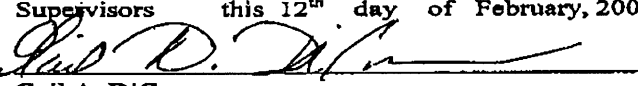
Resolution  
Committee

  
\_\_\_\_\_  
Elizabeth L. Long  
Chairman

STATE OF NEW YORK )  
COUNTY OF COLUMBIA ) ss:

This is to certify that I, undersigned Clerk of the Board of Supervisors of the County of Columbia, have compared the foregoing copy of resolution with the original minutes therefore, now remaining on file of record in my office, and that the same is a true and correct transcript there from and of the whole of such original.



IN TESTIMONY THEROF, I have hereunto set my hand and affixed the seal of said Board of Supervisors this 12<sup>th</sup> day of February, 2009.  
  
\_\_\_\_\_  
Gail A. DiCosmo  
Clerk of the Columbia County Board of Supervisors