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**THE LEAGUE
OF WOMEN VOTERS**
of New York State

**TESTIMONY TO THE NYS SENATE ELECTIONS COMMITTEE
SENATOR JOSEPH ADDABBO, CHAIRMAN
NOVEMBER 30, 2009
NEW YORK STATE CAPITOL, ROOM 124 @ 1:00 P.M.**

Subject: To address oversight of the 2009 elections, the pilot program for the use of optical scan voting machines, and proposals to address runoff elections and instantaneous runoff voting.

Good afternoon, members of the Senate Elections Committee and the public. I am Aimee Allaud, Elections Specialist for the League of Women Voters of New York State. Thank you for the opportunity to comment on the Pilot Program using the new voting equipment and to address other issues relating to HAVA implementation. It is appropriate that the Legislature monitor the implementation closely for several reasons:

1. The state's Election Modernization and Reform Act of 2005 went far beyond the federal HAVA of 2002;
2. The Legislature has a statutory responsibility through the budget process to adequately fund elections to ensure voter confidence in their accuracy and enforce campaign finance laws.

Because the League of Women Voters of New York State does not have a position on Instant Runoff Voting I will not address this issue today.

The League of Women Voters of New York State (League) is a nonpartisan political organization which encourages informed and active participation in government and works to increase understanding of major public policy issues, and influences public policy through education and advocacy. Voting is fundamental to citizenship and the League has worked on the issues surrounding exercise of the franchise since women became enfranchised in 1920.

We work in coalition with many other like-minded organizations to educate voters and to advocate for laws which will secure the integrity of the vote while expanding opportunities for using it. With respect to implementing the Help America Vote Act in New York State, we have worked in coalition with other organizations whose mission is also to ensure that all eligible citizens can vote, and that their votes will be accurately counted. These organizations have endorsed a voting system based on voter-marked

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paper ballots. This goal was achieved when the paper ballot-scanner voting system was chosen by New York counties in 2008. We advocated for the paper ballot-ballot marker-scanner system because ***with rigorous procedures and citizen oversight*** it will meet the League of Women Voters of the United States' "SARA" test of security, accuracy, reliability and accessibility.

The League, and other organizations representing many constituencies, believe that the newer technology can provide better verifiability and a voter verifiable paper record that is the official record of the voter's intent. A joint statement by New Yorkers for Verified Voting and League of Women Voters of New York State "Do Lever Machines Provide a Better Voting System for Democracy?" is attached to this testimony. This statement is also available on the League's website, www.lwvny@lwvny.org.

As background for our testimony today, we would refer you to prior statements on the subject of a pilot program for the introduction of new voting machines which the League and New Yorkers for Verified Voting have submitted to the NYS Board of Elections, "[Comments on the New York State Board of Elections Proposed 2009 Pilot Plan](#)" by the League's Citizen Election Modernization Advisory Committee member Bo Lipari, June, 2009. This report sets forth a series of criteria that our organizations believe would provide a basis for assessing information on the performance of machines and procedures before the full implementation in 2010 required by the US Department of Justice. The New York State Board of Elections Pilot Plan narrative of May 12, 2009, provides a broad description of the process but does not describe how or when an evaluation of the process will occur or when the public may expect to see the report. The Board has produced a report on the Primary Election Project, September 15, 2009, which contains "summaries of the findings of the several staff teams which traveled the State observing the implementation of our new opscan systems" (Introduction to the Report). We urge the Legislature to request such a detailed report containing the specifics of each county's implementation. One of the recommendations of the Lipari report concerns inadequate auditing requirements under the pilot plan:

"Since the systems being used in the Proposed Plan will not yet be certified and are being used only on a provisional basis, a higher standard than the statutory requirement of 3% of machines is necessary. As noted, the original discussions of the Proposed Plan acknowledged that a complete hand recount would be required to verify the results obtained from uncertified systems. The Proposed Plan must require some comprehensive method of independent verification of the results. The original proposal of a 100% hand recount would have provided that certainty, the current proposal falls far short."

There have been reports of operational problems with some scanners in election districts in the 23d Congressional District. These reports should be addressed by requiring a 100% hand count of the ballots so that the validity of the election results can be assured. Voter confidence, as well as the accuracy of the machine results, is at stake here. This is

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the opportunity which a pilot program affords before statewide elections in 2010 possibly produce widespread anomalies and undermine voter confidence.

League of Women Voters of New York State Polling Place Survey November 2009

For the 2009 General Election the League of Women Voters of NYS conducted an online survey of our members' experiences in voting on the new equipment. The survey questions and responses are attached to this testimony without text answers to each question although those are available for research. One Hundred Twenty-One (121) responders from 20 counties (see attached list) participated. For purposes of this testimony, I have summarized responses into broad categories corresponding to the 17 questions on the survey.

Adequacy of Instructions

Overall, 76% of the respondents indicated satisfaction with the adequacy of instructions they received on how to use the voting machines and fill out the ballot. However, a number of people expressed concern that they overlooked the reverse side of the ballot where the propositions were located and recommended that either the ballot and/or the inspectors alert a voter to review both sides of the ballot.

Marking the Paper Ballot

Many respondents felt that the ballot print was too small and fine and the squares and circles to be filled in were also too small. Some noted that a square takes more time than a circle to fill in accurately. The correct type of pens or pencils with the right kind of tip and a sufficient supply of these tools in the privacy booth was also noted. One person noted that a magnifying lens could also be provided alternatively to using the BMD. Some voters noted that there wasn't adequate lighting in the privacy booth to mark the ballot and recommended that flashlights be provided if the physical condition of the room couldn't be altered.

Privacy Issues

The single most frequently expressed comment concerned privacy issues surrounding the location of the privacy booths, privacy screens, scanner, and BMD so that privacy is provided in marking and casting the ballot. Some inspectors as well as voters did not understand the purpose of the privacy sleeve and how to use it. Inspectors did not routinely use it with all ballots. Several voters who spoiled ballots wondered about the privacy procedures for spoiled ballots.

Ballot Scanning

Very few voters in the survey cohort had any problems with the scanning operation. Some Erie County residents apparently had their ballots rejected several times due to an unexplained error message which inspectors said had occurred several times earlier. In one case, after several unsuccessful attempts to scan the ballot two election inspectors (one Democrat, one Republican) opened up the ballot box and deposited the voter's paper ballot inside!

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Ballot Marking Device

Generally, the survey respondents were unaware of the location of the ballot marking device in the polling place and did not observe anyone using it. Several respondents said they requested information on how to use it but were discouraged from using it by the election inspectors who were uncomfortable with the procedures for the BMD.

Conclusions for Improving the Voting Process with the New Machines

1. Increased intensive voter education on the new voting process from beginning to end using the media, printed materials as well as the web is needed for 2010. NYS has recently received 2008-09 federal HAVA requirements payments of \$14 million dollars for voter education and poll worker training. Counties must access this funding in time to implement for the 2010 elections.
2. Increased signage in the entrance to polling places providing information and instructions on the ballot marking devices. All inspectors should be trained on this equipment and should not discourage its use.
3. Revising the paper ballot for maximum usability for the voter will reduce the number of spoiled ballots and rejection by the scanner. Minimum standards for lighting and usability in the privacy booth should be examined.
4. Increased attention by the NYS Board of Elections and local boards of elections to issues of privacy in the polling place, and mandating the use of the privacy sleeve.
5. Enlarging the pool of trained election inspectors should be a top priority. The Senate should immediately pass two bills, S1836/Klein and S5172/Dilan which have already passed the Assembly. The Klein bill would permit split shifts for inspectors and the Dilan bill would permit 16 and 17 yr. olds to serve as inspectors. In addition, the Legislature should consider the recommendations of Marcus Cederquist, Executive Director of the NYC Board of Elections at the Assembly's October Hearing on the recruitment of election inspectors. He recommended that inspectors should receive \$100 per day to attend training and that there should be further incentives to encourage attendance at trainings and working on election days.

The League survey was accomplished by nonpartisan volunteers working under the provisions of the NYS Election Law which does not allow observers to be present in the polling place. Only election officials, candidates and pollwatchers are allowed to remain in the polling place during the course of the Election Day. Media are allowed at the polls and vote canvass. A brief overview of laws governing "State Media and Public Access to Polling Places" contained in Electionline.org.'s Briefing report of May 2008, "Case Studies: Election Observation Dispatches From the Polls," indicates that only two states, California and Wisconsin, have provisions for public access to the polling place. The report's executive summary suggests that:

"First-person observation, media reports and field research can yield new insights into the election process, show where weaknesses might occur in the system and point to possible solutions to make voting more efficient, accurate and convenient."

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A noteworthy example of the success of nonpartisan observation is that of the Citizens for Election Integrity Minnesota, which produced a report on the post-2008 election audit and recount, "Eyes on the Vote Count.," www.ceimn.org.

If New York State Election Law permitted access to the polling place by bona fide observers there would be much constructive information gained. The LWV recommends that the respective election law committees in the Assembly and Senate conduct research and public hearings on the feasibility of legislation to permit nonpartisan observers.

Finally, the League recommends that election inspectors be required by the law to wear identification badges giving their name and position while they are employed at the polls. We note that the HAVA Administrative Complaint Procedure requires that the names of election officials who interacted with a complainant be documented. Lacking a statutory requirement for such identification, each county board of elections makes their own policy. This omission should be corrected in the election law. Voters have expressed their concern that polling places seem to have many unidentified people, perhaps acting in official capacities, but not identified.

Thank You for this opportunity to express our recommendations for procedural and legislative action.

Attachments:

Lever Machine Statement

League of Women Voter of New York State Survey Questions

Counties Represented in League of Women Voter of New York State Survey



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Do Lever Machines Provide a Better Voting System for Democracy?

Aimee Allaud
Elections Specialist, New York State League of Women Voters
Wanda Warren Berry
Executive Director, New Yorkers for Verified Voting

Some New Yorkers are seeking the support of our organizations for their misguided attempt to keep the lever voting machines instead of implementing the paper ballot-optical scanner system purchased last year by the county commissioners. This purchase was funded by millions of dollars allotted to New York under the Help America Vote Act (HAVA) specifically for the replacement of lever machines. Our commitment to high standards for verifiable and accessible voting prevents us from supporting retention of the levers once the scanners pass New York's rigorous certification process.

Lever voting machines, though they have worked fairly well for over 100 years, do not meet current standards for voting systems. Even if New York were not under a federal court order requiring their replacement in 2009, we believe New Yorkers have learned to ask for a higher level of accessibility and accountability than levers can provide.

In "Citizens' Right to Vote" (2006), the national League of Women Voters resolved to support only voting systems which:

- Provide a voter-verifiable paper record that is the official record of the voter's intent.
- Allow the voter to verify this paper record while still in the process of voting.
- Allow verification of vote totals by an independent hand count of the paper record.
- Allow routine audits of the paper record in every election.

Lever machines do not meet these standards. They retain no record of individual votes. During voting, one can see the small lever go down, but cannot see that the inner workings of the machine register the intended vote. In addition, levers include no record of individual votes that can be hand counted or audited to verify the totals. At the close of Election Day, they provide only the totals for each contest. Occasionally these totals have been known to be wrong; but there were no records to re-count. The federal Election Assistance Commission strongly recommends and is expected to require such records in the future.

Both HAVA and our own democratic standards ask that voting systems be accessible to persons with special needs. Lever machines are not. To compensate for this serious limitation, those advocating retention of the levers say that counties can continue to use the ballot marking devices (BMDs) used last Fall to allow persons with disabilities or with need for alternative languages to mark a paper ballot to be hand-counted. This plan shows no sensitivity to the right of persons with disabilities to cast a secret ballot using the same voting system as others. If most voters were using the levers, many poll sites would have only a small number of ballots marked with BMDs. This would make it difficult to preserve the anonymity of those ballots during Election Night hand-counts. With the paper ballot-scanner system, such ballots are submitted to the same precinct-based scanners as those marked by hand by other voters. They also are counted along with others in any re-counts and in mandated audits. This promises both independence and privacy to voters with special needs.

In addition, the attempt to keep the levers does not recognize the financial and managerial problems posed by the suggestion that the already purchased ballot markers continue to be used alongside the levers. Those who argue that keeping the levers would save taxpayers' money do not take into account that HAVA funds for the replacement of lever machines would need to be returned if levers are retained. Also significant is the fact that most counties purchased ballot markers that cannot function apart from the scanners. If this equipment is used along with levers, counties have to maintain, store, program, test, and deploy at least two large machines with different technologies for each polling place; this would increase operating costs.

The long process of gaining certification of new voting equipment for New York has been frustrating. But neither this frustration nor our sense of economic crisis should lead us to sacrifice the superior standards for verifiable and accessible voting that we have come to see as important to democracy. Lever machines cannot meet those standards.



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Constant Contact Survey Results

Survey Name: Polling Place Survey Nov 2009

Response Status: Partial & Completed

Filter: None

Nov 29, 2009 8:47:25 PM

TextBlock:

Most counties in NYS are participating in the NYS Board of Elections pilot project deployment of new voting machines in the 2009 General Election. Some counties will be participating countywide (all polling places); others have selected pilot sites within specific municipalities in the county for a partial deployment. If your polling place is not in the deployment, you will be using the lever machine. All polling places in the state are required to have BMDs (Ballot Marking Devices) in operation for use by any voter who wants to use one.

If your polling place is using the paper ballot optical scanner system, we are asking for your cooperation in a simple survey detailing your experience in using the system and your observations of the procedures in use while you are in the polling place to vote. It is not necessary for you to question the poll inspectors. The survey results will be shared with the local boards of elections and the NYS Board of Elections so that corrections and improvements in the process can be made.

Please enter the information indicated below.

Answers	Number of Response(s)
First Name	108
Last Name	108
Email Address	105
Address 1	104
Address 2	9
City	104
State/Province (US/Canada)	106
Postal Code	106

Your County is:

107 Response(s)

Your local League name is:

103 Response(s)




Your polling place is:

106 Response(s)




TextBlock:

Questions on Voting




Were you given adequate instructions on how to use the new voting machine by the poll workers? If no, please explain.

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			92	76.0 %
No			13	10.7 %
No Response(s)			16	13.2 %
Totals			121	100%




Did the privacy booth give you adequate space and privacy? If no, please explain.

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			79	65.2 %
No			25	20.6 %
No Response(s)			17	14.0 %
Totals			121	100%

Were the instructions to complete the ballot easy to understand and in large enough print? If no, please explain.

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			84	69.4 %
No			16	13.2 %
No Response(s)			21	17.3 %
Totals			121	100%




Did you have difficulty in filling out the ballot? If YES, please explain.

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			11	9.0 %
No			91	75.2 %
No Response(s)			19	15.7 %
Totals			121	100%




TextBlock:

Questions on Scanning Your Ballot




Was a privacy sleeve provided for your ballot?

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			70	57.8 %
No			31	25.6 %
No Response(s)			20	16.5 %
Totals			121	100%




Did you use the privacy sleeve? Please explain if necessary.

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			56	46.2 %
No			33	27.2 %
No Response(s)			32	26.4 %
Totals			121	100%



If a poll worker handled your ballot, did they use the privacy sleeve? Please explain if necessary.

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			44	36.3 %
No			44	36.3 %
No Response(s)			33	27.2 %
Totals			121	100%

Did you have any problem putting your ballot in the scanner? If yes, please explain.

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			8	6.6 %
No			92	76.0 %
No Response(s)			21	17.3 %
Totals			121	100%

While you were in the polling place, did you observe how rejected ballots were handled by poll workers? If yes, please explain.

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			19	15.7 %
No			80	66.1 %
No Response(s)			22	18.1 %
Totals			121	100%

Were there any delays or lines of more than five voters waiting to scan their ballots? Please explain if necessary.

Answer	0%	100%	Number of Response(s)	Response Ratio
Yes			5	4.1 %
No			94	77.6 %
No Response(s)			22	18.1 %
Totals			121	100%

Please provide your comments, general or specific, on the machine, the process or the poll workers.

88 Response(s)

TextBlock:

Ballot Marking Devices (BMD)

We encourage you to use the device even if you do not need assistive technology. It will help poll workers to gain experience and you will be able to explain how it works to other voters.

Was the Ballot Marking Device well located in the polling place to protect the voter's privacy? Was a poll inspector assigned to assist the voter using it?

84 Response(s)

Did you observe any voters using the Ballot Marking Device and having any problems? If you are able, describe the problem.

74 Response(s)

TextBlock:

Thanks for your help.



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**League of Women Voters of New York State Polling Place Survey
November 2009**

Participants in the survey came from the following counties:

Albany
St. Lawrence
Erie
Madison
Ulster
Oneida
Cortland
Schenectady
Chenango
Chautauqua
Broome
Saratoga
Monroe
Steuben
Onondaga
Schuyler
Putnam
Yates
Tompkins
Fulton