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October 22, 2009

Madam Chair, Mr. Chair, and members of the New York State Assembly Committees and Subcommittee, thank you for the opportunity to add my thoughts as you consider an issue that is fundamental to sustaining – and given the problems with our 2000 and 2004 Presidential elections, some would say fundamental to restoring – public confidence in our election process. This testimony follows comments I made before the New York State Senate Committee earlier this month.

Three years ago, the Council of the City of New York unanimously passed Resolution 228-2006 that urged reasonable criteria to guarantee a successful implementation of voting machine reform. I was the lead sponsor of Resolution 228 and I am speaking from the perspective of a New York City legislator. I continue to be concerned about our future elections because, to date, most of the prudent measures advocated by Resolution 228-2006 have not been adopted in New York.

From day one, the cost of proposed electronic systems has been a concern. To date, only independent citizens have produced cost analyses for New York City. These analyses show that our counties will not be able to afford to conduct elections properly without diverting significant resources from other essential needs. In these times of diminished resources and declining tax revenues, is it responsible to embark on a particular path for HAVA compliance without a comprehensive cost study? I think not.

I urge you to work with the New York State Comptroller to quickly produce and publish a comprehensive cost analysis and to identify sources of funds to cover the cost of electronic elections, before allowing our counties to proceed with replacement of our accurate and affordable lever voting machines.

Besides cost – there is the issue of confidence. Government must be credible. We cannot tolerate an electoral system where who counts the votes is more important than who casts them. Resolution 228A recommended a public demonstration of county boards of elections' ability to independently perform all tasks related to running an election with its chosen new equipment, from programming the ballots to canvassing votes and tabulating final tallies. In addition, Resolution 228A asked for such a demonstration to show that counties would be able to confirm that tallies, activity logs and event logs are accurate. The pilot use of the new equipment in the 2009 Primary and General elections this year has not yet and will not accomplish this objective, since verification of tallies, logs etc is not part of the pilot. I urge you to mandate that the State Board of Elections conduct such a demonstration of proficiency.

I urge you to ask the State Board of Elections to conduct a public hacking test on each scanner system being tested for certification. **Can you point to a method by which a county board of elections can verify that its delivered equipment consists solely of legal components that have passed state certification tests and contains no other components, including hardware, software, firmware, operating systems, anti-virus software, firewalls, drivers, and all other types of components?**

My concern about the probability of illegal supplemental software is influenced by the experience of whistleblower and former County Clerk Bruce Funk, from Emery County, Utah who, upon inspection, found that none of his electronic voting systems contained only legal software. Or, put differently, all of the electronic voting systems contained illegal software. His testimony is compelling and is supplemented by findings in California of illegal and unexpected software in its electronic voting systems from all of its vendors.

Key here is that State of California ***made*** inspections. Although New York State law and regulations prohibit communications capability in electronic voting

systems, there is no provision in our State law ***requiring*** inspections. Do we just have to trust that there is no incentive to subvert an accurate tally? I believe that as stewards of the public trust, we must do more – we must ***guarantee*** an accurate tally. Just as the ability to create an audit trail means nothing without the impetus of an actual audit, I urge you to mandate inspection for illegal components. I further urge you to mandate the State Board of Elections to devise a method of inspection by which a county board of elections can verify that delivered equipment consists solely of legal components.

New York City's counties are currently able to conduct cost-effective and accessible elections generating trustworthy results by using existing lever voting machines supplemented by the new accessible Ballot Marking Devices ("BMDs") that were purchased and deployed in 2008. Let us seize the obstacle of high costs to install electronic voting and transform it into an opportunity: to create an accurate, efficient and economically justifiable 21st century election infrastructure.

Start by meeting the criteria of Reso 228.

Thank you for your attention to my testimony.