

**Statement to the New York State Assembly committees on  
Election Law, Education, and Libraries and Education Technology  
and the Subcommittee on Election Day Operations and Voter Disenfranchisement  
October 22, 2009  
Assembly Hearing Room, 250 Broadway, New York, NY  
Virginia Martin, Democratic Commissioner, Columbia County Board of Elections**

Thank you, Assemblymembers Millman, Nolan, Lifton, Kavanagh, and others, for providing this opportunity to be heard.

I'm a relatively new election commissioner, having not yet completed a full year in the position, and I believe that my perspective as someone quite new to the issues of election administration and the Help America Vote Act may be a little different from others', and therefore particularly valuable, as sometimes a fresh perspective is.

This morning I want to speak to three issues: (1) whether we are truly addressing the spirit of the Help America Vote Act, which I thought was to improve election administration and to enable all individuals, including those with disabilities, to vote privately and independently at the poll site; (2) how the current mandates, most of them necessitated by New York's 2005 Election Reform and Modernization Act, impact our county boards financially, and (3) how the mandated transition to electronic voting and vote-counting will likely prevent me as commissioner from doing my job, which is to certify to the accuracy of election numbers.

**1. Are we addressing the spirit of HAVA?**

In the public notice of this hearing, the State Board of Elections says that it has accomplished a number of HAVA objectives, including the creation of a statewide database of voters, the placement of one accessible voting machine in each poll site, establishing a program to distribute funds to improve poll-site access, and other items relating to HAVA compliance. I will agree that a very robust and effective database has been created, and certainly that each poll site now has an accessible BMD. Yes, we have a means for reimbursement for our costs when we make our poll sites fully accessible. I agree that those crucial objectives relating to improved administration and access have been well met and implemented.

Where we are not meeting the spirit of HAVA, I think, is that only minimal attention is being given to helping people with disabilities get out to vote in the manner to which they have every right. This is happening not out of malice or conscious dismissiveness, but out of the county boards' need to direct every available resource to the complicated and all-consuming transition to new voting machines. We counties would have our hands full making a successful transition to our BMDs alone, but at the same time we're faced with having to introduce yet another system, the optical scan with post-election paper-ballot audit, a system to be used by the vast majority of our voters—a system that dramatically changes the way we administer elections.

I said a transition to BMDs alone would be consuming and resource-intensive. This is partially because the equipment is not high-quality and is prone to breakdowns and a variety of other problems; it's partially because the system itself is far more complex, involving a handful of software programs that require highly trained technicians to manage them; and it's partially because the system introduces into election administration many vulnerabilities that our old lever voting machines are free of.

For example, our BMDs, like the ballot scanners, rely on software rather than hardware for programming. Software is aptly named: it is soft, pliable, changeable, and therefore can be easily manipulated. Hardware (like we have on our lever machines) is, well, hard, and cannot be easily manipulated. (The BMDs of course have hardware, too, but unfortunately it's poor-quality hardware that breaks easily.) The other vulnerability our BMDs introduce is the paper ballot, which, while "harder" than software, is still easy to manipulate (or tear/spindle/mutilate); paper can be lost (or can be introduced post-election), and paper votes are subject to interpretation. When in the late 19<sup>th</sup> century the then ultra-modern lever voting machines were first introduced, one manufacturer boasted that they would "protect mechanically the voter from rascaldom"—that rascaldom being the tampering that so often happened to paper ballots. Going back to a fully paper-ballot system is, in many ways, a step back in time and I would say a mis-step.

In Columbia County, we're not participating in the pilot program. That's because we oppose the move to electronic voting and vote-counting and also because we know we don't have the resources to engage in a second major new process while we're putting huge amounts of time and energy into making our BMDs work well. We're training a whole new set of staff to operate them and be responsible for them. We're training that same staff and all our inspectors to appreciate and value the differences amongst our voting public and to learn how they can best welcome voters with disabilities into the polling places and if necessary to assist them. And we're training them to ensure that all our poll sites are fully accessible and truly appreciate what distinguishes accessible from non-accessible.

We're also engaged in a comprehensive program of outreach to our county's disability communities and to the general public. This program is to raise awareness, on a face-to-face basis, about these new voting machines; to allay any fears that people, who have historically been shunted aside when it comes to voting, may have about venturing out to vote; to raise awareness among the rest of the population about the desire that people with disabilities have to come to the poll site so that they can exercise their constitutional right to a private and independently cast vote. It's been a huge amount of work. I didn't design the program and curriculum we're using, but I don't believe that our voting-access consultant got it from the State Board. While our program has been very well received and is enjoying small but important successes, even after November's election we will have miles to go before we can begin to say we've done justice to addressing the needs and the rights of the people in Columbia County who have disabilities.

And that's one reason that neither I nor my Republican counterpart Don Kline can begin to think about implementing yet another, and far more widely used, voting system. We must get one right before we can think about doing another.

From what I can deduce about what other counties are spending their time on, the lion's share of it doesn't appear to be access for the disabled. Our conference agendas and our conference calls barely mention the needs of voters with disabilities. They're dominated by issues like chain of custody, security, seals, documentation, certification, testing, audits, paper handling, transportation, ballot design, programming, and the like. I haven't heard anyone talk about a great disability outreach or education program, or how they've developed and strengthened ties with the disability community. I don't think they have the time to.

## **2. The current mandates and their financial impact on county boards of elections**

My second topic is how the current mandates impact our counties financially. The cost to Columbia County just to implement BMD use and the education and outreach program I spoke of above has been extraordinary. Yes, a good chunk of it will be reimbursed, but I can't tell you how much because no one in my county has had the time to examine that question—or to apply for much of the reimbursement—we're too busy making sure we get our elections right.

But in a year when all our county's departments are being mandated to cut expenses, ours are going up. We've held the increase to a minimum by refusing to participate in the pilot, by not purchasing the \$78,000 election management system, and by not purchasing a host of other needs associated with the optical scan/paper ballot system. Nor do we intend to next year. Our small county can't afford an additional \$40,000 (that's approximately one dollar per voter) for paper ballots and so we haven't put it in the budget. My county stands behind me on this. When our deputies see the BMD expenses they shake their heads in utter dismay, incredulous that they are so costly.

And nobody is arguing that democracy isn't worth the cost; I'm the first to say that democracy doesn't come cheap. But that doesn't mean that you don't try to be realistic in the face of economic crisis or that you throw fiscal prudence out the window. I want to pay what democracy and what voter-access programs reasonably cost, but I don't want to do it irrationally or ineffectively and I don't want to rake our taxpayers over the coals in the process.

Much of what the Election Reform and Modernization Act provided for was very good, and I know people who put in Herculean efforts to include certain of its provisions. They're justifiably proud of what they've done. I take issue, however, with the mandate to get rid of our lever machines. Most of the rationale for it I don't agree with. HAVA doesn't prohibit lever machines, so why did New York decide to? Perhaps instituting whole new voting systems seemed do-able in 2005. Given today's fiscal environment, and the state budget, and deficits, current and forecast, I believe that the only prudent thing to do is to amend ERMA to allow counties to continue to use their lever machines

as they may desire and as may be necessary so as to avoid taxing our residents far beyond their means to pay.

Boards across the state have encountered enormous resistance from their counties when they have tried to get the funds these unfunded mandates would have us incur. I know of two cases in which county budgets have tripled. Commissioners and county administrators have asked the state board for guidance; the state's advice has been to press the Legislature for more money or to pass the expenses down the line to their towns and cities. I think both are irresponsible. What the state board should do is advocate on our behalf to allow us to keep our levers, at least for the foreseeable future and through the fiscal crisis. That would enable us to fully comply with the spirit of HAVA, which was better election administration and access for all. As it stands now, we at county boards are at our wits' ends, struggling to run our elections with resources that don't begin to be adequate to the tasks we have at hand, which is to say that election administration is suffering rather than improving.

### **3. How ERMA will prevent me as commissioner from discharging my duties with integrity**

Beyond the problem of too much to do with far too few resources in an undertaking as crucial as elections are to democracy is the ultimate role that each election commissioner has, which is to certify to the accuracy of an election result.

Until now, I've confidently certified two elections: a special congressional election and the recent primary. I was very confident of those numbers because the relatively few paper ballots that we had and hand-counted were handled with great care and oversight according to established processes. Also, I have great confidence in the tabulating mechanism in each of our lever machines. I can understand how the levers work—how the pointers, the gears, the counters, and the levers interact to add up the votes just as the voters cast them.

In Columbia County, we've done a pretty fair job of keeping our machines serviced, and so we have few breakdowns. We have no trouble getting the parts or the help and advice we need. We didn't, it's true, do everything that we might have to keep our machines in tip-top operating condition because we understood that their years were numbered. I know a lot of other counties did the same. But now, in anticipation of using our levers into the future, we're starting to ramp up our maintenance. Having gotten a good look at what the electronic voting-machine industry puts out (and it's not good), and having gotten a better idea of the true costs associated with electronic voting, and having seen the problems that continue to surface with electronic voting (the breakdowns, the hackings, and the secretive and proprietary nature of that which should be available to and understandable by the people), Columbia County has a far greater appreciation for the beautiful simplicity of our lever voting machines.

We deal with the Voting Machine Service Center in western New York for our AVM parts. They assure me that they are ready and more than willing to continue to service our

levers for many years ahead. I have also discussed this issue with International Election Solutions, which services the Shoup machines, and have been assured the same and that they have a huge inventory of machines that they've bought up from other states when they abandoned their levers. And, should we need brand-new machines, they have the blueprints and would be delighted to build them. I don't know where the oft-cited rumor that parts for these machines are unavailable comes from.

Federal standards allow 1 in every 11 voting machines or systems to fail either partially or completely in any 15-hour period. That's almost a 10% failure rate in every election. New York's standards require nothing better, and in the state there are far fewer complete failures of lever machines—only a few handfuls of machines out of about 20,000 statewide. Most lever problems can be resolved rapidly by technicians without the loss of cast votes. And unlike computerized systems, this can be verified by poll workers because lever machines are transparent machines.

If Columbia County starts using software to count votes, I will not certify an election unless an appropriately designed audit of the paper ballots is conducted. So far, the State Board has not mandated an audit that audit experts agree will expose inaccurate counts. If my county implements computerized voting, I will demand an appropriate audit. It will be expensive, though, and I know how well that will go over with my fiscally stressed county, especially after paying for all the other associated expenses. I'm afraid the county would not budget the funds needed to ensure my confidence, and if it didn't, I wouldn't certify the election. The high cost of auditing has other counties calling for less-stringent audit regulations. I shudder to think what the result to democracy will be if they get their way.

## **Summary**

I will end by saying that, as I see it, statewide, some but certainly not all of HAVA is being complied with, and that, with a forced move to electronic voting, election-administration improvements will suffer as will any move toward greater access for people with disabilities. I will also say that a continued movement toward electronic voting will place exponentially greater stresses on our counties' and our state's budgets. Given today's financial crisis and given what in 2009 we know about electronic voting, including the optical-scan paper ballot systems that so many of us fought for, I implore you to rethink ERMA's ban on the lever machines that are bought and paid for and that instill confidence in us commissioners, in our poll workers, and in our voters.

And my congressman, Scott Murphy, says it's a no-brainer—we should keep the levers.

Thank you.