IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff

DECLARATION
DAVE BERMAN

v

Case No. 06-CV-0263 (GLS)

NEW YORK STATE BOARD OF ELECTIONS; PETER KOSINSKI and STANLEY L. ZALEN, Co-Executive Directors of the New York State Board of Elections, in their official capacities; and, STATE OF NEW YORK,
Defendants

Pursuant to 28 U.S.C. sec 1746, **DAVE BERMAN**, declares as follows:

1. I am a co-founder of and spokesperson for the Voter Confidence Committee of Humboldt County, California www.VoterConfidenceCommittee.org. The Voter Confidence Committee (VCC) is an election integrity watchdog group established by citizens in Humboldt County, California in March 2005. Our work is known to government representatives from the Eureka and Arcata City Councils to the Humboldt County Board of Supervisors, and from the State Senate and Assembly to the current and previous two Secretaries of State of California.

2. The group has been engaged in public education campaigns, presentations at various classrooms around our county; town hall forums, radio broadcasts; and I have personally made dozens of appearances throughout California to community groups including the County Republicans, Democrats and Greens. The VCC has statewide and national affiliations with more than twenty-five other groups with similar goals and is a member of the California Election Protection Network.
3. The VCC has always been a champion of transparency, security, and verifiable accuracy in elections. Our earliest election reform recommendations were codified in the Voter Confidence Resolution, formally adopted by the Arcata City Council in July 2005. Subsequently, the City Council of Palo Alto, California in September 2006 adopted a resolution derived from it.
4. More recently, during the 2006 mid-term election, the Humboldt County elections department embraced our call for a 10% manual audit (hand recount), rather than the state-mandated minimum of 1%. This provided a more rigorous check on the results reported by the Diebold optical scanners and moved closer to our goal of a 100% hand count. Along with several other VCC members, I participated in the hand counting audit. Additionally, in response to VCC lobbying and at risk of a lawsuit, Humboldt County poll

workers were explicitly instructed to post precinct poll tapes at the close of voting, as described in California Election Code, Section 19384.

5. Following the November 2006 election, the VCC spent eight months studying the conduct of the election and the overall conditions of Humboldt County elections. The result was a 20-page "Report on Election Conditions in Humboldt County", http://tinyurl.com/29vhhu.
6. Among myriad recommendations, the VCC advocated the County switch to precinct-based hand counting of paper ballots, which are already in use but counted by optical scanners. In addition, the VCC released through its website a spreadsheet tool that allows any jurisdiction to estimate the cost, time, and labor needed for hand-counting, http://tinyurl.com/2dgt82.

The Hand-count Forecast Tool, a Spread Sheet / Workbook

7. I was interested in designing a tool that anyone in the country could use to calculate the number of citizen-counters, hours needed and the cost of a hand-count paper ballot election. In the summer of 2007, New Hampshire's Assistant Secretary of State, Anthony Stevens, made a presentation at an event called DemFest wherein he explained how New Hampshire jurisdictions planned and prepared for hand counted elections. Nancy Tobi pointed me to an archive of the presentation on the Democracy For New Hampshire website. Understanding that what New Hampshire does could be translated and applied throughout the country, I created a forecast

spreadsheet tool based on Assistant Secretary of State Steven's numbers, assumptions, and experience in New Hampshire.

8. The Hand-Count Forecast Tool is now in the public domain at the Voter Confidence Committee website, among other websites that have been adopting it. The Forecast Tool is a spreadsheet or workbook that allows anyone to input certain variables in order to know how many counters are needed, how long it will take and the cost of running a hand count paper ballot election. Since I have made the forecast spreadsheet public domain, I have been contacted by groups all across the country as the movement among citizens for hand counted paper ballot elections continues to grow.

9. The user input variables in this Forecast Tool include:

   a) Number of Election Districts;

   b) Average number of ballots cast per Election District;

   c) Number of contests on the ballot;

   d) Number of registered voters;

   e) Voter turnout;

   f) Percentage of ballots cast at a poll site vs. absentee or mail-in;

   g) Amount of time allotted to count each contest or question on the ballots; and

   h) Rate at which counters will be paid.

10. Once variables are input, the spreadsheet calculates and displays the number of hours a four-person team is needed for counting on Election Night, the total number of counters needed countywide, the total potential payroll expense for counters, and various voter turnout breakdowns.

11. For my own county, Humboldt, CA, I entered the few variables required and discovered that we would need roughly 800 counters, out of roughly 80,000 registered voters, or only about 1% participation to have enough counters. The Voter Confidence Committee has been gathering names of willing hand-counters to demonstrate to a skeptical Registrar of Voters and County Supervisors that there is enough popular support from a sufficient number of willing counters in Humboldt County, CA – as there is likely all over our nation.

The Hand Count Forecast Tool Specifically for New York

12. When asked to contribute to this amicus brief, I was specifically requested to develop forecasts for counties in New York State. It was agreed that I would base my calculations regarding hand counting of the two federal races on the November 2008 ballot.[1]

13. Robert A. Brehm, Deputy Director of Public Information, NYS Board of Elections, provided Attorney Andrea Novick with a document entitled,

[1] In the 2008 federal elections in New York, the President/Vice President comprise a single vote as does the choice for U.S. House of Representatives.

2*006AnnualStatisticalInformationReport.pdf*[2] displaying the number of Election Districts as of November 2006 for 11 of the 15 New York Counties we studied. These numbers were incorporated into the Forecast Tool, annexed as Exhibit "E" to this motion entitled, ***NY_HCPB.pdf.***

14. Some of the larger counties were not shown in the Brehm document. These are: Richmond, Bronx, Queens, and Kings (denoted with an embedded comment on each county's page). Voter registration and voter turnout numbers were taken from the forecast analysis of Rady Ananda (see Ananda Declaration at Exhibit F, Estimated 2008 Registration & Turnout for New York).

15. I used the Forecast Tool to create projections for 15 New York Counties, choosing a representative sample employing some of NY's largest, mid-range and smaller counties. I made a separate page in the workbook for each of the 15 counties in New York that I analyzed (Exhibit "E").

16. Each page is laid out with the same variables and formulas. Some variables have been uniformly established on all pages:

– 10 seconds to count per contest per ballot[3]

[2] Exhibit "D" on this motion.

[3] Experienced hand counters in New Hampshire average six seconds per contest (see Tobi declaration). Forecasts created for this brief assume a more modest ten seconds per contest for counters who are presumably doing this for the first time. This is especially conservative because the learning curve is very short for counting only 2 straightforward races (only one candidate to be selected for each contest).

– 2 contests to be counted

– 95.47% of votes cast at the polls [4]

– 4.53% of votes cast absentee/mail-in

– $10 per hour paid to citizen-counters[5]

– 4 people per counting team.[6]

17. The only user input variable I have not yet accounted for is the average number of ballots cast per Election District. This actual NY data was not available and had to be derived using the formulas of the Forecast Tool as follows. Rady Ananda provided projected voter turnout percentages for each county. The voter turnout percentage is directly proportional to the

[4] The absentee voting percentage in New York's 2004 presidential election was 4.53%, according to John C. Fortier, "Absentee and Early Voting: Trends, Promises, and Perils." Washington, D.C.: American Enterprise Institute, 2006. Fortier provides the following figures:

Total Votes Counted: 7,448,266
Absentee Ballots Counted: 337,544
2004 Absentee Rate: 4.53%

Thus, in-person votes cast at the polls in NY comprise 95.47% of total votes cast.

[5] In the spirit of community participation in the most fundamental aspect of our democracy, counting ballots is historically regarded as "high order civic duty." Yet it seems only fair to offer some recompense. Because county level pay for pollworkers varies widely across the State of New York, we use $10 per hour since it falls within the range of what NY's pollworkers are paid.

[6] The Read and Mark method of ballot counting is consistent with New York election statutes. In each four-person team, one reads the voter's choice; the second team member is the "observer" and verifies that the reader is correctly calling the voter's choice off the ballot; the other two members each have a tally sheet on which they mark the votes. The two tallies are compared after every 50 votes and if they do not match, the process for those 50 ballots is repeated.

average ballots cast per Election District. (As one goes up or down, so goes the other.) With all other input variables set, it was easy to manually adjust the average ballots cast per Election District until the voter turnout percentage in the Forecast Tool came within 0.1% of Ananda's projection for that county.

18. Additional guide calculations, e.g., the number of registered voters per Election District and Election District level voter turnout percent, create checks and balances to keep other numbers realistic.

19. In the four counties not shown in the Brehm document (Exhibit "D"), the uncertain number of Election Districts becomes a second relevant variable. In each case, the voter turnout percentage is still pegged to Ananda's forecast as described above, but here both the number of Election Districts and the average number of ballots cast per Election District can be moved up and down to achieve not only the targeted turnout percentage, but also assuring no more than 1,150 voters are assigned to each Election District.

20. The Forecast Tool clearly indicates that only one team of four counters will be needed per Election District which adheres to NY Election Law Sec. 4-100 (3) maximum of 1,150 registered voters.

21. The Forecast Tool tells us how many hand-counters are needed and the funds indicated in the Forecast Tool are designated only for paying the hand counters. There will be, as always, additional people required for

conducting traditional poll site election day activities. The funds for the counters, as such, present an additional cost beyond the existing election department budget. It is worth noting that the cost of hand counting an entire election compares favorably to any available computerized counting equipment, e.g, DREs or Optical Scanners. DREs and Optical Scanners come with a much higher price to the end user (NY) than any hand-count. Not only is the initial cost substantial, but testing and certification, storage (often necessitating temperature controlled environments), maintenance, reprogramming, updates, service, upgrading to newer models to keep up with specification requirements, etc., add up to substantially more than any hand-count. Furthermore, hand counting keeps the money in the local community -- and as a nice bonus, brings some of the community together in performing a high order civic duty.

I declare under penalty of perjury that the foregoing is true and correct.

/s/_____
DAVE BERMAN

Executed on December 16, 2007