



January 12, 2010

New York State Board of Elections
40 Steuben Street
Albany, NY 12207-2108

Dear Commissioners,

New York State is about to do something no one has ever done before: Change from lever voting machines to optical scan electronic voting machines on such a large scale. It is a bold – but probably necessary -- move to roll out new voting systems statewide all at once.

The nearly 12 million registered voters in New York may eventually embrace the new voting machines in the way that they have come to romanticize the lever machines. Acceptance is more likely to happen and happen more quickly if voters are confident that their votes are being cast as they intend.

We are deeply concerned that, while New York has taken careful steps to select and test new voting systems, the way the systems are designed and configured may end up allowing voters to mistakenly spoil their ballots. No New Yorker has had to worry about overvoting before, because the lever machines simply prevented it. But this safeguard is no longer in place. Voters will face a new ballot layout, a new system of marking and scanning ballots, and new messages about overvoting that they may misinterpret as they process their paper ballots in the automatic tabulators.

This very problem has been reported in Florida and Wisconsin, where it led to overvotes many times higher than would have been expected. New York is likely to have the same issue to a greater extent -- not only because of the voting systems being put in place but also because of the use of fusion voting – consolidating all votes for a candidate who appears on several party lines. Although New York voters have been fusion voting for generations, transferring that practice to new systems means that many voters must relearn how to do even the most basic tasks in casting their ballot. In a close race, large numbers of overvotes could lead to difficult and costly recounts, litigation and undermine New Yorkers' faith in their new system.

This is not an easy or a simple decision, and we appreciate the risks and challenges of each option. But there is a way to proceed with greater confidence than collective opinion: Usability

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testing of the chosen voting systems with real voters and election workers before Election Day will reveal what problems, questions, and concerns voters will have, how those problems could be remedied, and what poll workers should do to respond.

There are excellent resources in New York available to assist in assessing the usability of the voting systems and ballot designs chosen. The Usability Professionals' Association has, in cooperation with the Brennan Center for Justice, conducted many similar tests in several states, including Florida and Minnesota. The headquarters of the AIGA is in New York City. This professional association founded a project called Design for Democracy, which developed evidence-based best practices for design of election materials for the Election Assistance Commission (EAC).

The truth is, no one has ever used these systems with this ballot design and the other constraints New York faces before, so no one knows what will happen. None of the other changes in voting systems have been as extreme as the shift from the use of one system for over 50 years to one that may be misinterpreted in a way that invalidates thousands of ballots because of overvoting.

Testing against the 2005 VVSG requirements is not enough. **We strongly urge you to conduct usability testing of the new voting systems with real voters before Election Day.**

Sincerely,

UPA Usability in Civic Life: Voting and Usability Project
<http://www.usabilityprofessionals.org/civiclif/>



Brennan Center for Justice Task Force on Ballot Design
<http://www.brennancenter.org>



Center for Plain Language
<http://www.centerforplainlanguage.org/>



AIGA Design for Democracy Project (invited)
<http://www.aiga.org/content.cfm/design-for-democracy>



Cc: Assemblyman Brian Kavanagh, Chair, Subcommittee on Election Day Operations
Assemblywoman Joan Millman, Chair, Election Law Committee
Senator Joseph Addabbo, Chair, Elections Committee
Andrew Stengel, Senior Policy Advisor for Government Reform
New York HAVA Coalition