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VIA FACSIMILE

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

September 18, 2007

Dear Commissioners and Co-Executive Directors:

We write to oppose any effort by the State Board of Elections to certify full-face DREs as ballot marking devices as an ostensible means of satisfying federal requirements for full polling place accessibility in 2008. While we strongly support the Board's decision to comply with federal accessibility requirements, any attempt to satisfy those requirements by turning full-face DREs into ballot marking devices is misguided and likely to run afoul of federal and state law.

We echo the objections made by the American Council for the Blind, Citizens Union, the League of Women Voters, New Yorkers for Verified Voting, the New York Public Interest Group, the Puerto Rican Legal Defense and Education Fund, and other groups in their joint letter sent to you earlier today. In particular, we highlight the following points:

- A DRE VVPAT, which would presumably be used as the "ballot," and later counted by hand, is not accessible, because it cannot be read back to the voter via an audio interface. In fact, it cannot be read back in any way other than direct observation. If the DRE counter is turned off (as it would have to be, because the DRE would not have gone through the full certification process), the VVPAT would be the *only* record of the voter's vote. Section 301 of the Help America Vote Act (HAVA) provides, in relevant part, that the accessible system must "be accessible for individuals with disabilities, *including nonvisual accessibility for the blind and visually impaired*, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters." (Emphasis added.)
- As the Brennan Center demonstrated in its landmark 2006 study on electronic voting systems entitled *The Machinery of Democracy: Voting System Security, Accessibility, Usability and Cost*, the full-face DREs that New York is

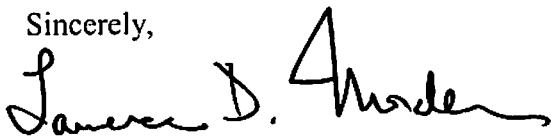
considering for certification are inherently inaccessible. Specifically, their confusing design has historically resulted in very high lost vote rates among all voters, but particularly among Hispanic and low-income voters. The study also finds that such machines present unnecessary challenges to voters with cognitive disabilities.

In sum, aside from the fact that DREs were not designed to be ballot marking devices, their use as ballot marking devices is likely illegal because they would be inaccessible to the very populations they are meant to serve, and may produce unusually high residual vote rates among certain protected populations.

As you are no doubt aware, the Brennan Center has previously brought successful litigation against jurisdictions that have used machines and procedures that resulted in higher lost vote rates among the general public, and that disproportionately impacted minority groups. Moreover, we continue to be committed to ensuring that disabled voters receive the same right to vote privately and independently as all other New Yorkers.

For the reasons detailed in this letter, we strongly urge you to permit the use of only real ballot marking devices that were *designed as* ballot marking devices. Such machines should allow all voters, including the visually impaired, to verify their ballots independently and privately, and should not employ a confusing full-face computer screen.

Sincerely,



Lawrence D. Norden
Counsel, Democracy Program

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