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July 8, 2010

Douglas Kellner and James A. Walsh
Co-Chairs
New York State Board of Elections
40 Steuben Street
Albany NY 12207

Dear Commissioners Kellner and Walsh:

I am writing to urge you to modify the way the new optical scanning voting machines will handle over-votes. Based on experiences in other jurisdictions, I have serious concerns that the current plan giving voters an "easy option" to have their ballot accepted when they have overvoted could result in lost votes for many voters. As the State adopts our new voting technology, it is critical that the public have confidence that it is reliable, accurate, and easy for voters to understand. I do not believe the current plan for handling overvotes will foster this confidence.

The current plan for voting machines is to have them retain, rather than kick back, the overvoted ballot. The message will not tell voters that if they "cast" the ballot (complete the process), the overvoted contests will not count. Instead, voters will be presented with a green "accept" button and a red "reject" button. The result is that most voters who overvote may not understand that their intended choices will not be recorded, if they press green to accept and they cast overvoted ballots.

I am not aware of any situation where a voter would intentionally overvote if they knew that would result in their vote in that race not counting, so the need for an "accept" button is unclear to me.

When Florida employed this procedure in 13 counties in 2008, it produced very high overvote rates for Election Day voting in those counties (about 14 times higher than counties that automatically rejected the overvoted ballots). If the same thing happens in New York, thousands of voters will be disenfranchised. Numerous studies show those most hurt by this practice will be elderly, African-American, Latino, and limited English proficient voters.

I have been advised that this problem can be fixed tomorrow, at no cost, by simply checking a box in the “configuration file” for the machines. That action would require all machines used in New York to reject overvoted ballots, as is done throughout the State of Connecticut, the City of Los Angeles, and most states across the country using similar voting equipment.

This is a critical moment for the election system in New York. As we move to replace decades-old voting machines with more updated and accessible technology, many voters and election day workers will find this change challenging. It is imperative that everything be done to make the new system transparent and easy to understand, so that voters have confidence that this change is truly for the better, and that their votes are being counted.

I therefore urge you to adopt a more straightforward and clear approach to overvoting by having overvotes automatically rejected so voters could correct their mistake.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, reading "Liz Krueger". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Liz Krueger
State Senator