

March 20, 2008

Douglas A. Kellner, Evelyn J. Aquilla, Helena Moses Donohue, James A. Walsh

Commissioners of NYS Board of Elections

40 Steuben St.

Albany, NY 12207-2108

Dear Commissioners:

Cattaraugus County respectfully requests the New York State Board of Elections (NYSBOE) approve and certify for use the HAVA and ADA compliant Liberty System to replace all existing lever voting machines in 2008 elections. We request this implementation in an effort to allow the Cattaraugus County Board of Elections to fully comply with the HAVA requirements under the mandates set forth by NYSBOE and the

U. S. Department of Justice.

It is our opinion that this request supports Judge Sharp's remedial order dated December 2007,

Specifically the following paragraph:

"Non compliance to HAVA is not an option....

It is the clear intent and Order of this Court that, where possible, New York counties be able to utilize, for the fall 2008 federal elections, voting systems that are fully compliant with HAVA. According, consistent with defendants' January 11, 2008 submission (Docket #180), the defendants shall make all possible efforts to provide for certification of a Plan A voting system(s) in time for use of such system(s) in the fall 2008 federal primary and general elections by such counties as wish to utilize fully HAVA-compliant voting systems in such elections

This direction Cattaraugus County wishes to pursue is not something new to the NYSBOE and its commissioners. We quote from the transcript of the Feb. 15, 2008 BOE meeting. Commissioner Douglas A. Kellner stated, "It makes sense for the smaller counties to say: Let's just do it once and go straight into it (Plan A/full HAVA compliance). It also makes sense for us as a state because the smaller counties can then become the test laboratory so that the larger counties can learn from whatever issues might develop as they implement it (Plan A/full HAVA compliance). I think we're all better off that way."

Consistent with our ambition to fully comply with HAVA, the Liberty system has always been our first choice. A copy of our letter dated May 18, 2006 substantiating our position has been enclosed for your convenience. (See Attached) Our choice is based on the easy transition that our voters will make from the existing lever machines to the Liberty system. The full-face, user interface would provide a seamless conversion to a new way of voting. The ease of use for voters with disabilities has been confirmed by the NYSILC Focus Group Voting Machine Testing Report dated March 18, 2008 and has been endorsed by our County independent living organization, Directions in Independent Living, Inc.

Regrettably, within the timeframe of January 28, 2008 until February 8, 2008 during which we had been forced to select a system, the Liberty system was not a choice available... This inability to select the Liberty system was a direct result of the January 24 split decision of the Board not to include the Liberty system on the list of options to the Counties to choose from. On February 8, in response to a courts' order, this inability was removed by a supplemental resolution of the Board of Elections. However, due to a scheduled absence of one of our commissioners our County Board selected our choice -- the only one available -- on Feb. 7, 2008. In addition, NYSBOE officially overturned their previous decision, to not allow the Liberty system to be purchased by the county board of elections, and on February 27, 2008 3 of 4 board members voted in favor of the Liberty system.

As Election Commissioners of Cattaraugus County we are responsible for implementing a voting system that will ultimately serve the long-term needs of our voters. It is our position that selection of a voting system must meet not only interim requirements set forth by NYSBOE, but ultimately long-term HAVA compliance as well. To that end, it makes no sense for Cattaraugus County to commit to a voting system that only provides a questionable short-term fix (Sequoia-Image Cast).

This system, in our opinion, does not meet the HAVA VVSG 2005 requirements and existing NY election law.ⁱ The NYSBOE and its commissioners have heard these concerns expressed by Erie County Election Commissioner Ralph Mohr at the Feb. 15, 2008 meeting.

Overall the Liberty System offers a more economical, logical and safer solution for our County's taxpayers. The base Liberty system has previously been certified to the minimum 2002 VVSG standards set forth under HAVA.ⁱⁱ We urge the NYSBOE and its staff to expeditiously continue toward certification of the Liberty System for Plan A use this fall.

We also have met with reticence on the part of our county legislature's leadership to construct or purchase a warehouse/storage space large enough to accommodate the Sequoia-Image Cast systems. This impediment occurred after we were forced to select a Plan B machine. Thus our initial preference for the Liberty machine due to its smaller footprint and ability to be stacked during storage would reduce the need and cost for a large warehouse facility and a smaller storage facility is more likely to be funded by our county legislature.

We consider it as an extremely important advantage that we only use one system during the election and only have to spend time and resources one time for training. Furthermore, the use of the Liberty system exclusively guarantees to preserve the secrecy of vote for the disabled voter as the ballot receipts have the same physical appearance for every voter.ⁱⁱⁱ

For the above described considerations and reasons the Cattaraugus County Board of Elections hereby requests that the NYSBOE notify O.G.S. to cancel the present purchase order/invoice #MA279679 for Sequoia-ImageCast systems and replace it with a valid purchase order(s) for Liberty Election Systems.

We realize time is of the essence and would appreciate your prompt response to our proposed plan that we request be put before the commissioners at your next meeting on March 26, 2008.

Yours truly,

Sue A. Fries

Kevin C. Burluson

Cc: NYSBOE Co-Executive Directors Stanley Zalen and Todd Valentine; NYSOGS Procurement Service Group, Ms. Lori L. Bahan, Purchasing Officer, Mr. Jamie Nussbaum, Team Leader, Ms. Michele Reale, Senior Attorney and Mr. Brian F. Heffernan, U.S. Department Of Justice

ⁱ After reviewing the documentation and Systest test results we found the following discrepancies:

Section 3.1.5 d. of the VVSG'05 Minimum font size to be 3mm will not be met in combination with the NY full face requirement especially in off election years with a relative big number of local offices and propositions. The ImageCast system passed the HAVA complaint test because of the limited ballot size (one proposition and two races). The documentation explains that they solve this problem by scrolling, however this is not HAVA VVSG 2005 compliant as Section 3.1.6 a. of the VVSG'05 determines that Voting machines with electronic image displays shall not require page scrolling by the voter.

The ImageCast offers the possibility to show more than one election district. This is not allowed under NY Election Law §4-104 5.(a) and 5(b) which stipulates that separate voting machines or ballots shall be provided in all cases that distinct election districts share one common polling location.

ⁱⁱ There is a price difference of at least \$3000. - per unit. The Liberty system would accommodate an approximate one to one replacement of the existing lever machines. The NYSILC Focus Group Voting Machine Testing Report March 18, 2008, shows an average time per voter of 23 minutes for the ImageCast system and only 11 minutes for the Liberty system. When the ImageCast system is used by disabled voters the County would have to buy extra precinct scanners to guarantee reasonable waiting times at the polling station.

The Liberty System does not require the requisition of preprinted ballots, saving more than \$31,000 per election. The liberty system requires considerable less storage space and provisions than the selected ImageCast.

ⁱⁱⁱ With the ImageCast system there is a distinct difference between the preprinted ballots and the ballots printed on that machine for disabled voters. There is also a distinct difference between hand filled out preprinted ballots and machine filled out ballots by the Automark and we anticipate court complaints by disabled voters claiming breach of voter secrecy.