



# New York State Law and Lever Voting Machines

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Given the chaos and delays in selecting new voting technology for New York State, many voters wonder why we can't just keep the mechanical lever machines which have been used in New York elections for generations. But in the view of the State and County Boards of Elections, state legislators, and citizen advocacy organizations, this is legally this is out of the question. New York State law and the US Department of Justice Lawsuit insist that the lever machines be phased out by September 1, 2007.

And although most voters have the impression that lever machines work well—probably because they are so familiar—a critical examination reveals that they fall well short of a transparent voting system that can be trusted. It is well known by New York election commissioners, pollworkers and machine technicians that a number of lever voting machines fail in each and every election.

## Problems with Lever Voting Machines

We need reliable voting systems that are understandable to voters and, ultimately, can be audited. With a lever voting machine, the voter flips levers and trusts that the counters corresponding to the chosen candidates are properly incremented. The average voter has little understanding of the workings of these machines. Most important, there is no way to verify a vote once it is cast; the voter cannot look at the counters and see if the machine has correctly counted their vote. There is no way to audit votes or recount them later. And there is no viable way to attach printers to produce a voter-verifiable paper trail, a recent requirement of New York election law.

Lever machines are certainly not foolproof. In his 2005 report on voting in New York, [Attorney General Spitzer said](#)<sup>1</sup>:

On Election Day 2004, as in past elections, there were numerous reports of broken voting machines. When machines break and voters must use emergency ballots, the process slows, lines get longer, and voters become discouraged from voting. New York relies almost entirely on lever machines that are over 40 years old, with close to 20,000 such machines serving some 15,000 election districts state-wide. Because no new lever voting machines are being manufactured, it is increasingly difficult to get the spare parts to fix broken machines.

[Professor Douglas W. Jones of the University of Iowa](#) mentions another possible failure mode based on lever machine mechanics:<sup>2</sup>

Roy G. Saltman has noted that the number 99 shows up in the vote totals on lever machines significantly more frequently than would be expected if vote totals were randomly distributed -- that is, the number of 99's is noticeably different from the number of 98's or 100's. The probable explanation is that it takes more force to turn the vote counting wheels in a lever machine from 99 to 100, and therefore, if the counter is going to jam, it is more likely to jam at 99. The fact that this is a frequent occurrence in vote totals reported from lever machines is empirical evidence that the lever machines that have been used in real elections are, in fact, inadequately maintained and that this results in the loss of a significant number of votes.

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1 E. Spitzer, NY Attorney General's Office, "Voting Matters II: No Time to Waste" (2005). 2/7/2005, [http://www.oag.state.ny.us/press/reports/voting\\_matters\\_2005.pdf](http://www.oag.state.ny.us/press/reports/voting_matters_2005.pdf) 7/8/06

2 D. W. Jones, "A Brief Illustrated History of Voting" (2003). <http://www.cs.uiowa.edu/~jones/voting/pictures/> 9/19/06.

Robert Brehm, Deputy Information Director of the New York State Board of Elections, reported that he is aware of a number of voting machine malfunctions, including cases where gear teeth broke and did not register votes. At the end of the voting day when an error is detected, there is no way to recover lost votes. Mr. Brehm noted the case of an election in Westchester County in 2001 in which a jammed lever voting machine that undoubtedly lost votes caused a protracted court case that took over two years to settle. ([Delgado vs. Sunderland et al.](#)<sup>3</sup>)

### **New York State Election Law Bans Lever Voting Machines after September 1, 2007**

Can New York State retain its lever machines? According to the prevailing interpretation of New York's current laws and regulations, they cannot. Lever machines lack the voter verifiability, auditability, and other new required features for voting systems to qualify for use in the Empire State.

Verifiability and auditability requirements are specified in Section 7-202(1j) of the [New York 2006 Election Law](#):<sup>4</sup>

1. A voting machine or system to be approved by the state board of elections shall:
  - j. retain all paper ballots cast or produced and retain a voter verified permanent paper record which shall be presented to the voter from behind a window or other device before the ballot is cast, in a manner intended and designed to protect the privacy of the voter; such ballots or record shall allow a manual audit and shall be preserved in accordance with the provisions of section 3-222 of this chapter;

The first sentence in the following paragraph from "The Election Reform and Modernization Act of 2005" ([ERMA](#))<sup>5</sup> clearly states that New York's law will not allow lever machines after 2007:

23 Effective September 1, 2007, all lever machines in New York state  
24 shall be replaced by voting machines or voting systems which meet the  
25 requirements of section 7-202 of the election law, provided, however,  
26 that with respect to any board of elections which determines to retain  
27 lever machines on or after the effective date of this act and prior to  
28 September 1, 2007, the provisions of this act which impose new standards  
29 for voting machines which were not required prior to the effective date  
30 of this act, including the amendments to section 7-202 of the election  
31 law made by section six of this act, shall not be applicable with  
32 respect to such lever machines during any period of time during which  
33 such lever machines are lawfully utilized. (ERMA 2005, S-7209, S 11).

The rest of the paragraph ("provided...") is a convoluted way of saying that the standards imposed on new voting technology cannot be applied to lever machines during their lawful use, which includes any time before September 1, 2007. In other words, counties that wish to continue using lever machines up to August 31, 2007 may legally do so without making any changes to their existing lever machines.

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3 J. E. Bailey, White Plains CitizeNetReporter, "Riding the Quo Warranto Trail with Glen Hockley and Larry Delgado" (2004). <http://www.whiteplainscnr.com/modules.php?name=News&file=article&sid=2674> 9.19.06.

4 New York State Board of Elections, "State of New York 2006 Election Law" (2005). <http://www.elections.state.ny.us/NYSBOE/download/law/2006NYElectionLaw.pdf> 8.14.06.

5 T. Hommel, WheresThePaper.org, "Comments on the Election Reform and Modernization Law (ERMA) 2005" (2005). [http://www.wheresthepaper.org/ERMA\\_45Comments.htm](http://www.wheresthepaper.org/ERMA_45Comments.htm) 9.19.06.

## Department of Justice Lawsuit Compels Compliance

Earlier this year, the US Department of Justice brought a lawsuit against the New York Board of Elections for not being in compliance with HAVA. In his June 2, 2006 decision, [US District Court Judge Gary L. Sharpe said](#):<sup>6</sup>

No later than August 15, 2006, the SBOE must file with the Court a proposed detailed schedule for implementation of its long term proposal for replacing all lever voting systems in the State with all HAVA-compliant voting systems in every polling place by September 2007.

At this point both state and federal law make it clear that New York State's lever machines must be replaced by September, 2007. In light of the fact that lever machines are prone to failure, provide no means for voters to verify their votes, and offer no way to audit results, perhaps their replacement isn't such a bad idea.

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<sup>6</sup> G. L. Sharpe, "Proposed Remedial Order, Civil Action No. 06-CV-0263" (2006).  
<http://www.nyvv.org/doc/USCourtOrder060206.pdf> 9.19.06.