



## Commentary on the Onondaga Election Commissioners Press Release

Commissioners Szczesniak and Kiggins of Onondaga County recently distributed a press release in which they interpret the Help America Vote Act (HAVA), the US Election Assistance Commission's Voluntary Voting System Guidelines, as well as New York State Election laws as justifying the conclusion that "the only type of voting system" that they can select for their county is a Direct Recording Electronic system. This conclusion is demonstrably incorrect. Below we point out errors, weaknesses, and misunderstandings expressed in this press release.

First, the claim that paper ballot-optical scan systems, augmented by ballot marking devices for disabled accessibility, do not meet HAVA requirements flies in the face of reason and actual practice. If this were so, how is it possible that many states are selecting exactly this system to comply with HAVA?

Second, we note that Commissioners Szczesniak and Kiggins label the two voting system at issue in misleading ways. They label the system based on hand-marked paper ballots, supplemented with a ballot-marking device for the disabled, and accompanied by a precinct-based scanner for counting (PBOS system) as the "Optical Scan voting system." It is important to be clear that the scanner only counts votes, it does not record them. In addition, the commissioners choose to label direct recording electronic voting machines (DREs) as the "Electronic system." This usage is an oversimplification; as a modern system, a complete PBOS system includes two electronic devices (the ballot marking device and the scanner), but it preserves the reliability of voting on paper ballots. In addition:

- **The press release makes unjustified claims that PBOS cannot provide accessibility for the disabled.** The National Association of Protection and Advocacy Systems (now the National Disability Rights Network) has said that currently no one voting machine is accessible to persons with all types of disabilities. *But it also points out that "most of the other machines on the market are significantly less accessible to voters with dexterity disabilities" than the AutoMARK ballot marking device.* (See "[Voting Machines and Dexterity Disabilities](#)" - [NAPAS-NDRN.pdf](#)).

The Onondaga County commissioners single out "the visually impaired" to try to argue that the PBOS system does not provide accessibility. However, a device like the AutoMARK provides accessibility to more kinds of visual impairment than those DREs that rely on a printed ballot face that cannot enlarge the font size or display the ballot in contrasting colors. The commissioners seem to be questioning whether a blind voter could independently submit the marked ballot to the scanner. Actually, this is quite feasible, especially in the light of the HAVA-mandated opportunities for voters to try the machines in advance. A rope or bar could be used as a guide between the ballot-marker and the scanner. Several ways to protect the privacy of the ballots have been devised (*ibid*, NAPAS). In addition, scanners can read ballots whether submitted right-side-up or upside-down.

The EAC Advisory says that complete independence will not be possible for all kinds of disabilities, but the currently available ballot-marking device (AutoMARK) has been shown to provide complete accessibility for more kinds of disabilities than the DREs under consideration. (See <http://www.verifiedvotingfoundation.org/accesscharts>).

- **The press release misrepresents the EAC as supporting only DREs.** The commissioners claim that the EAC Advisory 2005-004 goes “on to say that while future technological innovation may produce other voting systems with the same capacity of an electronic voting system, the only **current** fully HAVA compliant disabled accessible voting system is Electronic.” Such a statement cannot be found in EAC Advisory 2005-004. Indeed it explicitly says “*this advisory should not be read to preclude the innovation and use of accessible voting systems other than DREs for purposes*” of meeting HAVA accessibility requirements (EAC, July 20, 2005, 4).
- **The press release does not justify its claim that the PBOS system would be more costly than DREs.** Detailed analyses available from New Yorkers for Verified Voting demonstrate that this is not the case. Across the country the PBOS system has been found the more cost-effective choice, not only because a single ballot-counter can accommodate multiple election districts and multiple ballot-marking booths, but also because the scanners are reliable and require little maintenance or repair (see [www.nyvv.org/reports/AcquisitionCostDREvOptScanNYS.pdf](http://www.nyvv.org/reports/AcquisitionCostDREvOptScanNYS.pdf) ).
- **The press release’s promise of security with the DRE system does not square with the advice of computer security experts.** The commissioners speak of a “bipartisan team of Board of Elections employees with proper training” to maintain and program the electronic voting machines. They also say that “The Electronics are stand-alone machines” and “to cause the system to break down, a person would need to tamper with each voting machine.” This fails to recognize the complexity of the firmware and software in computerized systems, the many opportunities that DREs allow for accidental or deliberate miscoding, and the fact that a version of the software containing flawed or rogue code can and will be copied to *many* machines.
- **The press release relies on a false dichotomy between marking a ballot and casting a vote.** Much of the argumentation employed by the commissioners to justify their judgment that the Paper Ballot/Optical Scan voting system is not compliant with HAVA’s accessibility requirements is based on their assertion that “Voting is a 2-step process – **mark** your ballot, then **cast** your ballot.” HAVA and the EAC Advisory 2005-004 include no such strict dichotomy between “marking” and “casting” a vote. That the marked ballot is the voted ballot is clear - absentee and provisional ballots are considered records of votes to be counted either by hand or by a scanner. New York State legislation defines the paper ballot as the official record.
- **The press release mistakenly assumes that the use of DREs in three NY counties’ recent elections is an adequate test.** It claims cost effectiveness and implies there were no problems with reliability. As NYVV has said, “The Sequoia DREs used in Saratoga County did not have the voter verified paper ballot (VVPB), so the machines submitted for certification will be different. One cannot know there were no problems without verification and audits. Many problems with DREs that lack verification are detected only when large discrepancies occur” (See “Correcting Common Misunderstandings of PBOS” at <http://www.nyvv.org/reports/CorrectingRM.pdf>).
- **The last paragraph of the press release contradicts earlier negative assertions about the PBOS system by saying that “both Electronic and Optical Scan voting systems are good systems.”** The commissioners attribute problems with any voting system to ineffective “management policies and procedures.” We respect the many years of experience the Onondaga County election commissioners bring to such management. But at this point in technological

development, *those who are experts on computer security say that DREs simply cannot be managed so as to protect the integrity of our elections.* (See, e.g., David Dill's June 21, 2005 testimony to the Senate Rules Committee - <http://www.verifiedvotingfoundation.org/downloads/eactestimony.pdf>)

In conclusion, New Yorkers for Verified Voting regrets the need to publish replies to such mistaken attacks on the PBOS system. We would be glad to consult with election commissioners by e-mail, by telephone, or in person whenever they have questions. Our website also carries much information that could help avoid misunderstandings (<http://www.nyvv.org>).

We trust that election commissioners share our hope that New York will have the most reliable, verifiable, secure, auditable, accessible voting system available. We are ready at any point to enter into dialogue with you in public or in private in order to explain why we believe the PBOS system is the answer to that concern. Together, we must find a way to offset the loss of voter confidence that has developed in recent years.