

**Statement before the Governmental Operations Committee
New York City Council
Nov. 13, 2007**

**Teresa Hommel
10 St. Marks Place, New York NY 10003
www.wheresthepaper.org**

**One of the greatest voter deceptions in our nation today
is the use of computers to record, cast, store, handle, and count votes**

I read "Deliver the Vote" by Tracy Campbell, and some other works on the history of election fraud in our country. It seems that fraud has been widespread and well-accepted but conducted locally. It seems that the strength of local political organizations, as manifest in their ability to "cheat fair and square," has been accepted as a substitute for the will of local voters.

The Help America Vote Act in 2002 and the subsequent rapid increase in use of electronic voting machines have changed the type of fraud that America has to deal with. With electronic voting systems:

- Fraud can be accomplished on an unprecedented "wholesale" or nationwide scale.**
- Fraud can be accomplished while leaving no evidence, or no evidence that can be discovered in a timely-enough manner to make a difference.**
- Fraud can be accomplished by vendors and financial interests, so that fraud by local individuals and organizations may be reduced to window-dressing or smokescreens for the electronic fraud accomplished from distant, remote locations by others.**

It is true that voter registration and voter access to the voting booth continue to be areas of deception and intimidation. Electronic voting and vote-tabulating equipment, however, provide an additional mechanism by which one person can control election outcomes by tampering that takes only a few seconds, whether before, during and/or after an election.

None of our long-standing, well-respected, national good-government organizations are dealing with this problem. Our state and federal government are not dealing with it. But in this big void, the New York City Council's leadership and voice on election issues has been loud and clear.

This Council has already passed two resolutions on voting machine issues. Now two more resolutions are before you in this Committee, introduced by Council Member Darlene Mealy. Res. 784 supports a federal bill against voter deception and intimidation. Res. 961 urges our state to seek alternatives to buying voting equipment from the major vendors, all of whom have delivered shoddy machines and services, and caused chaos in the elections of other states. I urge this Committee to continue to deal with election issues for as long as these issues are a problem. Please pass these resolutions out of committee, and recommending them for passage by the full City Council.

Thank you.

Opening Statement of Jeff Strabone

New York City Council
Governmental Operations Committee

Tuesday, November 13, 2007
Hearing Room, 250 Broadway, 14th Floor

Chairperson: Simcha Felder
Committee Members
Joseph P. Addabbo, Jr.
Inez E. Dickens
Erik Martin Dilan
Domenic M. Recchia, Jr.
Larry B. Seabrook
Peter F. Vallone, Jr.

Res 784 - By Council Members Mealy, Avella, Brewer, Dickens, Fidler, Foster, Gonzalez, James, Mendez, Palma, Seabrook, Vann, Weprin, White Jr. and Sanders Jr. - Resolution urging the United States Congress to pass S. 453, the "Deceptive Practices and Voter Intimidation Prevention Act of 2007," introduced by Senator Barack Obama, which prohibits deceptive practices in Federal elections.

Good morning, Chairman Felder and members of the Committee. I appreciate the opportunity to speak to you today on Res. 784, urging the U.S. Congress to pass the Obama-Schumer Deceptive Practices and Voter Intimidation Prevention Act of 2007.

In a democratic republic such as ours, no laws are more important than those protecting the right to vote. But from time to time it becomes necessary to update those laws. Legislation is, by its nature, fundamentally reactive. New forms of bad behavior break out across the land, and government has to play catchup to legislate against the new wrongdoing.

Election fraud is as old as elections. It's sad to say, but true nonetheless, that there will always be individuals who strive to manipulate elections for partisan gain. It is up to the people and their representatives in government to try to keep up with those who would subvert our elections and, thereby, our republic.

Members of the Committee, the manipulators of our elections have been busy these past several years, and it's past time for us to catch up to all their anti-democratic machinations.

That is why I ask you to lend the support of the City of New York to S. 453, the Obama-Schumer Deceptive Practices and Voter Intimidation Prevention Act of 2007.

Let me tell you some of the most recent innovations in electoral skulduggery, and I am going to borrow here from the language in the bill, the Congressional Record, and the October 4, 2007 report of the Senate Judiciary Committee.

1. Deceiving naturalized citizens about their right to vote.

“In the 2006 midterm election, 14,000 Latino voters in Orange County, California received mailings from the California Coalition for Immigration Reform, warning them in Spanish that “if you are an immigrant, voting in a federal election is a crime that can result in incarceration”. In fact, an immigrant who is a naturalized citizen of the United States has the same right to vote as any other citizen.”

(Source: Text of S. 453, Section 2 (6).)

2. Deceiving voters about endorsements.

“In 2006, as well, fliers were handed out on election day in Maryland that gave the impression that top Republican candidates for office were Democratic candidates and were endorsed by prominent African Americans. These fliers were a clear and deliberate attempt to mislead voters.”

(Source: Senator Schumer, Congressional Record, January 31, 2007, page 1428.)

3. Deceiving voters about criminal penalties for voting.

“In Virginia, registered voters received recorded calls that falsely stated that the recipient of the call was registered in another State and would face criminal charges if they came to the polls.”

(Source: Senator Schumer, Congressional Record, January 31, 2007, page 1428.)

4. Deceiving voters about the day of the election.

“In 2002, fliers were distributed in public housing complexes in Louisiana, telling people that they could cast their votes 3 days after election day if the weather was bad.”

(Source: Senator Schumer, Congressional Record, January 31, 2007, page 1428.)

and 5. Deceiving voters about ID requirements.

“In 2004, Native American voters in South Dakota were prevented from voting after they did not provide photographic identification upon request, despite the fact that they were not required to present such identification in order to vote under State or Federal law.”

(Source: Text of S. 453, Section 2 (7).)

What all of these democracy-thwarting techniques have in common is deceit. They are designed to deceive people into not even showing up to vote at the polls. In other words, the votes are suppressed before they are even cast. With all the national attention to voting machine irregularities, the manipulators of elections are developing more and more ways of committing electoral fraud even without ballot- and machine-tampering.

That is why it is essential to support S. 453. The bill will criminalize deceit designed to suppress turnout. It prohibits any person from “knowingly deceiving any other person regarding: (1) the time, place, or manner of conducting any federal election; or (2) the qualifications for or restrictions on voter eligibility for any such election”.

The bill:

- “Makes intent to prevent another person from exercising the right to vote an essential element of the offense.”
- “Creates a private right of action for any person aggrieved by a violation of such prohibition.”
- “Prescribes a criminal penalty for such deceptive acts.”
- “Directs the U.S. Sentencing Commission to review and, if appropriate, amend the federal sentencing guidelines and policy statements applicable to persons convicted of any offense under this Act.”
- “Authorizes any person to report to the Attorney General false election information.”
- “Requires the Attorney General, immediately after receiving such a report, to consider and review it and, if there is a reasonable basis to find that false information has been communicated, to: (1) undertake all effective measures necessary to provide correct information to voters affected by the false information; (2) refer any pertinent matter to the Civil Rights Division of the Department of Justice for prosecution; and (3) refer the matter to the appropriate federal and state authorities for criminal prosecution or civil action after the election.”
- “Directs the Attorney General to study the feasibility of providing such corrective information through public service announcements, the emergency alert system, or other forms of public broadcast.”

and

- “Authorizes the Attorney General to establish a Voting Integrity Task Force.”

(Source: Congressional Research Service, bill digest.)

It provides for civil penalties and criminal punishment of up to five years in prison or a \$100,000 fine.

Members of the Committee, we need this law and we need it now, if not yesterday. We need to get tough on electoral fraud by increasing the penalties for knowingly deceiving voters about the time, place, and manner of elections.

I can understand why this law was not already on the books: who could have foreseen that this would be the direction that electoral fraud would take? But now that we know the latest innovations in thwarting our democracy, we are obligated to act, and to act promptly.

Members of the Committee, at our very next election, we will choose not only a new Congress but a new President as well. Let us do all that we can to urge Congress to pass this law now, in time for 2008. Our duty to democracy demands it.

Thank you.

**Pearl Reeves
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718-898-3363**

**New York StateWide Senior Action Council
Statement before the Committee on Governmental Operations
New York City Council
November 13, 2007**

My name is Pearl Reeves. I am a board member of the New York StateWide Senior Action Council. Thank you for the opportunity to speak here today.

I urge you to vote for the resolutions before you on the subject of election integrity, and to recommend them for passage by the full City Council.

This Committee and the full City Council have already passed two resolutions on voting equipment. You have set a standard for the nation in paying knowledgeable attention to the machines that our city and state may use for running our future elections.

Now, Resolution 784 urges our Congress to pass the "Deceptive Practices and Voter Intimidation Prevention Act of 2007." If we want to live in a democracy, it is important for all citizens and all governmental bodies to speak up against deception and intimidation in our elections. We must take whatever action we can against these practices. That is why I am here to speak today, and why you must take positive action on this resolution.

Resolution 961 is not before you today, but it is equally important. It urges our State Board of Elections to seek alternatives to buying voting equipment from our major national vendors. We have seen mountains of evidence that these vendors provide shoddy machines and service that have caused chaos in elections all over our country. We have seen these vendors raise their prices for service once jurisdictions are dependent on them. Now, New York is under pressure from the U.S. Department of Justice to buy machines from these vendors anyway. We need alternatives that make sense! That is what Resolution 961 is about. I urge you to take action on it as soon as possible, to speak up with a voice of reason.

Thank you.

Testimony: Tuesday, November 13, 2007
NYC City Council- Committee for Governmental Operations

Good afternoon, Chairperson Felder, members of the Governmental Operations committee, and audience present. My name is Melissa Martinez and I come to you today to offer my support of New York City Resolution 784. As a current student of public policy, I have closely followed the measures taken by both our federal and city legislators in response to the episodes of voter intimidation and deceptive practices, which for the vast majority have been targeted against low-income, minority voters, in particular new voters. Just a few weeks ago, students at Georgia Southern University at Statesboro were the victims of intimidation and deception as they organized early registration booths on their campus. Overwhelming police presence as well as downright harassment by police officers who insisted to question students' voting eligibility based on residency are examples of just a few of these intimidation tactics against the new student voters. One local politician even tried to place an ad in the local campus paper telling students that if they voted, their parents could no longer list them as dependents on their tax returns and therefore would run the risk of losing their financial aid.¹ The recent Georgia Statesboro case is just one of dozens of voter intimidation and deception cases that have occurred in more than thirty states in our nation in the last year. These are serious and intolerable incidents of political maneuvering that cannot be simply frowned upon as we approach our next national election, a moment where we need as many eligible voters ready and eager to cast their vote.

In a country like the US where transparency and democratic legitimacy are practices to be upheld, there is absolutely no place for this type of ill-willed behavior. These are simply foolish tactics that have unfortunately become too commonplace in our political arena, where we no longer seem to demonstrate decisive arguments to counterattack our ideological opponents. Instead some deem it necessary to subject people to fear as a means of achieving political guarantees.

The current bill endorsed by Senator Obama and others in Congress promises to classify these deceptive practices as a crime and would require the Justice Department to prepare appropriate reports relating to its implementation. The bill has gained substantial support so far in Congress and many legal and political advocacy groups like the Brennan Center for Justice and USPIRG, and several important media outlets have truly made it an issue to bring this issue to the fore. Caucuses of local politicians like our New York City Council are stepping forward to also urge Congress to move forward with this bill. Yet, the more time passes, especially as we get closer to election day, the greater possibility of having episodes like the Georgia Statesboro case to reoccur. My ultimate fear, as a student and an advocate for voting rights, is the impact these episodes has already had on first time voters. Will they return to the voting booths?

Let us continue working and do our best to promote Deceptive Practices and Voter Intimidation Prevention Act of 2007 to Congress with success. Our country needs it. Again I thank you all for taking a stance on behalf of the American people.

¹http://www.nationalcampaignforfairelections.org/news_item/ga_southern_students_threatened_when_trying_to_vote/

Subject: HAVA citation

From: "R. Mercuri" <notable@mindspring.com>

Date: Mon, 12 Nov 2007 14:27:03 -0500

To: Richard Wagner

Hi Richard --

The full text (I assume of the passed version) of HAVA is on the FEC's website at http://www.fec.gov/hava/law_ext.txt

Section 102 pertains to "Replacement of punch card or lever voting machines" (I've copied it below). Notice that everything in Section 102 says "shall" not "must." Federal imposition of a particular voting method on the states is likely a violation of "states rights."

Furthermore, the definition of an acceptable voting machine for Federal elections in Section 301 (I've also copied the relevant part below) specifically INCLUDES lever voting systems as ELIGIBLE for use, given the constraints (which they do comply with). You might want to read further in Section 301 for more constraints.

There was nothing in HAVA that REQUIRED the elimination of punch card and/or lever machines. It is the DOJ's (erroneous) interpretation of "shall" as "must" and further misinterpretations about the lever machines' inability to provide manual audit and disabled accessibility, that have allowed them to attempt the lawsuit.

We'll be watching them duke this out for a while, it seems.

More later,
Rebecca Mercuri.

SEC. 102. <NOTE: 42 USC 15302.> REPLACEMENT OF PUNCH CARD OR LEVER VOTING MACHINES.

(a) Establishment of Program.--

(1) In <NOTE: Deadline.> general.--Not later than 45 days after the date of the enactment of this Act, the Administrator shall establish a program under which the Administrator shall make a payment to each State eligible under subsection (b) in which a precinct within that State used a punch card voting system or a lever voting system to administer the regularly scheduled general election for Federal office held in November 2000 (in this section referred to as a "qualifying precinct").

(2) Use of funds.--A State shall use the funds provided under a payment under this section (either directly or as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in qualifying precincts within that State with a voting system (by purchase, lease, or such other arrangement as may be appropriate) that--

- (A) does not use punch cards or levers;
- (B) is not inconsistent with the requirements of the laws described in section 906; and

(C) meets the requirements of section 301.
(3) Deadline.--

(A) In general.--Except as provided in subparagraph (B), a State receiving a payment under the program under voting systems or lever voting systems in the punch card precincts within that State have been replaced in time for the regularly scheduled general election for Federal office to be held in November 2004.

(B) Waiver.--If a State certifies to the Administrator not later than January 1, 2004, that the State will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, the State shall ensure that all of the punch card voting systems or lever voting systems in the qualifying precincts within that State will be replaced in time for the first election for Federal office held after January 1, 2006.

(b) Eligibility.--

(1) In general.--A State is eligible to receive a payment under the program under this section if it submits to the Administrator a notice not later than the date that is 6 months after the date of the enactment of this Act (in such form as the Administrator may require) that contains--

(A) certifications that the State will use the payment (either directly or as reimbursement, including 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in the qualifying precincts within the State by the deadline described in subsection (a)(3);

(B) certifications that the State will continue to comply with the laws described in section 906;

(C) certifications that the replacement voting systems will meet the requirements of section 301; and

(D) such other information and certifications as the Administrator may require which are necessary for the administration of the program.

(c) Amount of Payment.--

(1) In general.--Subject to paragraph (2) and section 103(b), the amount of payment made to a State under the program under this section shall be equal to the product of--
(A) the number of the qualifying precincts within the State; and
(B) \$4,000.

(2) Reduction.--If the amount of funds appropriated pursuant to the authority of section 104(a)(2) is insufficient to ensure that each State receives the amount of payment calculated under paragraph (1), the Administrator shall reduce the amount specified in paragraph (1)(B) to ensure that the entire amount appropriated under such section is distributed to the States.

(d) Repayment of Funds for Failure To Meet Deadlines.--

(1) In general.--If a State receiving funds under the program under this section fails to meet the deadline applicable to the State under subsection (a) (3), the State shall pay to the Administrator an amount equal to the noncompliant precinct percentage of the amount of the funds provided to the State under the program.

(2) Noncompliant precinct percentage defined.--In this subsection, the term "noncompliant precinct percentage" means, with respect to a State, the amount (expressed as a percentage) equal to the quotient of--

(A) the number of qualifying precincts within the State for which the State failed to meet the applicable deadline; and
(B) the total number of qualifying precincts in the State.

(e) Punch Card Voting System Defined.--For purposes of this section, a "punch card voting system" includes any of the following voting systems:

- (1) C.E.S.
- (2) Datavote.
- (3) PBC Counter.
- (4) Pollstar.
- (5) Punch Card.
- (6) Vote Recorder.
- (7) Votomatic.

SEC. 301. <<NOTE: 42 USC 15481.>> VOTING SYSTEMS STANDARDS.

(a) Requirements.--Each voting system used in an election for Federal office shall meet the following requirements:

(1) In general.--

(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, electronic system) shall--

(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error);

(iii) if the voter selects votes for more than one candidate for a single office--

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and

(III) provide the voter with the

| opportunity to correct the ballot before

the ballot is cast and counted.

|

**Election Fraud in America:
Don't worry about Paper Ballots--
The Problem is Secret Procedures and Lack of Observers!**

**Every pollsite should have paper ballots, continuous cameras focused on the ballot box,
and citizen observers.**

As a citizen activist against electronic voting machines ("DREs") and an advocate of voter-marked paper ballots and precinct-based optical scanners, the most common argument I hear against paper ballots is that "they have always been subject to fraud."

To find out more, I read Deliver the Vote by Tracy Campbell, a history of American election fraud from 1742 to 2004, and the 68-page chapter on fraud in Election Administration in the United States, which details some cases that took place in the 1920s.[1] Here's what I learned.

Regardless of the technology used for voting, three characteristics of fraud have always been the same:

1. Fraud occurs when election procedures are conducted in secret. Secrecy has been supported by law makers, law enforcement, and the courts. People in positions of power have stayed in power by controlling the conduct of elections, and keeping what they do secret.
2. When fraud occurs, citizens are treated as outsiders to the election process, and are prevented, by the use of law or violence, from participating in or observing election procedures, and from investigating irregularities.
3. In order to control the real votes that are cast, certain would-be voters have been discouraged from voting by the use of law and violence.

It's a sorry history--observers kidnapped or beaten up, and courts refusing to open the ballot boxes to find out whether what's inside has any relationship to precinct tally sheets.

DREs, electronic voting machines, continue this tradition of fraud. Just when surveillance and security technology could open our poll sites to continuous observation and prevent the hanky-panky, DREs establish a new barrier to citizen oversight. Citizens are shut out. We can't understand the procedures. We can't observe in a meaningful way sufficient to attest that procedures and counting were proper and honest. Voters can't even observe their own votes.

Just like the ballot boxes of old, DREs cannot be opened—their insides are concealed by trade secret and intellectual property claims of vendors, which have been consistently upheld by election administrators and courts. Courts today are playing the same role with DREs that courts of yesterday played with wooden ballot boxes. Our courts are protecting the secret software and any other secrets that might be inside, such as log files showing communications intrusions,

alterations of tally files, and other evidence of fraud. This is the reason we sometimes hear “there’s no evidence that DREs have ever been subject to fraud.”

Despite talk about outside hackers, insider control of election outcomes has never been easier-- just point and click, and after changing the tallies, remember to “save” before you “exit”.

It is ironic that by allowing our votes to be concealed inside computers—and thereby facilitating fraud—we may actually prevent some of the violence historically associated with elections. Obviously, with computers handling the votes, with errors and fraud being invisible and undetectable, it doesn’t matter who votes or who observes in the poll site. We no longer need violence to suppress the vote or scare off observers.

New Legislation in an old Model

After reading these works on election fraud, I read two election reform bills in Congress: H.R. 811 and S. 1487. They do not prohibit secrecy related to computerized voting systems.[2] Instead they give vendors' trade secret claims priority over citizens' right to know how elections are conducted. Although limited disclosure is mandated, both bills put unfair burdens on citizens to request disclosure of software, appeal denials of disclosure, seek undefined remedies for denied or delayed disclosure by undefined procedures, and bear the risk of lawsuits if vendors assert improper use of disclosed information. Meanwhile, elections are about votes – not computers. Neither bill requires meaningful observation of vote handling by ordinary non-technical citizens so that we can exercise oversight of our elections

Technology Can Serve Democracy

Technology can be useful in elections in the form of tactile, mechanical, robotic, or computerized devices to assist voters with disabilities, non-English languages, or illiteracy who want to make their voting selections without requiring another person to know for whom they are voting.

Technology can also help to secure our ballot boxes: surveillance cameras, heat and motion sensors for storage areas, and the many technologies used in warehouses to protect and keep track of inventory.

There are many ways that twenty-first century technology can be useful in elections, but computers should not be used to record, cast, store, handle, and count the votes because this prevents the citizen participation and observation that can keep these procedures honest.

Computers are not secure. Computers cannot be secured.

People argue over whether computers are secure. “Yes they are!” “No they aren’t!” The arguments are not very meaningful, because here’s the fact--no large computer system is secure, and no computer system is secure from people who work with it.[3]

Paper can be secure.

Is paper secure? Can it be? Banks, warehouses, and other businesses protect paper with minimum difficulty by the use of careful procedures, competent management, and surveillance and security technology. But it needs to be said that nationwide, our election administration has an aggressive “can’t do” attitude: “we can’t protect paper,” “we can’t get people to volunteer to

help with elections,” “we can’t audit computers to show that they are working properly because audits are too burdensome, time-consuming, and expensive, and also they are unnecessary because we trust the computers.”[4]

Election Reform in America—2007

America is at a crossroads. If we are to continue to be a democracy, we need to get rid of DREs now and use observers and surveillance and security technology to secure our ballot boxes for paper ballots.

But it takes more than good voting technology to make a democracy.

We citizens need to inform ourselves about our government via the alternative news media. Just on the subject of elections, most people know about the lost 18,000 votes in the Christine Jennings race in Florida’s 13th Congressional District. But our major media has not covered the thousands of other documented failures of computerized voting machines, and the voters who were disenfranchised as a result. We can learn much from various web sites: www.VotersUnite.org , www.WheresThePaper.org, etc.

We citizens also need to remember what democracy means—government of the people. We need to show up as poll workers and observers. “Get out the vote” efforts may have a negative effect in the long run, because we citizens need to participate in more ways than just voting. Minimizing the responsibilities of citizenship to the mere act of voting trivializes both citizenship and voting, and may contribute to the attitude that voting doesn’t count.

Conclusion – What to do!

Citizens need to raise our voices and confront the ignorance and corruption that has resulted in the use of DREs in our elections. It’s time for all our public servants to know why DREs are wrong, with or without a paper trail, and to take a public position against continued use of DREs.

It’s time for everyone to know about the history of election fraud in our country. It’s not the paper ballots we have to worry about—it’s secret procedures and lack of observers. It’s time to tell our U.S. Representatives and U.S. Senators that the election reform bills in Congress are an outrage, and should be revised immediately.

Everyone concerned about our elections needs to stay informed by subscribing to the Daily Voting News from VotersUnite.org. This includes activists concerned with other issues and all our public servants.

What to do? Know the issue, and raise our voices until we are heard!

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[1] *Deliver the Vote*, 2005, by Tracy Campbell, Carroll and Graf Publishers.

Election Administration in the United States, 1934, by Joseph P. Harris, Ph.D., available at http://vote.nist.gov/election_admin.htm

[2] Resources: www.wheresthepaper.org/HR811.htm! HR 811: www.wheresthepaper.org/HR811markupCmt.htm S1487: www.wheresthepaper.org/S1487withCmt.htm and www.wheresthepaper.org/S1487WhyItIsWrong.htm

[3] 2005 FBI Computer Crime Survey: <http://houston.fbi.gov/pressrel/2006/ho011906.htm>

[4] See for example, Testimony of Doug Lewis of The Election Center, March 20, 2007 http://www.wheresthepaper.org/HouseAdminTestimonyDougLewis3_20_2007.pdf

Teresa Hommel is an independent voting rights activist. She serves as Legislative Analyst for New Yorkers for Verified Voting, a statewide citizens' group that has worked with the League of Women Voters of New York State to advocate for paper ballots and optical scanners rather than electronic voting. Ms. Hommel's voting machine simulation, a demonstration called the "Fraudulent Voting Machine," has been used internationally to help people understand the security problems with computers used in voting. "Fraudo" was exhibited at the National Institute of Standards and Technology Symposium "Building Trust and Confidence in Voting Systems" in 2003, and is featured on Ms. Hommel's web site, WheresThePaper.org. Ms. Hommel is Chairwoman of the Task Force on Election Integrity, Community Church of NY. She has been a computer professional since 1967 and is a graduate of NYU School of Law, 1979.

Democracy: Law, Power, and Electronic Voting Machines

Teresa Hommel, Nov. 16, 2007

Power creates law, and law sustains power. This means that people in positions of power – elected and appointed officials – typically make choices that sustain and enlarge their own position. Another way of saying it is “might makes right” -- if you have might (power) you can give yourself legal rights to do what you want.

For democracy to exist, the people must retain control of the government -- the people must in fact elect their elected officials.

The formality of holding elections is not enough. Around the world, open and meaningful observation of election procedures is recognized as a requirement for legitimate elections.[1] Legitimacy is defined as “lawfulness by virtue of being authorized or in accordance with law, undisputed credibility, authenticity, or genuineness.”

America has a problem. Direct Recording Electronic voting machines, called DREs, prevent open and meaningful observation of the recording, casting, storage, handling, and counting of votes. Voters see an image on the screen, and may have an opportunity to verify a printout of their votes, but cannot see their own votes as recorded and cast inside the computer. Election observers cannot witness the storage, handling, and counting. Because of this, use of DREs interferes with the legitimate delegation of power from the people to our elected officials.

We have seen thousands of reports of DRE failures in recent elections, and many people oppose DREs as a result. But even if DREs appeared to work, the use of unobservable procedures keeps our elections and our elected government from having legitimacy.

Ordinary non-technical people must be able to observe and understand election procedures, and attest that they have been conducted properly and honestly. Election procedures cannot be delegated to experts, computer technologists and statisticians. If citizens have to “trust” “experts” to tell us that procedures were proper and honest, legitimacy has been lost.

The use of computers in our elections is one of the twenty-first century challenges to our democracy, and our ability to deal forthrightly with it and solve it will influence whether or not our democracy survives.

It is a mystery to me why so many Americans seem unable to grasp or deal with this basic information. It's as if you are on a sinking ship, urging someone to get in a lifeboat, and they say,

“Oh but my stateroom is so comfortable.” You say, “these machines prevent observation” and you get the reply, “Oh but they’re so convenient, and they’re accessible to the disabled.”

What can law students do?

One argument in favor of DREs is that “there is no evidence that a software attack or other tampering has ever been successfully carried out against an electronic voting system.”

In truth there is no evidence that such an attack or tampering has NOT succeeded because no electronic election has ever been fully and independently audited. The courts, election administrators and vendors have successfully rebuffed all demands by voters and candidates to examine equipment..

An increasing number of legal decisions are being handed down that prevent the gathering of evidence after election irregularities have occurred with computerized election equipment. I cannot say whether the courts are complacent, complicit, or corrupt. I do know that the computer voting machine industry has been doing “training” for several years to “inform” judges of the issues related to this equipment.

It is time for law review articles and other legal resources to be developed to present arguments to allow the development of evidence, and to oppose computerization and privatization of our elections. I hope you will be part of such an effort.

We also need legal evaluation of laws and practices that limit or prohibit (1) observation of procedures, (2) recounts, and (3) public access to election records such as ballot definitions, numbers of voters who signed in versus numbers of ballots cast, and so on.

The optical scanner alternative

Voter-marked paper ballots and optical scanners (PBOS) are a widely-used and low-cost alternative to DREs. Scanners perform electronic counting only. Their work is understandable, observable, and correctable.[2] It is easy to determine whether scanners are working by using test batches of ballots for which the vote counts are known from manual counting, and easy to diagnose and repair scanners.

Paper ballots can be secured by observation by average citizens as well as by surveillance technology such as cameras. There is a history of fraud with paper ballots, proving that tampering is detectable. Votes on paper ballots are a first-hand software-independent record of the voter’s intent.

The one requirement for successful use of PBOS is greater citizen participation in elections. We would need lots of observers. I believe a call for ballot observers would arouse many citizens to get involved in local elections, and revitalize our democracy.

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[1] Election Observation Handbook, Fifth Edition, by the Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE, ODIHR). OSCE includes Canada, the USA, and the broader European region including the South Caucasus and Central Asia.

www.wheresthepaper.org/OSCEintlElectionObservation14004_240_en.pdf

[2] Report – Paper Canvass Feb 25, 2003 Special Election, May 15, 2003, by Lucille Grimaldi, Manager, Electronic Voting Systems to Commissioners of Elections. www.wheresthepaper.org/NYCBOEScanRpt030515.pdf