



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD No. 4

330 West 42nd Street, 26th floor New York, NY 10036
tel: 212-736-4536 fax: 212-947-9512
www.ManhattanCB4.org

J. LEE COMPTON
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

March 8, 2007

Mr. Peter S. Kosinski
Co-Executive Director
NYS Board of Elections
40 Steuben Street
Albany, NY 12207-2108

Stanley L. Zalen
Co-Executive Director
NYS Board of Elections
40 Steuben Street
Albany, NY 12207-2108

Dear Mr. Kosinski and Mr. Zalen:

Manhattan Community Board Four at its March 7, 2007 meeting approved the following recommendations as it relates to the NYS Board of Elections (NYSBOE) and the NYC Board of Elections (NYCBOE) under the NYS Election Reform and Modernization Act of 2005 (ERMA).

ERMA was passed in order for the state to comply with the federal Help America Vote Act of 2002 (HAVA), which was a response to the concerns surrounding the presidential election of 2000.

ERMA requires local boards of elections, in this case NYCBOE, to select new technology to replace the mechanical lever machines which are currently used throughout the state.

The NYCBOE may select either a Precinct Based/Optical Scan (PB/OS) voting system or a Direct Recording Electronic (DRE) voting system. The original deadline for compliance was the first federal election of 2006, which was the September 2006 primary.

The NYSBOE has the responsibility for certification of the various models that will be available to the NYCBOE.

Given these facts Manhattan Community Board Four makes the following recommendations:

- That the deadline for compliance be moved so that the first election in which the new machines are used is September 2009. It seems to the Board that given the stage the NYCBOE is at there will not be a new system until at least 2008, at which point there will be a presidential election. The use of a new system is bound to be fraught with a host of unforeseen problems that may be minor in nature but in a presidential election year could become large and disruptive.

- That the NYSBOE certify PB/OS voting systems for procurement and require the NYCBOE select a PB/OS voting system for the City of New York. Although the “Escrow Requirements” under sections 7-208(1) and (2) of ERMA would tend to mitigate against the danger, the past history of DRE voting systems is inconsistent with the need for public control to maintain voting integrity given that the vendors tend to retain an interest in the hardware, software or source-code of such technologies. In addition, other jurisdictions like those in the state of Ohio during the presidential election of 2004 experienced severe problems and irregularities with DRE voting systems that hurt voter confidence and caused numerous lawsuits by candidates and voters. PB/OS voting systems can be used with electronic ballots which provide a type of paper ballot back-up and can provide quick Election Day results and accessibility.
- That the NYSBOE require that the NYCBOE impanel an independent, civic-minded team or several teams of computer scientists who have demonstrated the ability to manipulate the software and firmware of voting machines to assist with an ongoing evaluation of the voting system to ensure that it is secure, reliable and accurate. Circumstances such as the secret de-certification of the Ciber testing facility have shown that the certification process has been severely compromised. Therefore, the work of a computer science team must be separate and distinct from any corporate lab that is hired to evaluate the voting equipment. We ask that this requirement be done pursuant to section 7-208(3) of ERMA which:

Require[s] that the manufacturer and/or vendor of such equipment . . . consent to having and cooperating in the testing of any programming, source coding, firmware, or software pursuant to an order of any board of elections or court of competent jurisdiction.

- That the NYSBOE explore the option of developing its own voting software and firmware as the most secure and cost-effective route available. This option is especially desirable given the troublesome criminal history of three of the four companies under consideration by the NYCBOE. There is an established precedent of a state, Oklahoma, developing its own voting software and firmware.
- That the NYSBOE and NYCBOE develop procedures to protect against insider tampering and carelessness, pursuant to the “lock requirement” of section 7-202(g) of ERMA. It has been shown that the locks on some of these voting machines are the same locks used on office equipment, and in hotel mini-bars and these types of locks are easily available on the internet. Ballots could be stuffed, as well as computer programs accessed, if the machines and ballots do not have strict custody protocols before, during, and after an election, as well as multiple observers and possibly cameras recording the counting process. On January 29, 2007 the Atlantic Journal-Constitution reported on various voting equipment that wound up on E-Bay©.
- That the law mandates the use of recycled paper when satisfying the “permanent paper record” in section 7-202(J) of ERMA. The crucial policy issue of global warming can be accommodated while resolving other policy issues.

The above recommendations were approved by Manhattan Community Board Four by a unanimous vote.

Sincerely,



J. Lee Compton

Chair

Manhattan Community Board Four

cc: John Ravitz, Executive Director, NYCBOE
Electeds