



Susan Bysiewicz
SECRETARY OF THE STATE
CONNECTICUT

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- PRESS RELEASE -

SECRETARY OF THE STATE BYSIEWICZ BANS USE OF LEVER VOTING MACHINES FOR UPCOMING ELECTIONS

BYSIEWICZ LETTER ALERTS ALL REGISTRARS OF VOTERS, MAYORS, FIRST SELECTMEN,
TOWN CLERKS, MEMBERS OF THE CONNECTICUT GENERAL ASSEMBLY

Hartford: Secretary of the State Susan Bysiewicz held a news conference today at the State Capitol to announce that pursuant to the authority vested in her as Chief Elections Official for the State of Connecticut by Sections 9-3 and 9-238(b) of the Connecticut General Statutes, she finds that lever voting machines are no longer suitable for use in any election, primary or referenda in the State of Connecticut. The use of lever voting machines is banned effective September 11, 2007 and for all elections, primaries and referenda occurring on or after that date.

Secretary Bysiewicz, who was joined by Attorney General Richard Blumenthal, representatives from the Connecticut League of Women Voters, TrueVoteCT, DemocracyWorks, the Registrar of Voters Association of Connecticut, Connecticut Town Clerks Association, and the Connecticut Council of Small Towns (COST), is sending a letter to all registrars of voters, mayors, first selectmen, town clerks, and members of the Connecticut General Assembly informing them of the decision. (The letter is attached).

“In the last 9 months we have delivered over \$16 million worth of voting machinery to every city and town in Connecticut,” said Bysiewicz. “Connecticut’s residents deserve

the right to know that their vote is safe, secure and above all counted. Lever voting machines are no longer suitable for use in any elections, primaries, or referenda in the State of Connecticut. The use of lever voting machines is banned effective September 11, 2007 and for all elections, primaries and referenda occurring on or after that date.”

Attorney General Richard Blumenthal said, "The Secretary of the State has broad discretion to disapprove and decertify any unsuitable voting system - and has decided sensibly and reasonably to require optical scan voting machines, which provide a reliable paper trail. This decision applies federal and state law to guarantee reliability, security and equal access for physically disabled citizens."

“Tomorrow we launch a new aggressive effort to educate and train every registrar, clerk, and election official so that Election Day will run smoothly.” stated Bysiewicz. The full day training program will cover the topics of: components of the new machines, performance of the voting machines, proper set-up, pre-election machine testing, closing of election procedures and chain of custody of elections equipment and data. “I want to thank the election officials for taking part and especially the host towns for donating their time and space for this important task.”

The regional training sessions will be held in: Waterbury, Torrington, Trumbull, Windsor, Essex, Farmington, and Woodstock. To date nearly 2,500 elections officials have signed up for a training session. Elections officials from: Brooklyn, Darien, East Haddam, Essex, Fairfield, Farmington, Greenwich, Hartford, Killingly, Killingworth, Scotland, Thompson, Torrington, Trumbull, Waterbury, and Watertown will take part in tomorrow’s training sessions.

George Cody, President of the Registrar of Voters Association of Connecticut said, “This is a celebration of Connecticut’s full utilization of optical scan voting technology. The Registrars of Voters Association of Connecticut, representing election administrators in each of our 169 towns, welcomes this statewide implementation. With all of these preparations, we can all be assured of a seamless transition for our primaries and the fall election.”

Joyce Hamilton Henry, Executive Director of DemocracyWorks said, “To ensure compliance with the Help America Vote Act and to reduce confusion on the part of potential voters, we must be consistent and use the new voting machine in all of Connecticut's municipalities.”

Optical scan voting is the most common form of voting technology in America today, with a majority of counties nationwide voting on optical scan machines. The new technology also provides a paper trail for every vote cast, in compliance with state law and the federal Help America Vote Act.

Twenty-five Connecticut towns successfully utilized the optical scan machines in the November 2006 elections. This year, the remaining 144 cities and towns received their new machines. In May of this year, 13 towns or boroughs held their elections and 20 towns held referenda utilizing the new voting machines.

TO: All Registrars of Voters, Mayors, First Selectmen, Town Clerks, Members
of the Connecticut General Assembly,
FROM: Susan Bysiewicz
Secretary of the State of Connecticut
DATE: July 30, 2007
RE: Ban of Lever Voting Machines

Pursuant to the authority vested in me as Chief Elections Official for the State of Connecticut by Sections 9-3 and 9-238(b) of the Connecticut General Statutes, I hereby find that that lever voting machines are no longer suitable for use in any elections or primaries in the State of Connecticut. The use of lever voting machines is banned effective September 11, 2007 and for all elections and primaries occurring on or after that date.

There are a number of compelling reasons for this decision. First, we have invested \$15.7 million in new optical scan voting technology. Over the past several years, my Office has conducted an extensive review of existing voting technology. To assist us in this endeavor, we solicited assistance from the Computer Science Department of the University of Connecticut and asked them to determine the most secure and reliable technology. After an extensive review of the technology available, optical scan technology was selected as the most secure and reliable.

Second, optical scan technology has a number of very significant benefits, the most important of which is the paper ballot that can be verified by each voter prior to being cast, can provide the most detailed and effective mechanism for a recount in the event of a tight race and can provide an effective means of post-election audits to ensure accuracy of the technology and to detect fraud. The General Assembly clearly recognized the importance of a voter verified paper record when they codified such a requirement in Section 9-242b of the General Statutes.

Third, PA requires mandatory post-election audits and makes Connecticut a national leader in protecting the security and reliability of elections. Such an audit could be rendered useless, or at least severely compromised, if municipalities were allowed to use lever voting machines that do not allow for the hand count of each vote cast.

Finally, the use of different voting systems in different types of elections raises serious concerns regarding voter confusion and presents greater burden upon election officials who have responsibility for properly training staff and poll workers for each election and for conducting voter education and outreach.

Below is a detailed analysis for this opinion:

STATUTORY AUTHORITY

Connecticut General Statutes §9-3 provides that the “Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and

duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title..." Therefore, it is pursuant to this authority that I have reviewed all aspects of the lever voting machines and issue this opinion.

Connecticut General Statutes §9-238(b) provides that, "After October 1, 1970, no voting machine manufactured prior to January 1, 1927, shall be used at any election in this state and no voting machine manufactured after said date shall be used in an election, which voting machine, in the opinion of the Secretary of the State, does not conform to the requirements of law or is unsuitable for use in such election."

REASONING

As set forth above, the relevant standards under which the Secretary of the State can discontinue the use of a voting machine are (1) the voting machines no longer conform to the requirements of law or (2) the voting machines are unsuitable for use in an election.

A. The lever voting machines no longer conform to the requirements of law.

The Connecticut General Assembly passed and the Governor signed into law Public Act 07-194, "An Act Concerning the Integrity and Security of the Voting Process". This public act produced two very significant measures, (1) it changed the definition of what constitutes a voting machine in the State of Connecticut, and (2) it created a voting machine audit procedure.

(1) The definition of what constitutes a voting machine was changed by Public Act 07-194. As of the passage of this public act, the term "voting machine" is no longer defined by the general statutes. Instead, the term "voting machine" is replaced by the term "voting tabulator". This new term is associated throughout the general statutes with the casting and counting of paper ballots and was changed to facilitate the use of the new optical scan voting equipment. We are aware of no lever voting machine that casts and counts paper ballots.

(2) The audit procedure created by Public Act 07-194 requires that the paper ballots cast and counted by each voting machine be hand counted during an audit conducted by local election officials. This audit applies equally to all state and municipal elections and primaries in the State of Connecticut and is not limited to any particular type of technology. We are aware of no lever voting machine that casts and counts paper ballots.

Additionally, the audit requires that the individual paper ballots cast and counted by the voting machine be hand-counted and the totals of both the hand-count and the machine count be compared to ensure the accuracy of the voting machine. We are aware of no lever voting machine that produces a paper record suitable for audit on a voter-by-voter basis.

(3) In addition, existing Connecticut law creates the presumption of a requirement for a paper record when any new electronic voting system is used in the State. Connecticut

General Statutes §9-242b specifically requires any direct recording electronic voting machine produce a voter verified paper record that can be used after the election for any recount or auditing purpose. Although specific to direct recording electronic voting machines, the legislative intention of this section was to provide a permanent paper record of all votes cast on electronic voting machines.

(4) Finally, the Help America Vote Act requires that a “voting system”, including any lever voting machine produce a permanent paper record with a manual audit capacity for such system. The voter must be provided with an opportunity to change the ballot or correct any error on the ballot before the paper record is produced. The United States Election Assistance Commission issued an advisory opinion regarding this requirement and stated, “after careful review of HAVA Section 301(a), the EAC concludes that lever voting systems have significant barriers which make compliance with Section 301(a) difficult and unlikely.” Although the EAC is an administrative agency, the United States Supreme Court has long held that the interpretations of agencies charged with the administration of a statute are given differential treatment by courts when faced with issues of statutory construction. In reaction to this interpretation, the states of New York and Pennsylvania have prohibited the use of lever voting machines in their states.

B. The lever voting machines are unsuitable for use in an election.

(1) With increasing numbers, my office has continued to receive reports of broken or malfunctioning lever voting machines during elections and primaries held in the State of Connecticut. It is clear that these machines are no longer manufactured and replacement parts are becoming increasingly difficult to obtain. The most alarming problems involve situations where lever voting machines failed to record the proper number of votes or failed to record any votes during an election. In one instance, it appears that the lever voting machine may have been malfunctioning for several years.

These errors are precisely what a voting machine with a paper ballot audit trail will prevent. The paper ballot provides local election officials the opportunity to ensure that the voting machine counted all validly cast ballots during an election. Instead of ordering a new election and having a municipality absorb that expense, the actual paper ballots could be used to recreate the election and recover all “lost” votes.

(2) In addition, we find that it would be impracticable to administer and use two different voting systems depending upon the year in which the election would be held. The administration of elections and primaries includes a responsibility to ensure that voters are not confused and discouraged from participating in the electoral process. Creating an atmosphere where voters would not be aware of the equipment to be used at an election until they enter the polls would be contrary to the goal of increased voter participation.

(3) Further, over the past several years my Office has conducted an extensive review of existing voting technology. To assist us in this endeavor, we solicited assistance from the Computer Science Department of the University of Connecticut and asked them to determine the most secure and reliable technology. After an extensive review of the technology available, optical scan technology was selected as the most secure and reliable.

(4) Finally, because of the problems associated with lever voting machines, my Office will no longer support the use of lever voting machines. Moderators will no longer be certified and trained on the use of the lever voting machines. Voting Machine Mechanics will no longer be certified by our Office with regarding to the use, maintenance and set-up of lever voting machines. Lastly, any informational materials and instructional materials produced by this Office will no longer include information regarding lever voting machines.

CONCLUSION

In conclusion and for the reasons set forth above, lever voting machines are no longer suitable for use in any primary or election in the State of Connecticut. The federal Help America Vote Act has provided the state with a unique opportunity to enhance the voting experience of the electors in the State of Connecticut through the use of a more reliable and efficient technology. The new optical scan voting technology has been tested and proven reliable as long as proper security measures are taken. It is for these reasons that we must move forward and secure the integrity and security of the voting process in the State of Connecticut.