

**Comments by Common Cause/NY
to the
Senate Standing Committee On Elections
October 9, 2009**

Common Cause/New York is a nonpartisan citizens' lobby and a leading force in the battle for honest and accountable government. Common Cause fights to strengthen public participation and faith in our institutions of self-government and to ensure that government and political processes serve the general interest, and not simply the special interests. For more than 30 years, we have worked at both the state and municipal level to bring about honest, open and accountable government. Consistent with our overall mission we have consistently worked for election reform advocacy, working to improve accessibility, accuracy, transparency, and verifiability in our democratic process at the city, state and national level.

The Help America Vote Act (HAVA) seeks to improve upon the voting system in order provide comprehensive access to voters. The lever system which is currently in practice throughout the state, limits access to disabled voters; however, a new voting mechanism could work to avoid this interference. In addition to the significant maintenance problems with these aged machines, which studies have shown contributes to lost votes, the machines' lack of flexibility would make reforms such as the use of Instant Run-Off Voting impossible. Common Cause/NY does not support the effort by some to retain the old level machines.

The September 15 comments made by the public members of New York State's HAVA Task force successfully highlight the enduring issues and potential solutions for an accessible and efficient election process across the state, including salient criticisms of significant decisions made by the State Board of Elections. While we generally endorse the comments made by the public members, we would like to focus on two specific areas that they touch on for further discussion.

We are particularly concerned in New York State with the lack of hands-on training for poll workers in the implementation of new optical scanner machines at each polling site. The Board of Elections has very clearly shortchanged the poll workers who are responsible to provide assistance and guidance to any and all voters who need it.

The new optical scanner technology, which should be fully installed in the upcoming year, would allow for increased access of disabled persons to vote without assistance. The education of poll workers and voters regarding these machines has not received adequate attention. In the past, poll workers have received limited training for the new machines, without an adequate opportunity to become acquainted with the set-up, use, and even the existence of these machines. This has resulted in the under-use of the ballot marking devices. In some polling places the machines were not even removed

from their boxes. In others, poll workers were wholly unfamiliar with them or did not know that they were available.

Common Cause/NY has a long-standing interest in encouraging more extensive voter education by the Boards, an area where New York State is woefully deficient. We do not understand the Board's resistance to using the money provided by the federal government for voter education under HAVA to mail information to voters about the change-over in machines. We believe that it is the state's obligation to communicate with voters in advance of the election about the new machines. Website information, pamphlets and other outreach are important tools. However, we believe that an educational mailing to all voters is essential to a smooth transition.

In addition to insufficient preparation for the operation of the new machines, the Board of Elections has not made serious efforts to require states and counties to report the number of complaints and the nature of each comment regarding the new optical scanner voting machines. This information is essential for the adequate management and assessment of election processes. In the near future, tens of millions of dollars will be invested, and with this approaching transformation of the voting apparatus, the Board of Elections must work diligently to retain a close watch on the efficacy of the new system. Though tracking the number and types of complaints is only one important piece of information gauging performance, it is necessary to a fair assessment of the manner in which elections are conducted and in identifying areas for improvement, in administration, in regulations, and in practice, as well as areas for statutory correction.

Moving to an other area, access to ballots in New York City, we believe that a legislative response to the complicated and discouraging rules required for a petition to run for election is called for. The election process should work to promote healthy competition, allowing all legitimate candidates to run, rather than encouraging a brutal fight for a spot on the ballot.

The overcomplicated requirements and drawn out validation process have turned a process that should seek to place a range of candidates before the voters into one which supports only those with the most knowledgeable and influential election lawyers at hand to challenge the legitimacy of their opponents' signatures and petition. Though certain requirements are necessary to verify the legitimacy of each candidate, the standards for interpretation of the laws should be analyzed in a liberal sense rather than scrutinized mercilessly for the slightest fault. We believe that the Legislature could help remedy this situation by adopting statutory language encouraging the courts to interpret procedural requirements with some degree of liberality.

Finally, we wish to indicate our support for S2554A. The sorts of intimidation which have occurred recently in this state are shocking. In this last presidential election, the Common Cause/NYPIRG hotline in New York City fielded a call from a voter in a Queens district with a hotly contested legislative race, who was unable to keep the poll worker from entering the voting machine with him, in order to "help" him vote. The poll worker then informed him of the "right" people to vote for, refused to leave when

asked to do so, and when the voter cast his vote as *he* wished, voiced her “disappointment.” S2554A would rightly make this sort of behavior a crime.

While we strongly support the over-all intent of S2554A, we would suggest that the proposed language in new section 17-153 defining “suppress” is vague. How is a court or jury to decide what is against someone’s own interest? The definition adequately addresses the specific objectionable conduct without the word “interests.” We recommend that the second sentence of Para. 1, new section 17-153 should read: “‘Suppress’: to use force, authority or an abuse of power to prevent, subdue or compel another into acting against his/her intention or into not acting at all.”