

News Release

New York State Board of Elections



For Information Contact:
John W. Conklin
Director of Public Information
Phone: (518) 474-1953
E-mail: jconklin@elections.state.ny.us

For Release: **IMMEDIATELY**

Statement from the Board of Elections on the 23rd Congressional District

ALBANY, NY (11/20/09): The New York State Board of Elections Director of Public Information has issued the following statement on behalf of the Board in reaction to an article from a newspaper in the state's North Country:

An article in the Gouverneur Times as to the, as of yet uncertified results in the 23rd Congressional District contains numerous false assertions and allegations.

There was no virus in the voting machines on Election Day in the 23rd District or anywhere else. The article is full of inaccurate information and unfortunately quoted a single word from a commissioner who mischaracterized the issue in question.

The State Board has already acknowledged there was a software problem identified during our mandatory pre-election testing regimen prior to Election Day. The problem centered on races which were composed of multi-candidate formats which allow voters to vote for more than one candidate in a given race. For example, in judicial races the voter is often allowed to vote for 3 out of 5 candidates or 2 out of 4, etc., or in a town where there are "at large" districts. The source code did not allow for enough memory in these contests and caused the scanners to freeze during operation. The Counties experiencing the problem were notified prior to Election Day and the voting systems were corrected and re-tested and the corrective action was applied successfully in those areas.

However, the human review of the software problem did not adequately identify every machine that had the problem and, as a result, there were some scanners which did freeze on Election Day. When these scanners froze, the local boards implemented procedures according to state law and Board of Elections regulations. These procedures do not allow for new changes on Election Day, so inoperative scanners were taken out of operation and emergency ballots were cast and counted in those areas according to existing procedures.

This problem was discussed in numerous press reports around the state and was openly discussed at the November 10th State Board of Elections meeting by the Commissioners and the Director of Election Operations.

With regard to the use of USB ports, there is a single USB port on the ImageCast scanner. Pursuant to state Election Law §7-202(t) the port does not permit any “functionality potentially capable of externally transmitting or receiving data via the internet, via radio waves or via other wireless means.” The port is sealed, is not accessible and has no capability for any exchange of information. The scanners do not operate like personal computers. Any device, such as a flash drive, placed in the port will not be recognized.

In addition, from the time the pre-election testing is completed until Election Day morning the machines are in the care, custody and control of the local board of elections. The machines as a group are under lock and key. Individually, the critical areas of the machine are covered in tamper-evident seals which are numbered and logged. Any broken seal will be investigated and the machine re-tested prior to any further use. Any broken seal discovered on Election Day will cause the scanner to be taken out of service immediately. The inspectors then follow long-established procedures to go to emergency ballots, until an alternate scanner can be deployed.

Lastly, any reference to a slot that is accessible to voters and poll workers for stuffing the ballot box is inaccurate information. A gap between the scanning device and the ballot box was discovered during functional testing of the ballot marking devices more than a year ago. Every machine in use on Election Day was retrofitted to completely block access to that gap. Prior to completion of the retrofit last year the gap was blocked by a tamper-evident numbered security seal. As stated earlier, any broken seal would cause the removal of a scanner from use immediately.

In addition, from the time they are created up to and including final storage, all election materials – paper and machines – are secured and tracked in a chain of custody by the local board of elections. All ballots – voted, unvoted and spoiled – must be accounted for throughout the election process.

Despite the numerous misstatements of fact in the above mentioned article, the results in the 23rd Congressional District, and all other contests in counties which utilized optical scan voting machines, will have been canvassed and audited pursuant to state Election Law, and will be certified in due course. In the end, the new optical scan voting systems guarantee we have ballots as marked by voters ensuring that every vote is counted.