

Speaker Carl E. Heastie  
New York State Assembly  
202 Legislative Office Building 932  
Albany, NY 12248  
*Sent via email*

June 16, 2023

Re: Voting Integrity and Verification Act of New York (A5934A/S6169A)

Dear Speaker Heastie,

I write on behalf of Verified Voting in support of provisions in the Voting Integrity and Verification Act of New York (VIVA NY)<sup>1</sup> that would allow voters the choice to hand mark a paper ballot or use a non-tabulating ballot marking device (BMD) to mark their ballots. As a nonpartisan nonprofit organization founded by computer scientists, Verified Voting is committed to strengthening democracy for all voters by promoting the responsible use of technology in elections.

Verified Voting encourages jurisdictions to use BMDs primarily as assistive devices—not for all voters.<sup>2</sup> For most voters, hand-marked paper ballots offer better verification than can be achieved through a computerized interface. Hand-marked paper ballots are not vulnerable to software errors, configuration errors, or hacking. BMD-produced ballots require voters to catch and correct not only their own errors, but also software errors or alterations made by the BMD. Without intervention, very few voters check BMD-produced ballots with enough attention to catch errors.<sup>3</sup> Nonetheless, user-friendly voter-verifiable BMDs are critically important and must be available and working at all polling places: These devices provide the assistive technology to voters who need it to mark their ballots.<sup>4</sup> Making both options available allows voters to choose the option that best suits their needs.

Resilient elections ensure voters are not disenfranchised by long lines or equipment failures. Voters in BMD-only jurisdictions often face longer lines than voters in jurisdictions that primarily offer hand-marked paper ballots. When voting machines fail in jurisdictions fielding only BMDs, voters must wait for equipment to be fixed or replaced, and sometimes leave without voting.<sup>5</sup> In contrast, when scanners fail in jurisdictions that use hand-marked paper ballots and BMDs, voters simply deposit their hand-marked ballots into an auxiliary bin for subsequent scanning. Providing voters both hand-marked

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<sup>1</sup> A. 5934A, 2023 Leg., (N.Y. 2023), <https://www.nysenate.gov/legislation/bills/2023/A5934/>.

<sup>2</sup> *Policy on Direct Recording Electronic Voting Machines and Ballot Marking Devices*, Verified Voting 7 (2019), <https://verifiedvoting.org/wp-content/uploads/2020/06/VV-BMD-Policy-V4.pdf>.

<sup>3</sup> Mark Lindeman & Cris Landa, *Statement about Risk of Reliance on Ballot-Marking Devices*, Verified Voting (Sept. 28, 2020), <https://verifiedvoting.org/statement-about-risk-of-reliance-on-ballot-marking-devices/>.

<sup>4</sup> Help America Vote Act, 52 U.S.C. § 21081 *et seq.* (2022).

<sup>5</sup> *E.g.*, 866-OUR-VOTE hotline, administered by the Lawyers' Committee for Civil Rights Under Law, Election Protection OVL dashboard (Oct–Nov. 2022) (unpublished hotline tickets).

paper ballots and BMDs is not only scalable—able to handle a spike in voter turnout on Election Day—it is also typically much less expensive than fielding only BMDs.<sup>6</sup>

Verified Voting also supports the qualification that BMDs be non-tabulating in nature and that BMD-produced ballots be human-readable. When voters are unable to verify or confirm that quick-response (QR) or bar codes actually match their selections, public confidence in elections is threatened. At a time of widespread public fear about election systems and processes, we discourage the use of codes that obfuscate whether voters' votes have been correctly recorded. Likewise, BMDs that also tabulate ballots can foster distrust: if ballots share the same physical path when the ballot is printed as when it is scanned, the printer could add additional or new codes to a ballot after it is cast, changing the voter's selections. The integrity and strength of our democracy rely on citizens' trust that each vote is counted as cast, and the use of non-tabulating BMDs that produce human-readable ballots supports this goal.

We encourage the New York State Assembly to consider the provisions in the VIVA Act that support a resilient election system. We look forward to working with you to ensure secure, transparent, and accurate elections. Please reach out with any questions.

Sincerely,

Megan Maier  
Senior Program & Partnerships Associate

cc: Governor Kathy Hochul  
Lieutenant Governor Antonio Delgado

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<sup>6</sup> See Turquoise Baker et al., *Voting Machines at Risk in 2022*, Brennan Center for Justice & Verified Voting (Mar. 1, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-machines-risk-2022>.