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**THE LEAGUE
OF WOMEN VOTERS**
of New York State

**TESTIMONY TO THE NYS SENATE ELECTIONS COMMITTEE
SENATOR JOSEPH ADDABBO, CHAIRMAN
MAY 11, 2009
ALBANY, NEW YORK**

Good morning, Senator Addabbo, and members of the New York State Senate Elections Committee.

My name is Aimee Allaud and I am the Elections Specialist for the New York State League of Women Voters. I have served on the 2003 HAVA Task Force to draft a State Implementation Plan and am currently serving on the Task Force which is preparing amendments to the original plan. With me today is the League's Legislative Director, Barbara Bartoletti.

Once again, the League appreciates the opportunity to discuss those election reform issues that can be addressed through legislation.

The League of Women Voters is a multi-issue, nonpartisan political organization, which encourages informed and active participation in government and influences public policy through advocacy and education.

Today's hearing was called to obtain public input into those bills currently before the Senate that govern casting ballots and polling places. The League believes that voting is a fundamental citizen right that must be guaranteed and protected. Voting is the gateway to participation in a representative democracy, and laws to encourage participation while ensuring

the integrity of the voting process are necessary. The following comments are informed by these core beliefs.

1. *S3250 Addabbo*, enacting the “early voting act.” The League has no position on early voting per se. We have not had the opportunity to study the effects, both positive and negative, of early voting laws in other states or to examine how early voting might impact election administration processes in New York State. We suggest that the Senate study the issue further before enacting this legislation, especially since the introduction of new voting machines in 2009 and 2010 will increase demands on the total administration of elections in the state.
2. *S5028, S2868-a Addabbo*, both expand absentee voting by removing unnecessary documentation requirements on the application for an absentee ballot. The League strongly supports both of these measures. Both the New York State Election Commissioners Association and the New York State Board of Elections also support these measures. The League testified in support of eliminating the intrusive and unnecessary information required on the application form in 1993 when the New York State Board of Elections held statewide hearings on the absentee ballot application process. Legislation to streamline the process is long overdue. New York’s voter turnout statistics would be positively impacted if eligible voters had additional opportunities to exercise the franchise through this method. For example, the number of New Yorkers who actually voted in the presidential elections of 2004 and 2008 is still under 65% of the eligible voting age population. The New York State Constitution does not require the disclosure of personal details on the application form. Furthermore, the application is the

equivalent of a sworn statement and a voter's signature or mark should be sufficient to satisfy the constitutional mandate.

However, if this legislation becomes law, it will be incumbent upon the local boards of elections to improve the administration of the absentee balloting voting process in order to ensure its integrity. On March 6, 2009, the New York State Comptroller's Office issued a report, #2007-S-65, on Absentee Voting. The scope of their auditing report was to determine whether the absentee voting process in New York was adequately overseen by the New York State Board of Elections and whether voting by absentee ballot was properly administered by local boards of elections. The recommendations of the report call for greater oversight by the New York State Board of Elections and stricter accounting of requests for absentee ballot applications and ballots by the local boards of elections. According to the New York State Board of Elections 2008 Annual Statistical Information Report, released last week, 280,659 voters completed absentee ballots and returned them to their respective boards of elections for the 2008 general election. These statistics do not include the five New York City counties. We may expect that there will be increased use of absentee voting if this legislation is passed, and additional oversight and controls of the applications and ballots by the county boards of elections will be required.

Sec.8-406 of the New York State Election Law, *absentee ballots, delivery of*, specifies that a qualified voter who requests an absentee ballot may designate in writing a person who will deliver the ballot to him/her. Currently, the law does not limit the number of absentee ballots an individual may deliver to qualified voters. The League

recommends that the Legislature amend the Election Law to set a limit to the number of absentee ballots individuals can deliver to voters as it has done in Sec.8-407, *voting by residents of nursing homes, residential health care facilities, etc.*

Over the many years that the New York State League and our local chapters have monitored the election process, we have observed abuses of the absentee ballot process. For example, we call your attention to the 2004-2005 case, *Willingham, et al. v. County of Albany*, et al. Index No.: 04-cv-00369, filed with the U. S. District Court in the Northern District, in which the collection and processing of absentee ballots was found to be illegal. This specific example of egregious behavior would not have occurred if the Election Law limited the number of absentee ballots any person could deliver to a qualified voter.

Under the Election Law, county boards of election are given the responsibility of administering elections and only employees of the boards should have access to completed absentee ballot applications, blank absentee ballots, and submitted absentee ballots. Unauthorized persons should not have access to absentee ballots. The Election Law is very clear on the rules governing absentee ballots and county boards must be held accountable for enforcing the law.

3. ***S1701 Dilan***, the counting of affidavit ballots. The League has no position on this bill.
4. ***S1058-a Addabbo***, requiring that all polling places be accessible to physically disabled voters. The League supports this bill, which will amend the New York State Election Law to conform to federal accessibility standards. New York State has introduced accessible voting machines into all polling places in 2008, and it is now imperative that

persons with physical disabilities have the ability to access the polling place to use the machines.

5. *S1836-A Klein*, permits election inspectors to work half day shifts. The League supports this measure, which potentially may increase the number of citizens who apply to work as poll inspectors and draw younger individuals into the process. The law currently requires inspectors to work a fifteen hour day, which excludes many potential candidates from applying for this important role. This measure is also supported by the New York State Election Commissioners Association. We also urge the Senate to pass *S5172 Dilan* (companion bill, A4467 Brodsky) which would permit 17 year old persons to serve as election inspectors. More than forty states permit 16-17 year old persons to serve in some capacity at the polls. This young tech-savvy population would be an asset at the polls when new voting machines are fully implemented in 2009-2010 and will stimulate youth participation in the electoral process.
6. *S2443 Stewart-Cousins* The League has no position on this bill.
7. *S5112 Foley* in relation to the form of the paper ballot. This bill would add a new subdivision to the election law stating that ballots must provide an area to be filled in by a voter that would notify the voting system that the voter intended to undervote deliberately so the optical scanner would not produce an error message which would reject the ballot. The justification for this bill is that when paper ballots are used and not filled out entirely, it is possible for a voter to receive an error message from the optical scanner even though the voter voted as he intended. The reason that the error message happens is because the voter did not vote on every race.

The federal Help America Vote Act does not require voting systems to have undervote notification. Specifically, 301(a) (1) (A) (ii) only requires that voting systems provide an opportunity for a voter to change or correct the ballot before it is cast and counted. New York's regulations creating voting system standards, 6209.2.A (8) require that "in a paper based voting system, the system must indicate to the voter specific contests or ballot issues for which an overvote or undervote is detected." This specific section of the law and regulations could be amended to delete, "or undervote," which would allow scanners to be programmed without undervote notification.

The Brennan Center for Justice report of 2006, "The Machinery of Democracy, Usability of Voting Systems, suggests that "if correcting errors during the voting process imposes a significant burden on voters, the number of voters who choose not to make corrections increases, leading to higher residual vote rates. Accordingly, the mechanism for correcting errors must be easy both to understand and to execute." Their list of fourteen recommendations in the area of ballot design and system instructions should be reviewed by decision makers before enacting legislation. The report goes on to say that "it should be noted that usability is affected not solely by the type of voting system at issue, but also by the ballot and instructions designed by the vendors or elections officials for a particular jurisdiction."

The New York State full face ballot requirement creates a very complex ballot face and complicates the placement of candidates and issues, often resulting in voter confusion and undervoting. The League of Women Voters and other organizations have recommended that the full face ballot requirement be rescinded to allow for better ballot design. However, the Legislature has not acted upon this recommendation.

Two states, at least, do not require undervote notification for the voting system. They are Massachusetts and Michigan. In inquiring about why Michigan does not contain an oval or box on the ballot, Bradley Wittman, Director of the Election Liaison Division, Michigan Department of State, responded, “One of the administrative challenges associated with optical scan voting that we have had to work to overcome is ensuring that the secrecy of the ballot is protected at each step of the voting process. When a ballot is rejected by the tabulator, the voter is often left confused and uncertain. In such situations, election workers seem to have a natural tendency to want to look at the ballot to help the voter out. The use of undervote boxes will, I am sure, increase the interactions between the voters and the election workers at the tabulator which will, in turn, increase the risk that ballot secrecy violations will occur.”

Whatever the legislative requirements for changes to be made to the ballot, it will be imperative that voters are educated on how to prepare the paper ballot correctly, how to cast a vote properly on the voting machine, including how to review their ballot, and how to make corrections before the ballot is cast.

The success of the introduction of new voting machines depends on intensive education of the electorate. Although federal funds have been made available specifically for this purpose, the Legislature has responsibility to adequately fund this essential function over the long term. We recommend that the Legislature work closely with the New York State Board of Elections to achieve that goal.

Thank you for the opportunity to comment.