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Citizens' Election Modernization Advisory Committee
Attn.: All members (Ref. attachment)
P/a 41 Steuben Street
Albany, NY 12207-2109
United States

Subject: CEMAC recommendations for Lot 2 Ballot Marking Devices

Dear members of the Committee,

During the 27 February 2008 board meeting of the NYSBOE in Albany, NY, the board determined which systems received an interim certification for ballot marking devices for use during the fall elections 2008 in the State of New York.

Prior to that determination CEMAC issued a report on recommendations for Lot 2 Ballot Marking devices, of which a copy is also posted on the official NYSBOE website.

On page 3 of the report it states that the recommendations were also based on *'.....several day-long tests by voters with disabilities with some of the systems were conducted at the Albany offices of the New York State Independent Living Council and were observed by several committee members.'*

One of the systems that participated in these tests as performed by NYSILC was the LibertyMark. These tests were conducted on February 26th, 29th and March 5th. The results of these tests shall be reported, once all testing is completed. However preliminary results have been made available of testing on February 26th, a copy is enclosed for your perusal.

None of the findings during these NYSILC tests of the LibertyMark indicate support of the CEMAC findings. This also applies to the findings that came out of the other tests as conducted on February 29th and March 5th.

The average time needed by each individual voter to perform all required user tasks on the LibertyMark was 10 minutes, including 2 minutes for independent verification with the LibertyProof¹.

This result shows no significant negative difference in the usability performance of the LibertyMark relative to the two other tested systems that required an average vote time of 23 minutes and 9 minutes. The average vote time of the LibertyMark also indicates that the system can actually be used by voters with different special needs.

¹ For non visual impaired voters the independent verification with the LibertyProof is not required, and therefore not applicable.

A very likely explanation for the conflicting findings is that usability test results are influenced by how voters receive an introduction or guidance before actually using the LibertyMark, including its wide range of alternative usability features. In case poll workers do not receive the proper instructions needed to introduce and guide individual voters with special needs before he or she uses the system, voters could easily get confused.

As far as Liberty/Nedap understands, none of the CEMAC members or the NYSBOE staff received proper poll workers training or instructions.

This explanation for the conflicting findings also finds support in a verbal comment on the CEMAC paper at the NYSBOE February 27th board meeting. During this commentary a CEMAC member voiced concerns that when visual impaired voters use the LibertyMark the printed record of the vote could drop on the ground if the system ejects the printed record of the vote.

This concern could simply be taken away by a trained poll worker. The poll worker would explain that this event could never happen, since the eject functionality of the printed record of the vote can not be activated when the LibertyMark is released in the visual impaired user mode.

On top of page 6 of the report, LibertyMark's printed ballot voter panel design is presented as a system limitation or restriction for the support of multiple ballot styles.

Liberty/Nedap offer alternative solutions that support the ability of multiple ballot styles² outside NY.

Even the LibertyMark in its present hardware configuration, but with a different firmware set up, could offer the support of a split precinct functionality.

However, the LibertyMark is developed as a derivative of the LibertyVote, and both systems are purposely designed to meet all federal HAVA as well as all New York state legal and statutory requirements.

NY Election Law §1-104 8. and 18. provides a clear definition of what the word 'ballot' means when it is used in the context of voting machines or systems. In New York regulation part V 6209 section 6209.2 A. (2) it is determined that a voting machine or system should provide a full ballot display on a single surface.

In the case of the LibertyMark it is evident that its printed ballot on the voter panel is designed to meet the combination of these mandatory provisions of the New York Election Law.

The current firmware set up of the LibertyMark prevents that the system supports multiple ballot styles for different Election Districts.

This is not because of an intrinsic system limitation, but it is a careful determined design decision aimed to meet the mandatory requirements of NY Election Law §4-104 5.(a) and 5(b) where it is stipulated that separate voting machines or ballots shall be provided in all cases that distinct election districts share one common polling location.

It is simply not allowed that one single voting machine or system in a polling place is or can be used by voters of distinct election districts; hence a voting machine or system should not accommodate functionalities that present a clear violation with the law.

² For an example ref. attachment 3

In other words the fact that the LibertyMark does not offer a functionality that supports multiple ballot styles is not a coincidental feature or limitation of the system, but the consequence of a compulsory system design requirement dictated by the NY Election Law.

I trust that this supplemental information will aid CEMAC to continue their valuable and important contribution to the further implementation of the election modernization process in the State of New York.

Sincerely,

M. Schippers
Nedap Election Systems
On behalf of Liberty Election Systems

CC:

Commissioners of the New York State Board of Elections:

Commissioner Evelyn J. Aquila
Commissioner Helena Moses Donohue
Co-chair Douglas A. Kellner
Co-chair James A. Walsh

Attachments:

1. List of CEMAC members
2. Preliminary results NYSILC Focus Group Voting Machine Testing
3. The NEDAP ES4 full face ballot marker device

Overview members of the Citizens' Election Modernization Advisory Committee

James A. Conlon, Esq.
Assistant Director, Career Services,
St. John's University School of Law.

Bruce Darling
Director,
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William Frucci
Commissioner,
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Reginald Lafayette
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The Nedap ES4 ballot marker

