

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**MI FAMILIA VOTA, TEXAS STATE  
CONFERENCE OF THE NATIONAL  
ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED  
PEOPLE, MICAELA RODRIGUEZ and  
GUADALUPE TORRES**

**Plaintiffs**

**vs.**

**GREG ABBOTT, Governor of Texas;  
RUTH HUGHS, Texas Secretary of State,**

**Defendants.**

**No. 5:20-cv-00830**

**DECLARATION OF VIRGINIA  
MARTIN**

**DECLARATION OF VIRGINIA MARTIN**

I, VIRGINIA MARTIN, do hereby say under oath the following:

1. I am of legal age and competent to provide this declaration. All the information herein is based on my own personal knowledge unless otherwise indicated.
2. My background, qualifications, and professional affiliations are set forth in my curriculum vitae, which is attached as Exhibit A.
3. I served as Democratic Election Commissioner in Columbia County, New York from 2008 until early 2020. The role of Democratic Election Commissioner in Columbia County is a

full-time salaried role overseeing three full-time Democratic staff, one half-time Democratic staff, and 150 or more Democratic seasonal and election-day workers.

4. I am a member of the Election Verification Network, a national organization; a member of the advisory board of the National Election Defense Council; a member of the board of directors of Citizens for Voting Integrity New York; and a member of the advisory board of SMART Elections.

5. I have frequently been called upon to present to groups all around the country that are interested in election security, I have frequently appeared on a variety of radio programs, and I have been interviewed for many newspaper and blog articles about my experience with election security.

6. I have an MS and a PhD, both in communication and rhetoric, from Rensselaer Polytechnic Institute in Troy, New York.

7. I oversaw a transition of election systems in Columbia County, New York, to a primarily hand-marked paper ballot system. I have a great deal of experience over dozens of elections overseeing the optical-scan voting, the secure chain of custody, the reconciliation, and a particularly comprehensive hand-counting of paper ballots. In most elections, we hand-counted multiple races on each ballot in Columbia County and, in every election, the hand counts were completed efficiently and within a reasonable time frame.

8. I oversaw a transition of pollbook systems in Columbia County, New York, to an electronic pollbook system with paper backup, which was accomplished within an extremely tight timeframe.

9. My county's elections entailed hundreds of thousands of voter-marked ballots and easily millions of votes on individual races. I have personally examined thousands of hand-marked paper ballots.

10. Because of my extensive experience in running secure elections using optical scanners and hand counting a high percentage of the paper ballots therefrom, I have frequently been called to confer with and advise election-integrity experts, attorneys in election cases, other election officials, and other advocates about the security and feasibility of such processes.

11. I testified at the July 2019 preliminary injunction hearing in *Curling v. Raffensperger*, No. 1:19-cv-2989-AT (N.D. Ga.), and at the October 2019 trial in *Common Cause New York v. Brehm*, No. 1:17-cv-6770-AJN (S.D.N.Y.). My testimony was credited by the court in both cases. See *Curling v. Raffensperger*, 397 F. Supp. 3d 1334, 1399 (N.D. Ga. 2019); *Common Cause New York v. Brehm*, 432 F. Supp. 3d 285, 300, 306 (S.D.N.Y. 2020). I also testified at the August 2020 preliminary injunction hearing in *North Carolina State Conference of the NAACP v. North Carolina State Board of Elections*, 20-CVS-5035 (Wake Cnty Super. Ct.).

### **Executive Summary of Conclusions**

12. In 2010 I oversaw, with my counterpart, a major voting-system transition, from a mechanical voting system with no electronic components or paper ballots to one employing optical scanners and hand-marked paper ballots for every voter. It represented a sea change in our elections and required substantial modifications to every aspect of our operations.

13. In 2019, in conjunction with New York State's abrupt legalization of early voting, I oversaw a secure countywide transition to electronic poll books, which transition was effected even though mere weeks before early voting began, for which these new devices were essential, we had neither taken receipt of a single pollbook nor trained a single inspector on its use. That

transition was accomplished during a year in which dozens of game-changing election laws were enacted, one after the other, many to be implemented with just months if not weeks or days of advance notice.

14. The 2010 and the 2019 transitions were immensely challenging, yet both were effected successfully and in compliance with state and federal laws.

15. Now, the COVID-19 pandemic has changed the face of daily life, and with it must change the face of election administration. Similar to the transitions in 2010 and 2019, I believe that not only must far-reaching changes to elections in the State of Texas be mandated, but that, in order to ensure safe elections for Texas voters, counties can feasibly add hand-marked paper ballots to their existing voting systems and they can feasibly and beneficially modify a variety of other aspects of their operations. I also believe that the State of Texas must fully support the counties in these necessary efforts with appropriate funding.

16. It is my experience that, when so ordered and when funding is made available from the state or federal government, county election administrators are able, on very short deadlines, to implement huge, far-reaching changes to their procedures, as I have experienced in the two major election-administration transitions described above and in others that I have not described. It is my experience that, particularly in times of uncertainty which we clearly are experiencing in the current pandemic, properly funded orders and mandates, enacted whenever they may be necessary, can actually make administrators' jobs easier because they eliminate many of the uncertainties and ambiguities that are associated with election administration during difficult times.

17. There is precedent for election administration being upended and at the same time supported by substantial, even huge, governmental appropriations. Subsequent to the public

outcry that ensued after the 2000 presidential election disaster, Congress appropriated, via the Help America Vote Act, more than three billion dollars to the states to prevent such a disaster from ever happening again. No argument can be made that the pandemic, which has taken more than 170,000 lives in the United States and infected five million, and which strikes fear in the hearts of most, is any less serious.

18. What Texas can do is learn from the experiences of all states that have conducted primary elections during the time of COVID. Those elections have amply exposed the pitfalls of running an election during a pandemic and thus have revealed how those traps might reasonably be avoided. It is my belief that, with proper support, election administrators will rise to the occasion.

**Experience as Columbia County Election Commissioner**

19. I served as Democratic Election Commissioner in Columbia County, New York from 2008 until early 2020. Jason Nastke served as Republican Election Commissioner from 2010 until year-end 2019.

20. The role of Democratic Election Commissioner in Columbia County is a full-time salaried role overseeing three full-time Democratic staff, one half-time Democratic staff, and 150 or more Democratic seasonal and election-day workers, referred to herein variously as poll workers or inspectors. My Republican counterpart had the same staffing.

21. Columbia County currently has more than 45,000 active voters in 50 precincts.

22. Columbia County includes one city, 18 towns and four villages.

23. The Columbia County Board of Elections conducts all federal, state, county and municipal elections with the exception of three villages' elections. All such elections are conducted on hand-marked paper ballots, scanned and tabulated in the polling place by optical

scanners and then tabulated in the central office on the central tabulator for the election management system.

24. As required by the Help America Vote Act (HAVA), for all elections run by our board, each polling place is outfitted with at least one Dominion ImageCast accessible voting unit.

25. Since 2010, the Columbia County Board of Elections, comprising Commissioner Nastke and myself, ran 35 elections on Dominion ImageCast optical scan voting machines, followed by a hand count of the voter-marked ballots which I oversaw with Commissioner Nastke.

26. New York State was the last state to comply with the Help America Vote Act. This was, as I recall, due to the state's refusal to adopt any of the then-available systems, which did not meet its standards for accuracy and security, in particular, systems which did not rely on hand-marked paper ballots. To comply with HAVA, New York State demanded modifications of then-available optical-scan systems and successfully secured modifications that it deemed satisfactory from vendors Sequoia Voting Systems, which preceded Dominion, and from ES&S. The system that New York State demanded was an optical-scan system utilizing hand-marked paper ballots that would enable a post-election hand-count audit. The state rejected DRE and touchscreen systems altogether as insecure and unauditale.

27. Given the monumental nature of the change in the method of vote counting, I consulted academic research and governmental reports on electronic voting systems. In light of that research and those reports, Commissioner Nastke and I were unwilling to trust the computer-reported election results. Neither did we find that New York State's newly enacted audit regulations would provide us the level of confidence that we needed that the results were accurate.

28. Building on New York State templates, Commissioner Nastke and I developed policies and procedures for ensuring the security of elections conducted in Columbia County. As a result, we committed to conducting 100% hand counts of all votes cast in the 2010 elections, and that is what we did in the September and November 2010 elections. It was an undertaking of great effort but we executed it efficiently and without hesitation. In subsequent elections we reduced the hand-count audit but it remained far more robust than any other in the state and likely in the nation. Since that transition, both Commissioner Nastke and I personally or through trusted individuals verified the accuracy of vote totals in every election. We did so efficiently, quickly, and without incurring high costs.

29. In our modified hand-count audit, after each Election Day, my department, assisted by perhaps as many as 20 bipartisan election workers, conducted a hand count of a number of races to verify the accuracy of the optical scanning tabulations and to determine who really won. The trained counters that we employed during our audits came to recognize the kinds of markings that a scanner will count as a vote and those that a scanner will entirely fail to discern. In such a case, the voter's intent was interpreted by bipartisan teams and was honored.

30. Neither did New York State take the lead in adopting early voting. In 2019, after a majority of states had already instituted early voting, all New York State counties were mandated to offer nine days of early voting before the 2019 general election.

31. New York State certified three electronic pollbooks by July 2019.

32. For the 2019 general election, the Columbia County Board of Elections decided to open three early-voting poll sites. To accommodate the need for real-time registration data at multiple early-voting pollsites we began in April 2019 the selection process of and transition to electronic pollbooks.

33. It was not an easy process. We did not take even a partial delivery of pollbooks until the end of September, less than a month before they were to be deployed and used by poll workers.

34. It was far from an ideal situation and the timeframes seemed impossible. Yet we successfully opened our three early-voting sites with electronic pollbooks on October 26, keeping them open for nine days, and we successfully opened our 33 pollsites on November 5 with electronic pollbooks in each of our 50 precincts. The pollbooks worked fine and were generally seen in a positive light by voters, poll workers, and board staff.

35. Through the November 2019 general election, which was the last election that I administered, the process of conducting elections in Columbia County, which was largely the same across New York State, was as follows:

1. Candidates qualified for ballot positions by filing with our Board of Elections, or, for cross-county elections, with the New York State Board of Elections.
2. For cross-county elections, the New York State Board of Elections certified its ballot to our county.
3. Municipalities informed us of their ballot questions.
4. Our board built the ballots.
5. Once approved, ballots were printed for use as non-scannable absentee and affidavit/provisional ballots and for optical-scan ballots for issuance at the polls. Optical-scan ballots underwent logic and accuracy (preLAT) testing.
6. Our board programmed the electronic pollbooks and loaded the voter rolls onto them.
7. During Early Voting and on Election Day, poll workers signed in voters on the electronic poll books and, for redundancy, also on paper pollbooks.



8. During Early Voting and on Election Day, poll workers issued paper ballots to the voters who, after marking them by hand, cast them by placing them in the optical scanner, which tabulated their votes and deposited their ballots in a secure ballot box. At the close of polls, polling place results were publicly announced and posted.
9. Immediately after the close of polls, the secured memory cards from the precinct scanners; all the ballots, voted and unvoted; the pollbooks; and other election materials were brought, securely via a bipartisan team, to the county Board of Elections where our bipartisan staff aggregated the tabulations from the memory cards. Results reports were issued, posted on the board's website, and securely uploaded to the State Board of Elections. All election materials were secured in a room behind two locks with different keys, one held by the Republican commissioner and one held by the Democratic commissioner, so that no materials could be accessed without the presence and assent of the other party.
10. Following the election, and prior to the certification of the results, poll workers in bipartisan teams of two or four reconciled all election materials and then hand counted/audited some number of ballots to verify the machine totals.

**Columbia County's Experience Transitioning to a Hand-Marked Paper Ballot System**

36. As Columbia County Election Commissioner I had experience overseeing two major voting-system transitions: to a hand-marked paper ballot system and to an electronic pollbook system.

37. The first such transition was in 2010 when our county moved to a hand-marked paper ballot, optically scanned system. In Columbia County, we were able to transition efficiently and effectively to that new system.

38. I therefore have personal experience in transitioning tens of thousands of voters from a mechanical lever voting-machine election to one with paper ballots and optical scanners. That transition was accomplished effectively and without significant difficulty by implementing a voter-education program, primarily at the poll site on election day, utilizing oral instructions from poll workers as well as graphically illustrated written instructions. My county's experience was that voters had little to no difficulty understanding how to properly vote such a hand-marked paper ballot. In my role as Commissioner, on election days I frequently visited the polling places and observed voters voting by paper ballots that they marked by their own hand.

39. In September 2010, as stated above, Commissioner Nastke and I ran the first electronically counted election in Columbia County when New York State mandated a transition from mechanical lever voting machines to a system employing electronically tabulating optical scanners and voter-marked paper ballots subject to a mandatory hand-count audit.

Commissioners in 48 other counties in the state had made a similar transition during a 2009 pilot of the new voting systems, and the remaining 14 made the transition with Columbia County in September 2010 after the machines had been certified. I conferred with other New York election commissioners and exchanged information on the kinds of process-related and administrative changes necessary for this significant transition of voting procedures.

40. During these two years, 2009 and 2010, counties trained inspectors who successfully operated electronic scanners and successfully provided voters with the correct paper ballot for their election. Counties placed paper and ballot-printing orders that were successfully made and filled without difficulty.

41. The September and November 2010 elections were the first in which all voters in all counties in the state voted on a system that electronically tabulated votes from hand-marked paper ballots.

42. At the polls, poll workers instructed voters on how to properly mark a ballot. Voters signed the paper poll book, they were given a paper ballot and a privacy sleeve that would shield the voted ballot from prying eyes, and they carried their ballot and privacy sleeve to a table where they marked their ballot behind the shield of a privacy booth. In the booth, posted instructions could be consulted once again. Voters walked their voted ballot to the optical scanner, where a poll worker provided brief instructions on how to insert the ballot into the scanner and how to watch the small LCD monitor to determine if their ballot had been successfully scanned and cast.

43. Only a small minority of voters had any question about how to vote a paper ballot, as it is a simple and routine process. In conducting the post-election hand counts of hundreds of thousands of ballots over the years, my experience was that it is exceptionally rare to encounter a voter's ballot markings that cannot be reasonably interpreted as to the voter's intent. Instead of casting an ambiguous ballot, the great majority of voters simply ask for a new ballot when they make errors in the marking of their ballot.

44. During the transition to hand-marked paper ballots, the most frequent error voters made was a failure to adequately fill in the voting oval. Another was using a pen that was not

recognizable by the optical scanner. However, neither occurred with great frequency, and both were very easily averted with very simple educational techniques. The frequency of such errors, negligible during the transition period, decreased even further since that time. But it should be noted that, in both cases, a human review of the ballots easily adjudicated the votes to determine voter intent so that all votes could be counted.

45. The September and November 2010 elections were the first in which poll inspectors in Columbia County were required to understand and manage the proper execution of a wide variety of many new processes, documents, and reports. Most of those processes, documents, and reports had been developed at the state level and introduced to the counties, which then implemented them, as did Commissioner Nastke and I.

46. The transition represented a sea change in how elections are run, morphing away from a legacy voting mechanism that was solid, immobile, self-contained, impenetrable, and completely mechanical. The new system was based on electronic tabulating processes reliant on programming, on voter-marked paper ballots for every single voter, and on far more complicated security protocols. It was a system that featured dozens more moving parts than a lever-based election.

47. While the transition was challenging, it was successfully made. In New York State no county failed to procure sufficient ballots, to deploy enough machines, to train enough inspectors, or to have its voters successfully vote. No county failed to conduct the required post-election 3% hand-count audit.

48. In fact, Columbia County successfully conducted a 100% post-election hand-count audit, much more than was required. While it was challenging, we successfully completed it without making any errors.

49. Columbia County developed a simple but airtight chain-of-custody procedure, for ballots and all other election materials, that was initiated immediately upon the close of polls. At close of polls, materials were bipartisanly transported to the Board of Elections to be bipartisanly secured until reconciled and then hand counted in the days following. It proved to be completely effective and efficient, and it engendered the confidence of voters. The process was still in use through the last election that Commissioner Nastke and I oversaw, the November 2019 general election.

50. In the very rare event that an optical scanner broke down and could not be fixed before polls closed, and in accordance with New York State election law, inspectors completed a hand count of the uncounted ballots after the polls closed. Then, in accordance with law and our normal procedures, ballots were securely and bipartisanly transported on election night to the Board of Elections. In an emergency situation in which the precinct tally could not be completed by inspectors, it is my belief that the tally could safely and accurately be conducted centrally at the Board of Elections upon receipt of those ballots.

51. Based on my experience, I believe it is feasible to incorporate a hand-marked paper ballot system, in most cases followed by optical scanning at the precinct or centrally, into Texas's various county voting systems, many of which already include optical scanning. Such hand-marked paper ballots can be offered to voters as safer and faster alternatives that they may opt to use during early voting or on election day.

**Adding the Option of Hand-Marked Paper Ballots in Texas Counties is Feasible**

52. Based on the transition to hand-marked paper ballots counted by optical scanner in Columbia County, New York and other jurisdictions with which I am familiar, it is my opinion that in Texas the addition of an option for voters to vote on hand-marked paper ballots is feasible

and economical. Many counties will be able to use their current optical scanning capabilities, either at the precinct or centrally. Others may need to procure central scanners. Some small counties that currently and successfully employ hand counts may simply continue to hand count for the November 2020 election.

53. The precinct-based hand-marked paper ballot optical scan system in use in New York State is straightforward for administrators and poll workers to use. It is extremely easy for voters to use. The paper ballot is fed into the scanner, which after scanning it and tabulating its votes then stores it securely in a ballot box. Even if a mechanical scanner problem is unexpectedly encountered, the hand-marked paper ballots in use by voters can be deposited in the secure emergency-ballot box and counted later. This is a distinct advantage over touchscreen DRE and BMD units which, when they malfunction, cease to work at all, and accommodate fewer voters as the duration of each voter's use is far longer than the time it takes to mark a paper ballot in a privacy booth and insert it into an optical scanner.

54. In my experience, training time for the voters is minimal. They have no trouble understanding how to hand-mark a paper ballot or insert it into an optical scanner or locked ballot box in the polling place. Training time teaching poll workers to handle paper ballots is also minimal. Likewise, training time teaching poll workers to operate optical scanners is not lengthy. Many Texas counties already employ precinct scanners, and their workers have already received training on the equipment. Counties that currently have central scanners but not precinct scanners may collect ballots in secure ballot boxes and utilize their central scanners. Counties that do not currently have any scanners may purchase central scanners. Staff at boards of election will encounter little difficulty learning how to operate central scanners.

55. Instructing voters and especially poll workers on complicated electronic equipment, which touchscreen DREs and BMDs are, is much more complex than working with hand-marked paper ballots. This is less true for optical scanners, which are less complex than DREs and BMDs. In 2010 when we instituted optical scanners, we needed to train half of our inspectors, whom we called machine, or primary, inspectors, on the optical scanners. Yet quite a few of the more experienced and/or less technically inclined inspectors refused to learn the electronic equipment and some of them retired rather than face the rather modest challenge. In 2019 when we instituted electronic poll books, we had to train the other half of our inspectors, whom we called clerical inspectors, on the new electronic poll books. Quite a few of the more experienced and/or less technically inclined inspectors refused to learn the equipment and some retired. While there were many inspectors who achieved competence and welcomed the electronic devices, there was a not insignificant number of others for whom the equipment remained a challenge.

56. Learning to operate optical scanners is less taxing than learning to operate touchscreen DRE or BMD units. Newly hired poll workers, of which there are likely to be many in this election, will more easily learn a system of hand-marked paper ballots and optical scanners.

57. Adding hand-marked paper ballots as an option to counties' touchscreen DRE or BMD units should require minimal training time. Most Texas counties have optical scanning systems which are already in use by elections staff. Those that do not will find the setup and operation of optical scanners to be fairly simple. Hand-marked paper ballots have been used by hundreds of thousands of Texas voters to vote absentee by mail, and many to vote provisionally. Many Texas voters from the 90-plus counties that voted exclusively on paper ballots rued the day they lost their paper ballots after new voting machines were purchased in response to HAVA, according to

a “Report on Alternate Findings and Recommendations” to the 2009 Travis County report on voting systems.

58. No new system selection, certification, testing and implementation is required for the deployment of hand-marked paper ballots counted by any of the optical scanners already in use. Alternatively, counties may choose to count ballots by hand, which similarly will not require the selection, certification, testing and implementation of a new system.

59. The addition of an optional hand-marked paper ballot system, with or without optical scanners, can be accomplished smoothly, securely, and effectively by Texas counties.

60. In my estimation, the transition in New York (and Columbia County) from a fully mechanical system to an optical-scanning system represented a far greater change, incorporating the introduction of more complicated processes, than would Plaintiffs’ proposed addition of a hand-marked paper ballot/optical scanning system as an option for use alongside counties’ existing systems.

61. The proposed addition is relatively simple. At the poll sites, in addition to paper ballots, which simply represent an increase from the number of provisional ballots already provided, the only equipment needed for ballot marking would be pens, privacy booths, and secure ballot boxes. The proposal would offer voters a greatly simplified alternative.

62. To conduct early voting at centers using hand-marked paper ballots, the following can be developed and undertaken, sometimes in combination:

1. Paper-ballot-inventory management plans for a predetermined percentage of anticipated voters, perhaps 50%, based on past voting trends for each early-voting center.



2. Careful ballot-inventory daily monitoring supplemented if desired by Ballot-on-Demand printers.
3. Ballot-inventory management aided by a few roving teams of technicians to assist with printing issues, inventory shortages, etc.
4. Clear protocols for unexpected ballot shortages.
5. Requiring that two poll workers, ideally from opposing political parties, check the accuracy of the ballot style before issuing the unvoted ballot to the voter.
6. Requiring that high-traffic early-vote centers be managed by experienced staff.

63. In my estimation, and given that many counties in the State of Texas already employ optical scanners and employ paper ballots and centralized optical scanners for provisional and mail ballots, and given that many individuals who are voters have encountered optically scanned forms at some point in their lives, the transition to having a poll worker hand a paper ballot to a voter, to be hand-marked and then fed into a ballot box or an optical scanner, is feasible for election administrators, poll workers, and voters to manage.

64. Securing paper ballots at the poll site and during transport to their ultimate destination for central count has traditionally been part of the Texas elections process, given that poll workers have always secured provisional hand-marked paper ballots marked in the polling place, as have all other states since the implementation of the Help America Vote Act. Securing more ballots will be a very simple process, easily implemented with minimal revisions to current written procedures. Based on my experience in Columbia County's conversion to a hand-marked paper ballot system, it is my opinion that transitioning to a supplemental hand-marked paper ballot system will not increase the burden on poll workers. In fact, to the extent that it minimizes lines

at the poll sites and results in more expedited voter flow, which means voters will be happier, it likely will make poll workers' jobs more pleasant.

65. Transitioning to a supplemental hand-marked paper ballot system will require operational flexibility on the part of election administrators, but the pollsite and voter problems that will be minimized will balance out the inconvenience they will bear. The transition need not be initiated for the first day of early voting. Even beginning at a somewhat later date, such as one week after the start of early voting, will provide a welcome benefit for voters and poll workers alike.

66. In my experience, when a scanner became temporarily inoperable, voters expressed little concern about having to deposit their voted ballots in a secure emergency-ballot box for later scanning. Voters who were given the choice to vote instead at a later hour when the scanner was likely to be working again typically chose instead to deposit their voted ballots in the secure emergency-ballot box without scanning it first. Thus, even in the absence of an operational optical scanner, an election could continue with minimal, if any, inconvenience to voters.

67. If the anticipated destination for a voted paper ballot is a secure ballot box rather than an optical scanner and this is explained to voters before they decide to vote by hand-marked paper ballot, they should not experience any uncertainty or concern about using such a ballot box.

68. When hand-marked paper ballots are used, it is simple and inexpensive to expand capacity at the polling place in instances in which high turnout occurs. More ink pens and cardboard privacy booths and possibly a modest addition of poll workers are required, but no additional voting-system equipment is necessary. Given that each county's current voting system will also be available, running out of paper ballots becomes less of an emergency.

69. A voting system employing hand-marked paper ballots will exhibit a great deal of continuity with the counties' existing systems. Ballots will be programmed, tested, printed, and

tabulated on the same system as they are today for mail absentee ballots and for provisional ballots.

70. Poll workers can easily be trained to issue paper ballots. I am confident that poll workers would find the issuance and control of paper ballots to be easier than operating DRE or BMD machines, with all their operational and maintenance issues. The physical security required for the paper ballots would be much like the security protocols the poll workers employ today for the paper provisional ballots.

**Multiple Potential Sources for Additional Paper Ballots**

71. In Texas, paper ballots such as absentee mail ballots and provisional ballots are regularly printed and used in elections. With the addition of supplemental hand-marked paper ballots, ballot print orders can simply be increased. Poll workers can easily issue printed paper ballots to voters in the polling place.

72. It was my experience as an election commissioner that election boards procured their ballot paper or their printed ballots from vendors far and wide, that vendors were not limited to the state of residence, that more than one paper stock will perform well in a particular scanner, and that vendors are able and willing to produce ballots that conform to a scanner's specifications.

73. In fact, ES&S, the manufacturer of systems employed by a great many Texas county election boards, prints ballots or contracts out ballot printing and would be one logical source for ballots. Hart InterCivic, which manufactures systems employed by many other Texas counties, also provides ballot production and certified ballot printing services.

74. Another source for ballots would be the counties' current printers for mail and provisional ballots, who simply would need to increase their print runs for every ballot style. All

ballot styles are required to be printed under the current election scheme. Counties currently print a number of mail and provisional ballots equal to some percentage of the voter rolls, and, in the current coronavirus environment they are likely printing a much higher percentage of all registered voters. They would simply need to increase that percentage. Given the current emphasis on voting by mail, the in-person turnout, for early voting or for election-day voting, will surely show a substantial decrease from prior years, thereby requiring fewer in-person paper ballots to be added as an alternative.

**A BMD Voting System is Much Slower than a Hand-Marked Paper Ballot Voting System**

75. As commissioner, in the exercise of my due diligence, I followed the experiences of other counties and other states in order to prepare appropriately for elections in Columbia County. I paid close attention to problems experienced by other boards using other optical scanners, and particularly the Dominion ImageCast, which was my board's machine.

76. A great many counties in the State of Texas employ hybrid BMD systems such as the ES&S ExpressVote. That system has been proven to have far slower throughput than does a hand-marked paper ballot system. Research conducted by the Commonwealth of Pennsylvania's Department of State in November of 2018 indicates that the ExpressVote BMD accommodates 20-60 voters/hour. These numbers assume that (1) the voter is able to receive a voter activation card, which is not always possible if the electronic poll book has not been delivered to the poll site or for some reason fails to produce the card, (2) an appropriate number of ExpressVote BMDs have been delivered to the poll sites and are working properly, and (3) the voter is able to access an available ExpressVote BMD. The Department of State's research further indicates that the DS200 optical scanner, which in many cases is the same scanner in use by the same Texas counties, can accommodate 120-180 voters/hour. That throughput reflects the DS200's ability to

scan either a vote summary card, as produced by the ExpressVote BMD, or a hand-marked paper ballot, as could be produced by the great majority of voters with the assistance only of a working pen.

77. The conclusion that I, with considerable experience as an election commissioner, draw from this research is that no more than 60 BMD voters can be processed in an hour, but three times as many—up to 180 voters who were not using the BMD but instead were hand-marking their paper ballots—could be processed in an hour. It is my experience that voters mark their paper ballots rather quickly and that their time at the optical scanner is extremely short. It was never my experience, with hand-marked paper ballots optically scanned, that any of our poll sites had a voter flow of only 20 voters per hour if there were voters waiting to vote. That would have been unthinkable. I believe that at least two voters per minute and perhaps three could be processed through our optical scanners, resulting in a potential throughput of 120-180 voters, similar to the research herein cited.

78. What's more, the amount of working equipment needed for a system such as an ExpressVote BMD election far surpasses the amount needed for a hand-marked paper ballot election—multiple working BMDs that process voters slowly, plus a smaller number of DS200s, are needed for the former, while only pens and paper ballots plus the same number of DS200s as needed for a BMD election, or, alternatively, a secure ballot box, are needed for the latter. And if the DS200 should break down, the paper-ballot marking system will continue to be operational and voters can deposit their ballots in a secure emergency-ballot box.

#### **Columbia Voters Expressed Confidence in Elections With Hand-Marked Paper Ballots**

79. As Election Commissioner, I spoke frequently with many voters across Columbia County, who provided feedback regarding their perceptions concerning the effectiveness of our

voting systems. These conversations occurred on election days, over the course of the years in my capacity as commissioner, and over the course of the years in private conversations.

80. It was my experience as an election commissioner that voters gained great confidence and reassurance from casting their votes on a paper ballot that they marked themselves, that they knew was clearly marked, and that they knew would survive election day for hand-count examination of their marks to verify their votes. It was my experience that voters in my county were exceedingly confident that the vote counts that Commissioner Nastke and I certified and which they were welcome to attend and closely observe were absolutely correct.

81. It was my experience as an election commissioner that voters were reassured by the presence of non-electronic pen and paper processes at the polls, as present in our paper poll books and our paper ballots that they marked themselves. I heard from many voters that they are skeptical of the mutable and hackable nature of electronic processes as they have been introduced into elections, especially in light of recent years' news of foreign nation-state election-hacking attempts.

82. Indeed, as stated in the 2009 Travis County review of voting systems, "Voters are reassured by the physical paper ballot and generally trust a paper-based voting system" (Appendix B, "Voting Systems Comparisons," p. 100).

83. In a time when tensions are high and people are frightened for their lives, the simplest of things can be reassuring, and in a poll site during a tense presidential election, it is not unreasonable to think that hand-marked paper ballots might actually have a calming effect.

#### **Columbia County's Experience Transitioning to an Electronic Pollbook System**

84. In 2019, and beginning in January and continuing through the last days of October, the New York State Legislature passed 50 election-law bills which were signed into law by

Governor Cuomo. The great majority of them mandated changes to election administration with effective dates during the 2019 election season, many providing only a few months' notice and some providing only weeks' or days' notice. The New York State Board of Elections and all county boards thus were required to comply with a staggering number of election-administration changes, some of them far-reaching, within an extremely short window of time. Expectations for compliance were high and so were administrators' concerns as to how compliance could be achieved.

85. For the 2019 general election on November 5, all New York State counties were mandated to offer early voting for nine days, beginning on October 26 and ending on November 3.

86. For the 2019 general election, the Columbia County Board of Elections elected to open three early-voting poll sites at which voters countywide could vote. To accommodate the need for real-time registration data at multiple early-voting pollsites we began in April to assess electronic pollbooks.

87. By July, after an inhouse demonstration by vendor NTS Data Services, we were prepared to order their electronic pollbooks. In mid-July we were informed by NTS that they had decided to exit the electronic-pollbook market. We began a frantic review of the remaining vendors' products. On August 30, after diverting precious time to viewing demonstrations by the three other state-certified vendors, we placed an order with KnowInk.

88. All electronic-pollbook vendors were experiencing delays in filling their orders given the huge number of orders from New York State, to say nothing of their orders from beyond our state, which certainly were exacerbated because one vendor had withdrawn from the market.

89. Every year, according to statute, we trained all of our approximately 300 inspectors. Ordinarily this training took place in the summer. In 2019, we had delayed training because even in mid-August we had not even ordered pollbooks or associated printers and other equipment. The new pollbooks would be a crucial element of their training. On or about September 20 we finally took delivery of ten loaner books so that we might begin our training sessions. On Oct 1 we held our first painfully small training sessions of only nine inspectors, and, with our modest-sized staff, and diverting staff resources away from other essential work, we continued to hold two such trainings per day until we received more pollbooks on October 16. At that point we increased the size of our trainings to accommodate as best we could the remaining inspectors, with only 10 days remaining until the beginning of our first-ever rollout of early voting.

90. What we also needed before we could implement the use of electronic pollbooks were various connectivity devices and a method for secure data transmission. A raft of connectivity issues had to be explored and resolved. Contracts had to be negotiated and signed. We had to take delivery of these devices and plan for the secure deployment of all the elements of the electronic pollbook system to each of our 33 poll sites.

91. It was far from an ideal situation and the timeframes seemed impossible. Yet we successfully opened our three early-voting sites with electronic pollbooks on October 26, and we successfully opened our 33 pollsites deploying electronic pollbooks in each of our 50 precincts on November 5. In all instances the pollbooks worked fine, and they were generally seen in a positive light by voters, poll workers, and board staff.



**Texas Can Feasibly Transition to COVID-19-Safe Election Administration for the  
November 2020 General Election**

92. There is no delaying an election, as every election official knows. There is no denying the horrific impact of the COVID-19 pandemic in the bodies and in the psyches of millions of Americans and millions of Texans. Democracy must be perpetuated. Election administrators are in the business of doing just that. It is my belief that, if they are issued clear mandates that are supported by appropriate levels of funding, administrators will perpetuate democracy by successfully implementing whatever changes are ordered for the November 2020 election, so that they as essential workers, and poll workers as essential workers, and voters as essential actors in democracy, can all participate without fearing for their lives.

93. Temporary changes to the November election must be mandated both to literally protect these individuals and to assure them that every possible measure for their protection is being taken by the State of Texas. Clear plans for a variety of voter and pollworker protections, many of them enumerated by Plaintiffs, can and must be developed and widely communicated so that county board administrators can work without fear and so that poll workers can commit to working the polls without fear. It is my experience that poll workers have a great affection for working the polls and are sorely disappointed when they cannot. Given clear and public assurances of protections, including mandating the use of masks by all workers and all voters, it is my belief that many workers will work.

94. An aggressive recruitment program followed by training can be crafted by the state and provided to the counties. Younger people, including high-schoolers working as student election clerks, can be recruited to work the polls. All should be recompensed at a level that will attract them. It is, after all, a pandemic situation. In Columbia County, when we substantially raised the hourly pay rate of inspectors, we found they were easier to hire. Having a good number of

workers will enable them to work partial instead of full days, which will be more appealing in a pandemic situation than sitting in a room for very long hours. That strategy served us very well in Columbia County. Furloughed municipal workers can be hired to execute simple tasks at a county board or at a poll site. There is a long list of simple social-distancing measures that can and must be taken to protect the people involved and to assure them that they are being protected.

95. With a court order or a state mandate for a more generous minimum number of poll sites per population or per geographic area, it will be easier for counties to secure commitments from poll sites. Having more poll sites will reduce congestion which will reduce fear, anxiety, and lines.

96. Re-authorizing mobile voting units will help to ease crowding in fixed poll sites.

97. The State of Texas must fully support the counties in their necessary efforts with appropriate funding. Doing so will, to great extent, have the added benefit of circulating dollars into the local economy.

98. It is my experience that, when so ordered and when funding is made available from the state or federal government, county election administrators are able, on very short deadlines, to implement huge, far-reaching changes to their operations. I have seen administrators execute what seemed like impossible tasks because they were ordered to, because they were expected to, because they knew it was the right thing to do, and because they knew they were the difference between democracy and not-democracy.

99. To say that we are in an extraordinary time is a shocking understatement of the reality. All states, including the State of Texas, have an inarguable responsibility to protect democracy and the lives of their citizens.

100. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on the 26<sup>th</sup> day of August, 2020.

Virginia Martin  
[NAME]

I, the undersigned notary public, hereby certify that VIRGINIA MARTIN personally appeared before me this day and acknowledged the due execution of this DECLARATION.

Witness my hand and official seal, this the 26<sup>th</sup> day of August, 2020.

Kathy Anne Schweizer  
Notary Public

My commission expires 9/25, 2021.

KATHY-ANNE SCHWEIZER  
#01SC5049981  
Notary Public, State of New York  
Qualified in Columbia County  
My commission expires SEPTEMBER 25th, 2021

# EXHIBIT A

**Virginia Martin**  
Curriculum vitae

724 Warren St. #2  
Hudson, NY 12534

(518) 755-1521  
viriniamartin2010@gmail.com

**EDUCATION**

PhD, Communication and Rhetoric	2005
Rensselaer Polytechnic Institute, Troy, NY	
MS, Communication and Rhetoric	2000
Rensselaer Polytechnic Institute, Troy, NY	
BA, English/Communication	1999
Skidmore College University Without Walls, Saratoga Springs, NY	

**PROFESSIONAL EXPERIENCE**

Columbia County Board of Elections

- Democratic Commissioner 2008-2020 (Feb)

**Teaching**

University at Albany (NY)

- Dept. of Communication, Adjunct Professor 2006-2008

Rensselaer Polytechnic Institute (Troy, NY)

- Dept. of Language, Literature, and Communication, Teaching Assistant 2000-2004

**TESTIMONY / PRESENTATIONS / PANELS / INTERVIEWS. etc.: Election Security**

NC Superior Court, Wake County, NAACP v. NCSBOE

- personal affidavit, June 2020
- personal testimony at hearing, August 2020

*Kill Chain: The Cyber War on America's Elections*, released March 2020

- interviewed and filmed during June 2019 primary election

US District Court, Southern District of NY, Common Cause v. NYS Board of Elections

- personal declaration/affidavit, September 2019
- personal testimony at trial, October 2019

Citizens for Voting Integrity New York, Hastings on Hudson: panel presentation, October 2019

US District Court, Northern District of GA, Curling v. Kemp

- personal declaration/affidavit and 2 supplementals, August 2018-June 2019
- personal testimony at hearing, July 2019

State of Rhode Island Board of Elections: participant, Risk Limiting Audit Pilot, January 2019

GA Superior Court, Curling v. Kemp, CD6 special election

- expert affidavit, May 2017

GA Senate Ethics Committee, consideration of HB316 re hand-marked paper ballots

- expert statement, March 2019

Expert statement re hand-marked paper ballots re upcoming voting machine purchase, South Carolina, February 2019

Bard College Lifetime Learning Institute, speaker, "Women in Politics," April 2018

California Election Integrity Coalition, National Take Back the Vote Conference, Berkeley, CA



- October 2019
- October 2017

Sierra Club Hudson-Mohawk Chapter; February 2017, March 2018  
 Center for National Security, Fordham Law School, NYC, January 2017  
 George Washington University, Washington, DC, Election Verification Network, March 2017  
 National Press Club, Washington, DC, with Congressional candidate Tim Canova, October 2016  
 Bureau of Labor Statistics, Washington, DC, Washington Statistical Society, October 2016  
 Hastings on Hudson/Westchester, League of Women Voters: March 2017, May 2018  
 Dobbs Ferry, League of Women Voters of the Rivertowns: annual meeting keynote, May 2017  
 UDC David A. Clarke School of Law, Washington, DC: Jonathan Simons' *Code Red*, May 2015  
 Left Forum, John Jay College of Criminal Justice, NYC, 2016 and 2017 (panelist)  
 Radio: *Writer's Voice*, Progressive Radio Network, June 2016; *BradBlog*, October 2015; WOOC  
 Sanctuary for Independent Media, Troy, NY, May 2018; WGXC, Hudson NY, various  
*Columbia Paper*, Chatham, NY: *Your Vote Counts*; regular column, 2010-2011  
*Alliance for Democracy/Justice Rising*: "Hand Counting Ballots for Accurate Election Results,"  
 September 2016

#### **MEMBERSHIPS: Election Security**

National Election Defense Council: Advisory Board  
 Election Verification Network: member  
 SMART Elections: Advisory Board  
 Citizens for Voting Integrity New York, Board of Directors  
 New York Democratic Lawyers Council: member

#### **PAPERS/PRESENTATIONS/PUBLICATIONS: Academic**

Martin, V. "Feeling a Thought Through Song." In *The Big Red Songbook*. Eds. Green, Archie, D. Roediger, F. Rosemont, S. Salerno. Chicago: Charles H. Kerr Publishing Company, 2007.  
 Martin, V. "*You Can't Weave Cloth With Bayonets*": *The Role of Singing in the 1912 Lawrence Textile Strike*. Doctoral dissertation, Rensselaer Polytechnic Institute. 2005.  
 Martin, V. "'All Races Need Apply': The Wobblies as Early 20<sup>th</sup>-Century Model of Inclusion and Union." Rhetoric Society of America conference, Austin, TX. May 2004.  
 Halloran, S., Martin, V., Moore, V. "Rhetorical Spectacle on the Erie Canal: The Third Annual Tugboat Roundup." Rhetoric Society of America conference, Las Vegas, NV. May 2002.  
 Martin, V. "The Rhetoric of Democracy: The Story of Joe Hill." Rhetoric Society of America conference, Las Vegas, NV. May 2002.  
 Halloran, S., Martin, V. "The Prudence of the Curmudgeon." National Communication Association conference, Atlanta, GA. November 2001

#### **FELLOWSHIPS AND SCHOLARSHIPS**

2004: School of Humanities and Social Sciences Fellowship, Rensselaer Polytechnic Institute  
 1999: Graduate School Fellowship, Rensselaer Polytechnic Institute  
 1997: Patricia B. Trbovich Memorial Scholarship, Skidmore College University Without Walls

#### **NOTARY PUBLIC, STATE OF NEW YORK**