

1 NEW YORK STATE BOARD OF ELECTIONS

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3 PUBLIC HEARING
4 In the Matter of
5 VOTING SYSTEMS REGULATIONS

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7 Hearing Room A
8 Legislative Office Bldg.
9 Albany, New York

10 December 16, 2005
11 10:55 a.m.

12 PRESIDING:

13 Peter S. Kosinski
14 Co-Executive Director
15 NYS Board of Elections

16 Stanley L. Zalen
17 Co-Executive Director
18 NYS Board of Elections

19 PRESENT:

20 Lee Daghlian
21 NYS Board of Elections

22 John Ferri
23 NYS Board of Elections

24 Phil Jorczak
NYS Board of Elections

Ray Cecot
NYS Board of Elections

23

24

1 Public Hearing - Albany
2 Voting Systems Regulations
3 12-16-05

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1 EXEC. DIRECTOR KOSINSKI: I'd like to
2 welcome everybody. I just want to apologize
3 for the delay. We're waiting for
4 microphones, and apparently we have them, so
5 I think we'll get started.

6 My name is Peter Kosinski. This is
7 Stanley Zalen. We're the executive
8 directors of the State Board of Elections.
9 And today's hearing is publicized as on the
10 rules and regulations that were put out by
11 our board regarding the testing of voting
12 systems for New York State.

13 (Discussion off the record.)

14 EXEC. DIRECTOR KOSINSKI: Can you
15 hear me now? We'll try it. Actually, I
16 guess all I can suggest is if this isn't
17 going to work very well, maybe you'll want
18 to move down closer so that you can hear
19 well. But hopefully this will hold out.

20 At any rate, we have the rules and
21 regulations that the state board has put out
22 regarding the testing of voting systems in

23 New York. And these rules and regulations
24 were put out on December 7th for public

6

1 comment. They will be out for public
2 comment for 45 days, ending on January 23rd.
3 And these are the state's rules and
4 regulations to be used for the testing of
5 voting systems.

6 This is one of three public hearings
7 that we've scheduled around the state which
8 will be used to solicit public comment. In
9 addition to these public hearings, there's
10 also the opportunity for people to give
11 comments through either the mail or over the
12 Internet, by email to our offices. We
13 welcome public comments in that way as well,
14 and certainly you're welcome to do that.

15 But we do have a list of speakers that
16 we'd like to introduce today, give them a
17 chance to be heard. We've asked that those
18 who are going to speak to keep their
19 comments, if you can, to ten minutes. We'd
20 like to do that so that we have enough time
21 for everyone.

22 In addition, we'd ask that if you do
23 have written copies of your public
24 statement, if you could make those available

7

1 to us. We are having today's hearing
2 transcribed, however, so we will have a full
3 transcription of the comments made here
4 today.

5 Stanley, do you have anything you'd
6 like to add?

7 EXEC. DIRECTOR ZALEN: No, I don't.
8 Thanks, Peter.

9 We can call up our first speaker now,
10 and that's Bo Lipari, executive director,
11 New Yorkers for Verified Voting.

12 MR. LIPARI: Thank you.

13 The mike sounds like it's working for
14 me.

15 My name is Bo Lipari. I'm the
16 executive director of New Yorkers for
17 Verified Voting, a grassroots citizens
18 advocacy group concerned with ensuring the
19 integrity of our vote in an age of
20 computers.

21 I had a long career as a software
22 engineer, developing commercial and custom
23 software and managing software development
24 teams and projects for several companies.

8

1 Most recently I held the position of senior
2 software engineer in the Ithaca, New York,
3 branch office of Autodesk, the fifth largest
4 software company in the world.

5 I've spent the last three years
6 educating the public, the state, county and

7 town officials about potential problems with
8 computerized electronic voting systems and
9 advocating for adoption of
10 paper-ballot-based systems, using
11 precinct-based scanners and ballot-marking
12 devices for the disabled.

13 I understand that the purpose of these
14 hearings is to comment on the draft voting
15 system standards, and I will do so in just a
16 few minutes.

17 In a few weeks, New Yorkers for
18 Verified Voting will also submit to the
19 State Board of Elections a detailed
20 technical analysis detailing what we feel to
21 be the significant problems and omissions of
22 the proposed standards. Today, due to the
23 time limitations, I'll only present a
24 high-level overview of the problems we see

9

1 with the draft standards.

2 But before I do that, first I'd like to
3 comment on the approach the State Board of
4 Elections has taken to this important moment
5 in New York State's history.

6 We are on the cusp of fundamental and
7 far-reaching changes to our elections.
8 New York State has not seen such deep-seated
9 changes in generations. The public has a
10 vested interest in the integrity, accuracy
11 and security of our elections, and citizens
12 all around this state have been voicing

13 their concerns and demanding a transition
14 process that is open, fully visible to the
15 public. We've demanded that all kinds of
16 types of voting systems be objectively
17 evaluated and analyzed, and that fair,
18 accurate and thorough evaluations of voting
19 systems in widespread use throughout the
20 United States be performed and presented to
21 the public.

22 This is what the public has demanded of
23 the state board. Unfortunately, we feel
24 very little of this has happened.

10

1 Lately it seems like the state and
2 local Boards of Elections have forgotten
3 something essential. You work for the
4 public. You have been hired to administer
5 our elections. You work for us. You are
6 the public's employees. Your responsibility
7 is to protect the public interest, preserve
8 and guarantee the integrity of our
9 elections. Yet at this moment in time, to
10 the citizens of New York, it appears that
11 you have forgotten your responsibilities and
12 duties to those who you serve.

13 Let me give you an example.
14 Consistently, local and state election
15 officials given insider access to vendors of
16 voting equipment while excluding the public.

17 Consistently, local and state election
18 officials have not allowed citizen advocates

19 to present or discuss viable alternatives to
20 electronic touchscreen voting at Board of
21 Election conferences and events.

22 Consistently, state election officials
23 have told the public one thing about the
24 machine selection process while doing

11

1 another.

2 Consistently, local and state election
3 officials have failed to keep the public
4 informed.

5 Consistently, you have failed to
6 independently evaluate and assess different
7 types of voting systems but have been
8 content to use vendor talking points to
9 spread disinformation about HAVA-compliant
10 alternatives to touchscreen voting.

11 Let me give you a recent example. This
12 week in the Hamilton-Morrisville Tribune,
13 state board spokesman Lee Daghlian is quoted
14 as saying the following: "The civic groups
15 for some reason prefer optical scan
16 machines,' Mr. Daghlian said. 'Those are
17 the kind you write in pencil on a card, then
18 the card is scanned and you have a paper
19 trail. The electronic machine is cheaper.' "

20 Here we have a good example of subtle
21 editorializing in favor of electronic
22 touchscreen voting by what we hope to be an
23 objective representative of the state board.
24 The civics groups, he says, for some

1 reason -- for some reason -- prefer optical
2 scan machines.

3 Well, since the public and the press
4 have been discussing the optical scan
5 alternative and the compelling reasons for
6 its adoption quite openly for well over a
7 year now, the very solid and substantive
8 reasons for our preference are surely
9 abundantly clear at this point. But yet
10 this statement implies that it is quite
11 incomprehensible that anyone would support
12 such a system.

13 He continues: "Those are the kind
14 where you write in pencil on a card."
15 Surely at this point in time the board is
16 aware that an optical scan ballot is a
17 formal official ballot and not a
18 three-by-five index card like the statement
19 implies. Surely the board is aware that
20 pencils, which can be erased and could
21 potentially invalidate the ballot, are not
22 used to mark optical scan ballots, but
23 indelible pens are used.

24 The statement's unstated implication is

1 to undermine an accurate, auditable and
2 accessible voting system used in a third of

3 the United States' counties. Stating that
4 it is nothing more than pencils and index
5 cards makes it sound more like a
6 kindergarten exercise than a viable voting
7 system.

8 He says, "The electronic system is
9 cheaper." This is categorically false.
10 Electronic machines are unquestionably far
11 more expensive to acquire than optical scan
12 systems. You need more of the touchscreen
13 machines in each polling place, and they
14 cost more per unit.

15 Acquisition cost studies which
16 demonstrate the lower cost of paper ballot
17 systems are readily available. Indeed, even
18 the New York City Board of Elections issued
19 a study which demonstrates that scanners
20 would be less expensive to acquire than
21 DREs. The New York City Board of Elections,
22 excuse me, issued a study demonstrating
23 scanners would be less expensive to acquire.

24 Operational cost studies are available

14

1 of other states comparing actual costs of
2 counties using scanners to those using
3 touchscreens, which consistently show
4 optical scan systems, including the cost of
5 printing paper ballots, are less expensive
6 to operate in real elections. This
7 information is readily available. But yet
8 here we have a state board official quoting

9 inaccurate vendor talking points.
10 And then he goes on to say: "I don't
11 know why, but it seems these groups just
12 don't trust us." Let me say this to the
13 commissioners, who I don't know if any are
14 here today, and the staff of our county and
15 state Boards of Elections. It's something
16 that we teach our children and really should
17 not have to be explained, but let me be
18 clear. Trust is not automatic. It must be
19 earned.
20 The state board has thus far done
21 nothing, nothing, to earn the public's
22 trust. You have obfuscated, delayed, and
23 denied. You have told us you will do one
24 thing and then you have done another. You

15

1 have consistently failed to keep the public
2 informed about the machine selection and
3 certification process and have resisted and
4 continue to resist citizen demands for full
5 visibility into and full disclosure of each
6 and every step of this process so vital to
7 the integrity of our democracy.

8 I repeat, if you want our trust, you
9 must earn it. The state board seems to feel
10 that if they can only weather this current
11 storm, if they can just get through the
12 process of selecting machines while giving
13 out as little information to the public as
14 possible, we'll then return to the days when

15 citizens didn't pay much attention to what
16 the board did. But this is a new day. This
17 is a new era. The 21st century presents us
18 with many challenges, and the valid concerns
19 about impact of computerized voting
20 technologies on the veracity, the accuracy
21 of our elections are of great interest to
22 the public.

23 From here forward, we will no longer
24 simply trust that everything is okay. From

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1 here forward, we will demand and we will
2 obtain accountability from our election
3 officials.

4 The board seems to hope that we'll soon
5 return to the days when as long as there was
6 a working lever machine in the polling place
7 on Election Day, the public didn't much
8 concern itself with how our boards of
9 elections conduct our elections. Let me be
10 clear as I can. I'm here to tell you, on
11 behalf of concerned citizens from Buffalo to
12 Watertown to New York City, those days are
13 over.

14 Remember, you work for us. You can
15 approach us with respect, keeping us fully
16 informed, accepting our input, treating us
17 as the citizens you are hired to serve.
18 There's still time for you to earn our
19 trust. If you do that, I believe that
20 together we could make New York State a

21 model of cooperation between the public and
22 election officials. And I hope that's your
23 choice as we move forward.

24 But if not, let me assure you, if it's

17

1 not evident already: This is our democracy,
2 and this is our vote. We will not be
3 denied.

4 Now, let me briefly comment on the
5 draft voting systems standards. As I said,
6 we'll be submitting a detailed technical
7 analysis separately from this which will go
8 into great detail. But let me give you a
9 high-level overview.

10 As they're currently written, the
11 standards are very poor and do very little
12 to protect the integrity of our vote. In
13 their present form, we consider them to be
14 unacceptable and must be not be approved.

15 Why? Well, these standards determine
16 what voting machines can be used here in
17 New York State, what vendors must do to
18 submit and certify their machines, and it
19 describes the nature and rigor of testing
20 and performance standards. This is not a
21 trivial matter. But in their current form,
22 a vendor could certify a ham sandwich if it
23 supported the full-face ballot.

24 Now, in a few weeks we're going to

1 submit that detailed technical analysis, but
2 let me present the high-level overview of
3 the problems.

4 The standards are vital to protect the
5 integrity of our vote. Why? Because
6 there's a broad and deep consensus among
7 computer scientists, software engineers like
8 myself, network administrators, and other
9 computer professionals that today's
10 computerized voting systems are very poorly
11 designed with regards to security.
12 Passwords are widely known, rarely changed;
13 breakable forms of encryption are used;
14 systems are connected to networks and phone
15 lines; memory devices without any best
16 practices in security. Once they're
17 delivered, election systems are rarely under
18 tamper-proof seal from the point at which
19 known certified software is loaded.

20 Regarding certification and testing,
21 it's a maxim in computer science: Testing
22 can only show the presence of errors, never
23 the absence of errors. Likewise, testing
24 cannot prove the absence of malicious code

1 or the absence of opportunities for
2 intrusion.

3 The draft voting system standards do
4 little to protect the public from these

5 known problems. It's as if the state board
6 hasn't heard a word that computer scientists
7 have been saying. If this is the best the
8 board can do, I'm afraid it validates our
9 concern that there's insufficient expertise
10 and a true lack of understanding of the
11 nature of computer-based voting systems.

12 Let me give you a few examples, and
13 then I'll finish.

14 In general, vendors are given far too
15 much latitude in this document to define and
16 satisfy tests. Vendors cannot be given the
17 decision-making power to define tests.

18 Two, they allow the vendors to define
19 what they consider to be proprietary, and it
20 makes no allowance at all for independent
21 public review and analysis of documentation
22 or source code. It's imperative that code
23 not be considered proprietary of the
24 manufacturer but must be in the public

20

1 domain so that the software can be reviewed
2 by truly independent auditors and third
3 parties.

4 Three, the standards are insufficient
5 in calling for full access and independent
6 review of vendor source codes and materials.

7 Four, the standards allow the State
8 Board of Elections to waive any part of the
9 requirements they choose if the vendor
10 submits its own test reports. This is in

11 Section 6209.6(B). But we know that vendors
12 use what are called independent testing
13 authorities to produce these reports. And
14 it's well known that these independent
15 testing authorities are neither independent,
16 conduct adequate tests, or are authorities
17 in any sense of the word.

18 There should be no reason that any part
19 of the tests or other requirements can
20 simply be waived by the State Board of
21 Elections. This makes even the best
22 regulations meaningless. What is the
23 purpose of that statement?

24 Five, vague definition of crucial

21

1 terms. There's many problems here, not the
2 least of which is you didn't even bother to
3 alphabetize the list of definitions of terms
4 so that people could readily find it. But a
5 vague definition of terms in a technical
6 document is a serious failing. The
7 standards say, in Section 6209.6(B)(1), "All
8 subsequent changes to the software baseline
9 configuration shall be subject to
10 reexamination," but it gives no definition
11 of what is the baseline configuration and
12 what would constitute a change that would
13 require reexamination.

14 These may seem like unimportant
15 aspects, but in a technical document they
16 are far from unimportant. A strict

17 definition of terms is vital to understand
18 and to have common ground to understand the
19 meaning of the regulations. Yet the
20 definitions are seriously lacking.

21 Six, paper-ballot-based systems are
22 held to a standard that DREs are not. There
23 are substantial differences in rigor of
24 testing standards for DREs versus paper

22

1 ballots.

2 We see no reason for this discrepancy.
3 We believe fully in rigorous testing of all
4 voting equipment, be it optical scanners,
5 ballot markers, electronic touchscreen
6 voting, or any other form. Rigorous testing
7 is what we want. The standards, however,
8 seem to hold paper-ballot-based systems to a
9 far more rigorous standard than the
10 electronic voting systems.

11 And finally, the standards must clearly
12 state that the conduct of the certification
13 tests shall be open and transparent and
14 performed in public, and the results of
15 those testing shall be made readily
16 available to the public. Fully informed,
17 fully visible, fully transparent.

18 There's a lot of things lacking in this
19 document. And as I said, we will give you a
20 very detailed technical analysis that I hope
21 you will take into consideration.

22 I thank you for your time.

23 EXEC. DIRECTOR KOSINSKI: Thanks,
24 Mr. Lipari.

23

1 We appreciate your comments regarding
2 the rules and regulations, of course, and
3 we'll take those very seriously.

4 I just want to mention, however, I
5 guess in somewhat of a response to your
6 initial statements, I think this board has
7 been very open and has been very public in
8 the way we've presented this process. In
9 fact, I think today's hearing presents
10 evidence that this board is very interested
11 in the public's input and has given the
12 public many opportunities to have that
13 input.

14 As you know, we've had -- we're having
15 three of these public hearings. We've had
16 public hearings in the past regarding the
17 state's implementation of the HAVA project
18 in New York. Board meetings of our board of
19 commissioners are open to the public. I
20 believe you've attended some of those
21 meetings, and certainly the public is always
22 welcome to attend those meetings, and they
23 do.

24 In addition, we've had statewide

24

1 conferences of our county election
2 commissioners, where I believe you
3 personally have attended. And we always
4 welcome the attendance of the public. And
5 the public has attended and sat in on those
6 meetings and been a part of those meetings,
7 and they're always welcome to those
8 meetings.

9 So I think, contrary to the assertions
10 that this board has been not public and has
11 not been open and available to the public in
12 this ongoing process, I don't believe that's
13 true. And in fact I think today's hearing
14 belies that very assertion.

15 But we do appreciate your comments, and
16 we'll take them very seriously.

17 We'd like to go on to the next speaker,
18 who is Wayne Stinson.

19 MR. STINSON: Good morning.

20 I'm Wayne Stinson, from Summit,
21 New York, a very small rural town in western
22 Schoharie County. I offer this commentary
23 both as a citizen/taxpayer/voter of the
24 state and as a representative of the

25

1 Peacemakers of Schoharie County, a
2 nonpartisan citizen organization committed
3 to peace and social justice.

4 For the purpose of this commentary
5 submission, I believe it relevant for you to
6 know that I'm a 65-year-old retired law

7 enforcement officer with more than 12 years
8 experience as a supervisor and an executive
9 officer/administrator in a large suburban
10 police department in New York State. I also
11 served briefly as an adjunct instructor of
12 criminal justice at Suffolk County Community
13 College.

14 In my role as law enforcement official
15 and as an instructor, I was regularly
16 required to interpret rules, regulations,
17 and statutes. Additionally, I was often
18 engaged in the analysis of written reports
19 which pertained to said rules, regulations,
20 and statutes.

21 So it is with that experience in mind
22 that I must first advise you, as I might
23 have instructed a subordinate or student
24 years ago: Stop. This document is

26

1 seriously flawed. It is so flawed as to
2 likely result in more harm than good.

3 Later in this commentary I will provide
4 some specific criticisms of some of the
5 draft standards' various sections, but first
6 some general observations.

7 The draft standards document is not
8 organized in such a fashion as to facilitate
9 analysis and comment. There are no line
10 numbers which would make reference easier,
11 and the hierarchy of section and subsection
12 identification is so inconsistent as to make

13 understanding difficult.

14 There are undefined terms used which
15 cry out for definition, such as "prefactory
16 material" and "fully accessible voting
17 equipment." There are defined terms which
18 do not appear in the text of the document
19 that perhaps should, such as "election
20 management software" and "encrypted copy."

21 There are incomplete definitions. In
22 what I consider a very telling lapse, the
23 definition of "voting system" is limited to
24 "any electronic or computerized voting

27

1 equipment and any ancillary equipment." It
2 says nothing about hand-counted paper ballot
3 systems or a paper ballot with optical scan
4 tabulation system.

5 The definitions are not even in
6 alphabetical order.

7 There are repeated references to
8 statutes and rules without identification of
9 specific titles or section numbers. One
10 flagrant example of this problem is that in
11 at least two places, reference to
12 "Laboratory Environmental Test Procedures
13 for Hardware and Software" appears without
14 any further information as to where this
15 title is found. No definition or section
16 title of this sort appears in the draft
17 standards.

18 There are many places where objective

19 standards should be provided but are not.
20 6209.2(E), which concerns itself with
21 environmental hazards, is one such example.
22 All of the above, plus the clumsy
23 cutting and pasting which apparently was
24 done to assemble this document, indicates a

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1 lack of expertise and care which is
2 inexcusable. The people of New York State
3 deserve better, and you would be well
4 advised to go back to the beginning and
5 start over. And yes, this time do hire
6 someone who knows how to do it.
7 Now, with respect to specific sections
8 of the standards, 6209.3, titled
9 "Paper-Based Voting Systems," is two pages
10 long and begins with the following
11 statement: "In addition to voting systems
12 requirements provided elsewhere in these
13 rules and regulations, paper-based systems
14 must." Note here that there is no
15 particular section or subdivision titled
16 "Voting Systems Requirements."
17 This wording implies that the extensive
18 list of requirements which follow in this
19 title is above and beyond that which would
20 be required of some other type of system;
21 namely, a direct recording electronic
22 system. Some of the requirements make good
23 sense, with some redundancy, and obviously
24 should be applicable to all voting systems.

1 The section goes on to talk about the
2 system providing "an audit trail of all
3 ballots cast making possible reconstruction
4 of the election." This statement evinces a
5 lack of understanding of the inherent
6 voter-verified paper trail which is the
7 hallmark of a paper ballot system.

8 Perhaps most importantly, there is no
9 section entitled "Direct Recording
10 Electronic Voting Systems" which might
11 enumerate similar requirements for
12 electronic systems. I take this as evidence
13 of an assumption or perhaps a prejudice that
14 "voting systems" means direct recording
15 electronic systems. Not a good starting
16 point for writing definitions and rules
17 which need to apply to all voting systems.

18 6209.3(J) talks about qualification
19 tests for paper-based voting systems and
20 excludes certain kinds of equipment from
21 testing. One such piece of equipment is
22 "production models of special-purpose data
23 processing equipment (scanners) having
24 successfully performed in elections use and

1 having been shown to be compatible with
2 paper ballot voting systems." The wording

3 of this could be interpreted as to give a
4 free pass to optical scanners which are or
5 have been used elsewhere, such as the ES&S
6 Model 100 optical scan machine. I doubt
7 that's what the authors intended, but that's
8 what it says.

9 6209.6 is "Examination Criteria."
10 Paragraph B alludes to test requirements
11 contained in 6209.2(E). However, that
12 section has no specificity. It has no
13 objective criteria for such tests.

14 6209.6(C)(1), "Software and Hardware
15 Qualification Tests." Throughout this
16 section there are repeated references to
17 vendor supplied specifications and data to
18 be used as the basis of qualification tests
19 or in partial fulfillment of such tests.

20 Subdivision A states that the testing
21 will "verify nominal system performance and
22 validate on a sampling basis the vendor's
23 test data reports." New Yorkers deserve
24 better than verification of nominal

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1 performance employed only to a sampling of
2 vendor-supplied data.

3 6209.6(B), "Physical Configuration
4 Audit," Subsection 4, "Audit Procedure,"
5 states: "The vendor shall identify all
6 documents which contain proprietary
7 information." And it goes on to say: "The
8 state shall refrain from disclosing

9 proprietary..." and "the state board shall
10 not retain copies."

11 All of this protection of the vendors'
12 interest is not in the interest of the
13 citizens of New York State, nor does it
14 assist in any way in the development of
15 secure voting machine software. All of the
16 code used in voting machines must become the
17 property of the state and must be available
18 to all interested parties who wish to test
19 the security and functionality of the
20 software.

21 In Section 1, "Software Specification,"
22 which begins on page 11 -- sorry, better
23 hierarchal identification is impossible --
24 there are several sections which mention

32

1 security. The most glaring failure of these
2 standards with respect to security appears
3 in Subsection Q, "Qualification Test
4 Specification," on page 14, which states:
5 "The vendor shall provide a specification
6 for verification and validation of software
7 performance, including security." And it
8 goes on to say: "The vendor's specification
9 and procedure shall be used to establish the
10 detailed requirements of the test described
11 in 'Laboratory Environmental Test Procedures
12 for Hardware and Software' of this
13 standard." A similar statement appears in
14 Subsection R.

15 It is totally unacceptable for the
16 vendor to be setting the specifications for
17 any part of the qualification tests. It
18 obviously is not in the best interests of
19 acceptable performance or security to allow
20 a vendor to set the standards by which their
21 own equipment will be evaluated.

22 The state needs to establish electronic
23 voting security standards with the
24 assistance of independent computer experts

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1 with no affiliation to the voting machine
2 manufacturers. There are several well-known
3 such experts which I expect would be anxious
4 to apply their knowledge in the interest of
5 the integrity of our elections. A few of
6 these folks could be easily identified by
7 simply going to Google and searching
8 "electronic voting." Excellent resources
9 are available in the documentary video
10 "Invisible Ballots" which I provided to your
11 agency several weeks ago. And I'm not going
12 to ask if you looked at it, but I sure hope
13 you will.

14 Also, since your agency has already
15 begun testing of the Liberty DRE, it would
16 be prudent to communicate with the
17 Department of the Environment in Ireland,
18 which has been struggling to confirm the
19 security and functionality of the Nedap
20 Power Vote for the past two years. For

21 those of you who are not informed, the Nedap
22 Power Vote is the same as the Liberty vote
23 machine that's being marketed here. The
24 Irish investigators will likely have some

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1 valuable insights to offer.

2 6209. 9, "Contracts, " provides for
3 vendor assistance and training of election
4 personnel during the first two elections in
5 which the equipment is used. This section
6 lacks any protection of the integrity of the
7 vote by not explicitly stating that the
8 vendor representatives will not have any
9 access to voting equipment or at any time
10 control of said equipment during the time in
11 which the equipment is being used for an
12 election or a recount.

13 6209. 10, "Acceptance Testing, "
14 Subdivision D and E talk about malfunctions
15 discovered during acceptance testing at the
16 local elections offices. These sections
17 allow for the temporary suspension of
18 certification, that's a quote from the
19 draft, "for the future sales in New York. "
20 Such a suspension should logically apply to
21 all similar type equipment presently in use
22 as well as equipment ordered but not yet
23 received by the local election officials,
24 not just future sales.

1 6209.12, "Operational and Testing
2 Procedures for Paper-Based Voting Systems,"
3 Subdivision A calls for "complete testing of
4 the paper-based voting system." Not a bad
5 idea. But there's no similarly titled
6 section or such requirement expressed for
7 direct recording electronic machines.
8 Should there not be one standard for testing
9 all the varied types of voting machines and
10 systems?

11 Subdivision C, "Public Demonstration,"
12 requires that the chair of the county
13 committee of each political party -- I'm
14 going to repeat that. Subdivision C,
15 "Public Demonstration," and this is under
16 acceptance testing by local boards: "The
17 chair of the county committee of each
18 political party and each candidate" will be
19 notified and are entitled to be present at
20 the public demonstration of the equipment --
21 here they're talking about test-deck
22 pre-election tests.

23 I am compelled to remind you today that
24 election officials, Boards of Elections, and

1 these very proposed standards exist to serve
2 the citizens of New York State, not just
3 partisan representatives. Certainly all
4 citizens have an interest in the integrity

5 and proper functioning of election
6 equipment. There should be a requirement
7 for public notice of demonstration tests,
8 and any interested party ought to be able to
9 observe and participate.

10 6209.12, Subdivision H, says, in part:
11 "Operational tabulation activities may not
12 be carried out on the equipment while it is
13 solely under the vendor's control." This
14 limitation does not go far enough. As
15 previously stated, there should be no vendor
16 access under any circumstances while
17 equipment is being used for election
18 functions.

19 6209.14, "Routine Maintenance for
20 Paper-Based Voting Equipment," Subdivision D
21 allows for the suspension of certification
22 of equipment due to complaints by a vendor
23 or other interested party that the equipment
24 has not been maintained properly.

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1 No such provision exists with respect
2 to direct recording electronic machines,
3 however. I assume this is an oversight
4 which needs to be corrected.

5 In conclusion, the above commentary is
6 not exhaustive. I am not a software
7 engineer or computer security expert, so
8 there is much of the draft standards which I
9 did not feel qualified to comment on. I am
10 confident that there are others who will

11 address those issues effectively.

12 These comments are offered with the
13 sincere hope that they will assist in the
14 development of serviceable rules,
15 regulations, and standards to guide the
16 certification of voting systems and machines
17 for New York State.

18 And one last comment which is not part
19 of the documents that I submitted to you,
20 but I could not avoid saying this. We seem
21 to be in a headlong, mad rush to cover all
22 aspects and get this job done so that we can
23 get the machines all certified and buy them
24 expeditiously so that we don't lose

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1 \$220 million from the federal government.

2 When I began my presentation, I
3 suggested to you that you need to stop, and
4 I am serious about that. Just stop, and the
5 hell with the HAVA money.

6 Let me tell you what \$220 million is.
7 The last census recorded in New York State,
8 there were 9,053,200 wage-earners,
9 breadwinners. So we'll assume there's that
10 many households in the state. Right? You
11 divide that into \$200 million, and you come
12 up with \$2.43. I'll tell you, folks, I'm
13 willing to put up the \$2.43 and I'll even
14 pick up somebody else's, maybe one of yours.

15 Let the HAVA money go. It's not doing
16 us any good to do this in a slipshod

17 fashion. Take another two years if you have
18 to.

19 EXEC. DIRECTOR ZALEN: Thank you,
20 Mr. Stinson. Appreciate it.

21 William Edelstein, of Verified Voting.

22 MR. EDELSTEIN: My name is William
23 Edelstein. I am representing New Yorkers
24 for Verified Voting. I am a scientist

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1 retired from General Electric. I'm a
2 physicist.

3 And I first would like to make a
4 comment on openness that you brought up,
5 that you're saying that you are open. But I
6 would like to point out to you that you have
7 just had this preliminary testing which is
8 anything but open.

9 First of all, you decided to do it
10 without telling anybody about it, without
11 discussing it with anyone. You had
12 established your Voting Systems Citizen
13 Advisory Task Force. You simply sent them a
14 letter, you didn't tell them you were going
15 to do this. The letter informed them that
16 you would conduct preliminary testing of the
17 Liberty voting system.

18 The letter begins: "The Liberty
19 election system, a DRE voting machine which
20 has never been submitted for certification
21 in New York, has been delivered to us for
22 certification testing. We are prepared to

23 conduct preliminary testing, Phase One of
24 the process, on December 7, 8, and 9. This

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1 machine will have to be resubmitted for
2 additional testing."

3 What exactly is the nature of this
4 testing, and who will carry out the tests?
5 Nobody knows. This is not open. What is
6 Phase One, and where is it defined? The
7 BOE, Board of Elections, has not talked to
8 the Citizen's Advisory Task Force or to the
9 public about any of the testing procedures.
10 This flies in the face of having an open
11 process of your -- which we are having now,
12 which I appreciate, which includes a 45-day
13 comment period beginning on December 7th and
14 public hearings that did not even begin
15 until this week. And yet you had the
16 testing last week.

17 But the notice of the public comment
18 period and public hearings was published
19 November 30th, well after you apparently had
20 decided to carry out preliminary testing.

21 You said on other occasions that you
22 were going to get an independent company to
23 do certification, that they would first have
24 to put out a request for proposal for the

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1 testing, and that nothing would happen until
2 the testing company was in place. As far as
3 I know, right now there is no RFP for the
4 certification process, let alone any
5 publicly specified test procedure.

6 How was this deal arranged? Were there
7 secret discussions between BOE and voting
8 machine vendors bypassing the Citizen's
9 Advisory Task Force and the public? This is
10 not open, and I think you owe us an
11 explanation.

12 Now let me get to the main body of my
13 comments.

14 I believe very strongly that paper
15 ballot/optical scan is the right choice for
16 New York State. The federal HAVA Act of
17 2002 and the New York HAVA legislation aim
18 to renew America's and New York's means of
19 voting in order to reestablish confidence in
20 the integrity of the elections on which our
21 democracy rests. We must have a voting
22 process that correctly registers every
23 citizen's vote, that can be recounted, that
24 is secure, and that comes at a reasonable

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1 price.

2 The straightforward answer to these
3 requirements is paper ballots, with
4 candidates' names and adjacent "bubbles" to
5 be filled in by the voter. There is no
6 computer or other machine interposed between

7 voter and ballot. If all else fails, the
8 ballots can be counted by hand, with the
9 knowledge that the markings were made by the
10 voters themselves with no software or
11 computer fiddling that might alter the
12 result.

13 This process is easy to understand and
14 is widely used for school tests and
15 government forms. It is familiar to the
16 vast majority of citizens. If electricity
17 fails, voters can still vote. If there's a
18 concern about a particular scanner, the
19 ballots can be read to a different scanner
20 or counted by hand. Recounts are
21 straightforward.

22 Paper ballots can be easily and
23 accurately tallied by optical scanners, as
24 are tests and forms. We will abbreviate

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1 paper ballots with optical scan as PBOS.

2 A second approach is to enter votes on
3 a computer by means of a touchscreen or push
4 buttons. These machines are known as direct
5 recording electronic systems, or DREs.

6 PBOS has been used around the country
7 for decades. Election Data Service reports
8 that in October 2004, 46 percent of
9 counties, 36 percent of precincts, and
10 35 percent of U.S. voters used some form of
11 paper ballots/optical scans.

12 DREs have only been in use relatively

13 recently. Their record has been dismal,
14 with lost votes, jammed machines, and
15 excessive costs. DREs do not begin to meet
16 the high standards of reliability and
17 cost-effectiveness that New Yorkers must
18 have to safeguard our democracy.

19 Companies that make and sell optical
20 scanners for PBOS also produce DREs. This
21 creates an automatic conflict. Since DRE
22 systems are far more expensive than optical
23 scanner systems, it is much more profitable
24 to sell DREs. For those who sell both

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1 technologies, there's a heavy tilt toward
2 DREs, just as car dealers prefer to sell
3 trucks, SUVs, and vans rather than cars.

4 Voting machine vendors are spending
5 millions of dollars lobbying legislators and
6 election commissioners in order to convince
7 them that more complicated and more
8 expensive is simpler and cheaper.

9 While computers are extremely useful,
10 anyone who deals with them on a routine
11 basis knows how problematic they are. That
12 is why so many computer professionals and
13 others who understand the technology are in
14 favor of PBOS and oppose DREs. It is not
15 that these technologists are against
16 technology, it is because they truly
17 understand the pitfalls and limitations of
18 computers.

19 Those who adopt DREs may find
20 themselves embroiled in disputes over lost
21 or misplaced votes, grappling with failed
22 units, or saddled with unexpected expenses.
23 A significant number of localities using
24 DREs have already had those unfortunate

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1 experiences.

2 A few things about paper ballot/optical
3 scan. Optical scanners are a fast and
4 accurate way to tally votes, with the backup
5 of a hand count to check the scanner
6 operation or to do a recount. This is in
7 contrast to failed DREs, which would stop or
8 slow the voting process and might lose or
9 otherwise alter vote totals.

10 One optical scanner can serve up to
11 five voting positions, including multiple
12 election districts. The time to send a
13 completed ballot through a scanner was
14 described as "instant," "insignificant," or
15 "a few seconds" from a survey that NYVV
16 conducted of states that presently use this
17 voting technology. As we found in our
18 survey, one scanner can serve several voting
19 stations. And that's what happens.

20 Ballot-marking devices are available to
21 assist disabled voters. One of them has
22 been federally certified.

23 The bottom line is, for paper
24 ballot/optical scan, each voting precinct

1 requires one scanner at \$5,000 plus one
2 ballot-marking device at \$5,500, for a total
3 of about \$11,000. And we urge everyone to
4 visit our website for more detailed cost
5 analysis.

6 Ballot printing costs. This is often
7 brought up as an obstacle, but in fact the
8 costs have been exaggerated. We have
9 actually contacted companies that print
10 ballots, and we've had estimates from
11 several of 30 cents per ballot. These
12 include Dayton Legal Blank in Dayton, Ohio,
13 who sent us an estimate of 30 cents based on
14 a New York City ballot we submitted to them.
15 Others who gave us this number are Election
16 Systems & Software and Fidler Doubleday in
17 Illinois. These companies print millions of
18 ballots every year.

19 With a competitive bidding process,
20 New York ballot printing costs should be
21 30 cents or less. New York State has
22 11 million registered voters. If we were to
23 certify optical scan ballot printers around
24 the state, the quantities of scale for

1 New York would ensure low ballot costs.

2 Okay, a few things about DREs. First
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3 of all, DREs have to have, according to
4 New York legislation, paper trails. And
5 some of them attempt to meet these with a
6 small ATM-like paper-tape roll behind a
7 glass window. The voter is supposed to look
8 at this after they've voted, and go down and
9 look at this. And I've seen these, and this
10 is a pretty awkward. And I think it's quite
11 likely that a lot of people will not bother.

12 Furthermore, I have not heard of any
13 DRE vendor plan or technology for doing a
14 recount for paper receipts. Counting
15 ATM-type paper slips by hand from a roll or
16 individual pieces cut from a roll would be
17 tedious, to say the least. And the present
18 New York State HAVA law requires a 3 percent
19 mandatory audit of these records. So it has
20 to be done, and I think you should take this
21 into account.

22 Each of our present lever machines will
23 have to be replaced by one DRE, since voting
24 on a DRE is similar to the process of voting

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1 on a lever machine. There's really no time
2 advantage in pushing buttons versus turning
3 levers. In both cases, thinking takes most
4 of the time, not mechanics.

5 Bottom line: One DRE machine to
6 replace each lever machine at roughly
7 \$10,000, plus one or more extra machines at
8 each voting venue in case of failure. So a

9 precinct with three voting stations would
10 have about \$40,000 of DRE equipment.
11 Initially, this will be provided by HAVA
12 money if we get our act together.
13 Ultimately, however, maintenance and
14 replacement will be done by counties.

15 Reliability. VerifiedVoting.org has a
16 51-page document of DRE failures, which
17 include lost votes, malfunctioning
18 electronic ballot control, incorrect
19 transmission results, votes that did not
20 register, and other problems.

21 Miami-Dade, America's eighth largest
22 county, had many serious problems with DREs.
23 Lester Sola, the present elections
24 supervisor of Miami-Dade, plans to replace

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1 the DREs by PBOS because of malfunctions and
2 because DREs cost so much to operate --
3 50 percent more than a PBOS system in
4 neighboring Orange County. Sola says that
5 lower operating costs of PBOS will pay for
6 the switch in a few years.

7 Pennsylvania decertified Unilect
8 Patriot touchscreen DREs after February 2005
9 tests during which the touchscreen system
10 froze, failed to sense touches multiple
11 times, didn't register or record some votes
12 and stopped accepting touches. The
13 Pennsylvania State Department concluded that
14 DRE system failures were responsible for

15 10,000 votes not being recorded during the
16 November 2004 general election in the three
17 counties that use this system.

18 Paper ballots for optical scan are
19 inherently a paper trail. They are designed
20 to be scanned. Therefore, they can be
21 rescanned by the same or different machine
22 if there's any question. If a hand count is
23 required, ballots are large, flat, and
24 mechanically stable pieces of paper that are

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1 easy to handle.

2 Security. One of the principal
3 concerns of computer experts is potential
4 security flaws in DREs that would allow
5 hackers to change results and subvert the
6 voting process.

7 The government of Ireland -- this was
8 mentioned by the previous speaker -- spent
9 nearly \$60 million on Nedap Power Vote
10 voting machines, the same as the Liberty
11 Vote machines, and intended they be used for
12 the June 2004 local and European Parliament
13 elections. An independent commission on
14 electronic voting investigated the system
15 and said it could not recommend its use
16 because of security and accuracy concerns,
17 whereupon it was not used for that election.

18 Presently the Irish government said it
19 is most unlikely that these systems will be
20 used for the 2007 general election. That's

21 two years from now. In fact, they may not
22 be used for several years, if ever. The
23 machines are now been stored, at an annual
24 expense of over \$800,000. Remember, that's

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1 a country with a population of 4 million
2 people, about one-fifth of our population.

3 The General Accountability Office
4 published a study in September that found
5 many security flaws in DREs. They conclude
6 that DREs are not yet secure and that it is
7 unclear when the initiatives -- in other
8 words, when security will be available.

9 Okay. In conclusion, New Yorkers need
10 to have the highest confidence in the
11 integrity of the voting process. We must
12 use a cost-effective voting technology that
13 creates a paper trail verifiable during the
14 voting process, is secure, is reliable, does
15 not ultimately depend on technology and, if
16 necessary, can be recounted independent of
17 technology. PBOS meets these requirements.
18 DREs do not.

19 As I said earlier, we all know that car
20 dealers would rather sell us an SUV than an
21 economy model and thereby make a larger
22 profit. In this case, the economy model,
23 PBOS, is not only cheaper to buy with lower
24 running costs, it also works better.

1 Thank you.

2 EXEC. DIRECTOR KOSINSKI: Thank you.

3 Next we have Aimee Allaud, from the
4 League of Women Voters.

5 MS. ALLAUD: Good morning.

6 I'm Aimee Allaud, elections and
7 government specialist for the New York State
8 League of Women Voters.

9 I also want to comment here that I
10 don't see any of the -- none of the four
11 commissioners, who, if I understand the
12 process correctly, will be the ones who will
13 make the decision on the voting standards.

14 I know that you will give them the
15 copies of all the testimony that has been
16 presented here, but I note their omission.
17 I think that these hearings are extremely
18 important. I think that for them and for
19 all the people who have made an effort to
20 come here on this very difficult day
21 weatherwise, that it would have been very
22 nice for them to have been here also.

23 But more to the point, we hope that
24 they will have the opportunity and will

1 review the testimony here. It's very
2 sincerely given, and it's very important to
3 the future of elections in New York State.

4 The league is a national and state

5 multi-issue nonpartisan political
6 organization which encourages the informed
7 and active participation of citizens in
8 government. In New York State we have 58
9 local leagues across the state actively
10 engaged in their communities and working to
11 help voters understand and participate in
12 elections.

13 I represented the league on our 2003
14 state task force to implement the HAVA Act
15 and prepare the state implementation plan.

16 The right of every citizen to vote has
17 been a basic League of Women Voters
18 principle since our founding in 1920. The
19 right to vote and have that vote counted as
20 cast is the substance of today's hearing on
21 the draft voting systems standards which
22 will establish the requirements for new
23 voting systems to be purchased by New York
24 State with Help America Vote Act funds.

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1 The League of Women Voters strongly
2 supports full and equal voting rights for
3 all eligible Americans, including persons
4 with disabilities. However, we also believe
5 that no one's right to vote has meaning if
6 the voter cannot be reasonably assured that
7 their vote was counted as cast.

8 The problem we face is how to provide a
9 system that ensures security to all voters
10 and also satisfies the legitimate concerns

11 of persons with disabilities. We have
12 raised the bar significantly for both
13 concerns since 2000. But unfortunately,
14 some technology options, as described in the
15 recently released Government Accountability
16 report, are not there yet.

17 Maintaining the integrity of our
18 electoral process is critical to America's
19 democratic institutions. The new voting
20 technologies will provide greater
21 accessibility and opportunities for
22 second-chance voting and voter verification,
23 which are requirements of HAVA. But to be
24 ultimately successful, a voting system must

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1 have the confidence of voters in its
2 security and reliability. If voters choose
3 not to vote because they do not trust the
4 system by which they vote, we will have lost
5 the battle for full participation by all of
6 our citizens which is the cornerstone of our
7 democracy.

8 The League of Women Voters of the
9 United States and the New York State League
10 of Women Voters have adopted the following
11 statement of position on criteria for voting
12 systems. The Citizen's Right to Vote
13 Resolution reads: "In order to ensure
14 integrity and voter confidence in elections,
15 the League of Women Voters of the United
16 States supports the implementation of voting

17 systems and procedures which are secure,
18 accurate, recountable and accessible. "

19 Using these criteria to evaluate the
20 choices available to New York State in
21 complying with HAVA requirements, the League
22 of Women Voters of New York State has
23 endorsed precinct-based paper ballot/optical
24 scan voting with the addition of a ballot

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1 marker to provide accessibility. We believe
2 that this mature technology will best meet
3 the criteria because it provides an actual
4 ballot for recount purposes if that is
5 necessary.

6 A perfect and completely error-proof
7 system does not exist. However, a
8 paper-based system which has been rigorously
9 tested by independent authorities and
10 operates according to prescribed federal and
11 state standards and procedures will provide
12 the best guarantee for secure and accurate
13 elections.

14 New technology is not the whole
15 solution. Voting machines are only one part
16 of a voting system. Voting machines
17 function within a larger legal and
18 administrative structure. Many of the risks
19 inherent in the use of particular voting
20 systems can be substantially reduced by
21 improving such management practices as
22 personnel training and by instituting

23 rigorous administrative and chain-of-custody
24 procedures.

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1 The following summary list of
2 recommendations for best practices for
3 election officials regarding voting systems
4 security is excerpted from the League of
5 Women Voters of the United States report
6 "Safeguarding the Vote," July 2004,
7 available at the League of Women Voters
8 website.

9 For accountability, openness, and
10 transparency, we should require bipartisan
11 or third-party monitoring of sensitive
12 election practices. We should require
13 tracking and documentation of all
14 procedures, from the testing of machines to
15 the handling of ballots. We should require
16 transparency in the operation and management
17 of voting systems.

18 For uniformity, establish statewide
19 practices for the management and operation
20 of voting systems and require that all
21 systems at a minimum have been state
22 certified and meet all federal voluntary
23 voting system standards.

24 Regarding testing, test every voting

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1 machine to ensure it is operating properly.
2 Perform uniform public testing of voting
3 systems. Verify that the electronic and
4 optical scan machines used are the same as
5 the systems that were certified.

6 For the physical protection of voting
7 systems, restrict physical access to all
8 components of voting systems. Maintain and
9 operate voting systems in isolation from
10 networks and the Internet.

11 Regarding preparation prior to Election
12 Day, educate voters on the use of all voting
13 equipment, both in advance of the election
14 and in the polling place on Election Day.
15 Provide adequate training for all Election
16 Day workers.

17 On Election Day, ensure adequate
18 technical support to poll workers. Provide
19 a backup plan in the event of machine
20 failure.

21 After Election Day, design a routine
22 process that checks for problems that may
23 have occurred but have not been visible on
24 Election Day.

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1 In October 2005 the Government
2 Accountability Office, GAO, released a
3 comprehensive analysis of the concerns
4 raised by the use of electronic voting
5 machines. The GAO had been requested by
6 members of Congress to undertake this study

7 because of reported problems with electronic
8 voting systems.

9 GAO identified specific problems based
10 on reports from election experts such as (1)
11 flaws in systems security controls, (2)
12 flaws in access controls, (3) flaws in
13 physical hardware controls, (4) weak
14 security management practices by voting
15 machine vendors.

16 The GA0 report indicated that national
17 initiatives to improve voting system
18 security and reliability of electronic
19 voting systems, such as updated standards
20 from the Election Assistance Commission,
21 federal accreditation of independent testing
22 laboratories, and certification of voting
23 systems to national standards are underway,
24 but a majority of these efforts either lack

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1 specific plans for implementation in time to
2 affect the 2006 general election or are not
3 expected to be completed until after the
4 2006 election.

5 According to the GA0, "Until these
6 efforts are completed, there is a risk that
7 many state and local jurisdictions will rely
8 on voting systems that were not developed,
9 acquired, tested, operated, or managed in
10 accordance with rigorous security and
11 reliability standards, potentially affecting
12 the reliability of future elections and

13 voter confidence in the accuracy of the vote
14 count. "

15 The GAO report also includes, in their
16 Appendix II, "Recommended Practices for
17 Voting Systems Security and Reliability."
18 The practices and recommendations in the
19 Best Practices Tool Kit, 2004, address the
20 life cycle activities of acquisition,
21 operations, testing and management, as well
22 as practices specific to ensuring the
23 security and reliability of different types
24 of electronic voting systems in the areas of

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1 testing, operations and management.

2 Three tables which identify practices
3 that pertain (1) to all types of voting
4 systems, (2) optical scan voting systems,
5 (3) direct recording electronic voting
6 systems are included as attachments with my
7 testimony.

8 It is imperative that, given the
9 conclusions of this nonpartisan report, that
10 the New York State elections officials
11 review and compare the draft voting systems
12 standards with the example practices
13 described in the appendix of the GAO report
14 as well as against the LW recommended
15 practices that I read.

16 The New York State League of Women
17 Voters also endorses the New York State
18 Citizens' Coalition on HAVA Implementation

19 "21 Recommended Requirements for New Voting
20 Systems," also attached with this testimony.

21 Now as to comments specific to the
22 draft standards.

23 The league finds that the proposed
24 voting systems standards are weak,

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1 inadequate, and will not protect the
2 integrity of New York State's voting
3 process, and in fact, by the omission of
4 critical requirements and procedures will
5 damage the future of fair and accurate
6 elections in this state. They must not be
7 approved as they stand, for the following
8 reasons.

9 One, public confidence in the election
10 process is directly linked to the
11 transparency of the process. The process of
12 adopting new systems and the standards
13 governing that process should be transparent
14 and incorporate public input. Responses by
15 agency officials to questions and concerns
16 on the standards and the certification of
17 machines should occur in a public meeting
18 where they can be heard by the public.

19 What will be the next stage of this
20 public process, if indeed it is public?
21 Will the agency read the comments and
22 respond in a separate document to all
23 questions? Will the public have another
24 opportunity to review the standards?

1 The agency should go back to the
2 drawing board, review, rewrite, and resubmit
3 the draft standards to the public for
4 comment once again until they receive public
5 approval. State and independent voting
6 systems experts selected by a diverse
7 cross-section of computer scientists and
8 computer professionals, government entities
9 and from the civic community should review
10 the draft voting systems standards for their
11 conformity to the Election Reform and
12 Modernization Act and to ensure that they
13 represent the highest standard for voting
14 systems.

15 Although the Election Reform
16 Modernization Act, signed into law by the
17 Governor in July, does not specifically
18 require the Citizen's Election Modernization
19 Advisory Committee to review voting systems
20 standards, the Board of Elections should
21 also convene this committee to review a new
22 draft of the standards.

23 Number two. Vendors are given the
24 power to determine what information they

1 will provide to the state agency to satisfy
2 the requirements. Government, not vendors,

3 must be in control of our system of voting.
4 A primary example of this is in
5 Section 6209.6(B) of the proposed
6 regulations: Vendors are allowed to waive
7 any part of requirements they choose if they
8 submit test data and reports which will
9 verify systems performance in a manner
10 equivalent to the board's examination
11 requirements. The state board retains
12 discretionary power to waive any of the
13 verification and test data.
14 This is particularly alarming, because
15 nowhere in this section is it described how
16 that determination will be made. Will an
17 independent expert be consulted to provide
18 advice? Who within the agency has the
19 necessary skills to evaluate the data
20 provided? Will this be a public process?
21 It is our opinion that no part of the
22 test and other requirements of documentation
23 of system performance should be waived by
24 the Board of Elections.

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1 Number three, testing of machines
2 should be done publicly and by a truly
3 independent body. The proposed regulations
4 shut out voters in the evaluation process of
5 voting systems under consideration.
6 In fact, the only reference to public
7 involvement is in Section 6209.12(C), public
8 demonstration. "In addition to the

9 preelection test, the county board shall
10 conduct a public demonstration of the test
11 utilizing all or a portion of the test deck.
12 Appropriate written notice of the public
13 demonstration shall be sent to the chair of
14 the county committee of each political party
15 and to each candidate whose name appears on
16 the ballot. One representative of each
17 political party and one representative of
18 each candidate whose name appears on the
19 ballot shall be entitled to be present at
20 the test." This is directly from
21 6209.12(C).

22 What about citizens? The wording of
23 this section suggests that the only
24 recognized stakeholders in an election are

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1 candidates and political parties. Shame on
2 the board for not recognizing that their
3 first responsibility is to citizens of
4 New York State.

5 There should be a requirement for
6 public notice of demonstration tests, and
7 any interested party should be able to
8 attend and participate on an equal footing
9 with candidates and party officials.

10 Furthermore, nowhere in the proposed
11 regulations is there any reference to public
12 participation and observation of the
13 certification process.

14 Number four, regarding the Citizen's
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15 Election Modernization and Advisory
16 Committee. It is appropriate for these
17 hearings that I comment on the so-called
18 Citizen's Election Modernization and
19 Advisory Committee and its role in the
20 selection and approval of voting machines.
21 The legislation defines categories of
22 individuals who must be on the committee.
23 The committee's role is to have access to
24 each machine or system submitted for

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1 examination and to assist the State Board of
2 Elections in the examination of the voting
3 machines or systems by recommending which
4 machines or systems meet the requirements of
5 the law.

6 The committee was appointed in late
7 September, has held only one meeting, and
8 was invited to attend the precertification
9 meetings for the Liberty systems voting
10 machine in Albany last week. The names of
11 the committee members have never been made
12 public by posting on the website of the
13 Board of Elections or in a press release.
14 Their qualifications to be on such a
15 committee have never been described. No one
16 seems to know if they have specific
17 knowledge of computer technology or systems
18 which would enable them to determine if
19 voting systems applying for certification
20 meet accepted standards of security,

21 accuracy, and reliability.

22 By limiting the membership of this
23 committee to election officials, members of
24 the disability community, and political

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1 appointees, this committee by definition is
2 not a true citizens' committee. We hold the
3 Legislature responsible for defining the
4 committee so narrowly. However, the Board
5 of Elections could show courage and
6 leadership in opening this committee's
7 meetings and deliberations to the public.
8 We encourage them to do so if this process
9 is to be considered more than just a
10 rubber-stamp process.

11 Number five, the proposed regulations
12 are virtually unreadable, with
13 inconsistencies throughout, indicating a
14 lack of expertise and care. A primary
15 concern is that large sections of the
16 document define procedures for paper-based
17 voting systems without any comparable
18 definition of procedures for DREs. This is
19 unacceptable. Voting systems under
20 consideration must be given equal treatment
21 in the regulations.

22 In conclusion, the league is outraged
23 that this shoddy document is being offered
24 to voters as the draft regulations for

1 voting systems standards. We are outraged
2 by the exclusion of citizens, the lack of
3 transparency in the selection and
4 certification process, and the incomplete
5 and inadequate proposed regulations.

6 According to the mission statement of
7 the New York State Board of Elections, June
8 of 1974, the board is charged the
9 preservation of citizen confidence in the
10 democratic process and enhancement of voter
11 participation in elections. The document
12 that you've proposed for adoption will not
13 meet that standard. The citizens of
14 New York State deserve better.

15 Thank you for the opportunity to
16 comment.

17 EXEC. DIRECTOR KOSINSKI: Thank you,
18 Aimee. We always appreciate the league's
19 input on our process.

20 MS. ALLAUD: Yes.

21 EXEC. DIRECTOR KOSINSKI: Next we
22 have Vicky Perry.

23 MS. PERRY: I'm Vicky Perry of Red
24 Hook, New York, in Dutchess County. I am

1 the founder of Red Hook for Verified Voting,
2 a citizens' organization supporting
3 transparent administration of elections and
4 accurate vote counts.

5 I maintain an online blog at
6 www.midhudsonalliance.com devoted to
7 providing timely information on voting
8 issues. I have a master's degree in
9 computer science from NYU.

10 In discussing the draft of the voting
11 systems standards, I will refer to paper
12 ballots that are optically scanned as PB/OS
13 and touchscreen systems as DRE.

14 Along with discussing these draft
15 regulations, I call on the Board of
16 Elections to insist that vendors offer their
17 PBOS systems for certification testing.
18 Otherwise, we will have no real choice in
19 the future of our voting and you can be sure
20 that there will be no confidence in the
21 integrity of our votes no matter how long
22 the voter confidence campaign is waged or
23 how much money is spent to convince us we
24 are truly voting.

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1 I am in agreement with New Yorkers for
2 Verified Voting in stating that these
3 regulations do almost nothing to address
4 vital issues of voting system usability.

5 Specifically, number one, the issue of
6 verification of intent by the voter is
7 nowhere outlined. Two, the draft embodies a
8 clear bias against PB/OS technology. Three,
9 security from privatization of our voting
10 process is not created with these

11 regulations. Rather, vendors are given
12 inordinate power over the voter. Four,
13 finally, the regulations would be more
14 universal if the separate function of vote
15 recording and vote counting were explicitly
16 used throughout.

17 Voter verification. A new subsection
18 should be added called "Standards for
19 Verification." This could be added in under
20 Section 6209.2, "Polling Place Voting System
21 Requirements." There we would find a
22 reasonable yet minimal standard of voter
23 verification. This would include a
24 description of how a voter compares their

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1 intended vote with what the recording
2 component displays. This is absolutely
3 crucial and completely ignored in the draft.
4 It is not referred to in the section on
5 "Functional Tests," page 11.

6 For example, in the case of PB/OS, the
7 voter verification of the marks on the paper
8 can be achieved only if proper lighting is
9 available and the typeface is large enough
10 for many viewers. A DRE device must provide
11 a verification of the marking. While a
12 voter-verified paper audit trail may be
13 printed, the vendor must prove that most --
14 a reasonable sampling of -- voters will
15 accurately and consistently perform the
16 extra step of verifying their marks.

17 If the system is poorly designed and
18 only a small number of voters actually
19 succeed in verifying their votes, such a
20 system cannot be certified. It is all well
21 and good for the DRE vendor to say, Look, we
22 have paper. But if few voters seriously and
23 successfully scrutinize the print to compare
24 it to the screen, verification is simply a

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1 pipe dream. Democracy will have been
2 seriously compromised. Surely such a system
3 requirement needs to be spelled out if noise
4 levels and curtain design are delineated.

5 While the draft regulations state that
6 the vendor shall provide user acceptance
7 test procedures and acceptance criteria,
8 this is not enough to ensure that voter
9 verification takes place. To ensure that
10 voter verification is an operational part of
11 the voting system, independent tests must be
12 performed of actual voting wherein the act
13 of verification is examined. If a voting
14 system fails to enable a reasonably high
15 level of successful verification, such a
16 system must be considered unsuitable for use
17 in real elections.

18 Bias found in organization and
19 throughout the draft. We need draft
20 regulations that treat PB/OS and DRE
21 technologies with equal rigor. The overall
22 organization of this draft is unfortunate.

23 There are repeated instances where PB/OS is
24 referred to as an afterthought or perhaps an

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1 exception to the norm.

2 For example, 6209.3, "Paper-Based
3 Voting Systems," seems to suggest that the
4 requirements outlined in the previous
5 section were conceived with DRE in mind.
6 The points made in the paper-based section
7 should be universal, such as preventing
8 overvoting or ignoring stray marks. A fair
9 document would combine the requirements in
10 6209.2 and 6209.3.

11 A fairly egregious example of this
12 uneven treatment is Section 6209.14. Here,
13 in a discussion of routine maintenance of
14 paper-based voting equipment, paragraph D
15 says any interested party may question a
16 PBOS machine. I quote: "D. The State
17 Board, upon the written request of a vendor
18 or any other interested or aggrieved party,
19 may, after a hearing, suspend the use of any
20 paper-based voting system in any county in
21 which proper maintenance procedures or
22 proper servicing by the manufacturer have
23 been fully implemented, resulting in
24 malfunction of such equipment. "

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1 But paragraph I of Section 6209. 10,
2 "Acceptance Testing on the DREs, " does not
3 allow any interested party to question a DRE
4 machine. Rather, the DRE is protected by a
5 veil of bureaucracy as follows: "I. The
6 State Board may, upon review of the
7 maintenance logs, require further testing of
8 any piece of equipment or may, for
9 sufficient cause, remove a piece of
10 equipment from use in an election until
11 further examination and testing has been
12 completed. "

13 Here is another example of the draft's
14 uneven scrutiny of PB/OS and DRE. There is
15 a requirement of PB/OS that "The system
16 shall provide a means by which the software
17 may be positively verified to ensure that it
18 corresponds to the format of the ballot
19 face. " But no similar requirement is
20 explicitly in place for non-paper system
21 systems.

22 In fact, Section 6209. 3 contains
23 numerous requirements of paper-based systems
24 that are not outlined for non-paper-based

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1 systems. I see no technical reason for this
2 unseen treatment.

3 Even the definitions display a semantic
4 bias throughout. The terms used in this
5 part suggest the authors' assumption that
6 the voting systems implemented in New York

7 are not paper ballot systems. The authors'
8 intentional or inadvertent demotion of PB/OS
9 is clearly apparent in language and content.

10 It is reminiscent of another flawed
11 document, a comparative review of voting
12 machine systems for the June 2005 report of
13 the Election Commissioners Association of
14 the State of New York, titled "Replacement
15 of the AVM in New York State." That
16 document also treated PB/OS with more
17 stringent standards, while the DRE standards
18 were allowed wide latitude, particularly in
19 the area of costs.

20 For example, Definition 12 regarding
21 prequalification tests should read "Such
22 votes shall be entered into the voting
23 equipment" rather than the current phrase
24 "Such votes shall be entered upon the voting

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1 equipment. "

2 Again, one registers a bias by the
3 authors of the draft that does not envision
4 the ultimate implementation of PB/OS. A
5 document that would include PB/OS would use
6 the adverb "into" as the paper ballot is fed
7 into the scanner. This adverb also serves
8 to describe other systems.

9 Security issues. Section 6209.2,
10 "Polling Place Voting System Requirements,"
11 Subdivision A(5) calls for the system to
12 contain "a means of simulating the random

13 selection of candidates and casting of
14 ballots in quantities sufficient to
15 demonstrate that the system is fully
16 operational and that all voting positions
17 are operable. "

18 This is not to be confused with an
19 independent test of the machine's
20 operational integrity. Vendor code to prove
21 the system works is not proof that the
22 system works in a real election. This is
23 incredibly generous and exactly the kind of
24 requirement that opens the door for the

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1 privatization of our voting system. Can we
2 really own our votes when the recording and
3 counting of votes is so technically complex
4 that private corporations, a veritable
5 priesthood of paid technocrats, administer
6 the election?

7 6209.12(H) on vendor access to PB/OS
8 systems should be strengthened. There
9 should be no vendor access under any
10 circumstance while equipment is being used
11 for election functions.

12 In Section 6209.6, "Examination
13 Criteria on Software and Hardware
14 Qualification Tests," this phrase
15 "Specification. Vendor test data may be
16 used in partial fulfillment of this
17 requirement" should be removed from the
18 regulation. No vendor data should be used

19 for any certification testing.
20 Definition 10, "Modification," should
21 be amended to read "Any change in either
22 software, firmware or hardware that
23 directly" -- and then insert "or
24 indirectly -- "affects the operation of the

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1 voting system that will require
2 reexamination of certified equipment by the
3 State Board."

4 I present this modification because we
5 have cases in our country where vendors have
6 not been scrupulous in presenting software
7 changes for recertification but have instead
8 implemented such code changes without public
9 review. This definition change should limit
10 the instances where such unreviewed
11 modification will be allowable.

12 Definition 11, of "Operational Manual,"
13 would be improved by adding a part (3)
14 stating the manual should "include
15 procedures to facilitate accurate and timely
16 recounts." This stresses the importance of
17 mandatory recount aspect of future voting.
18 Systems should be designed to accommodate
19 recounts.

20 A voting systems records and counts.
21 The regulations would achieve greater
22 clarity if the equipment was discussed as
23 having two main functions. One is to record
24 the vote. The other function is to count

1 the vote. It is clear that the PB/OS
2 systems divide these functions in a way
3 that, to my mind, facilitates voting
4 integrity. The marking of the ballot, the
5 record function, is handled in a most direct
6 and intuitively natural way by the voter or
7 a marking device for those handi capped
8 voters. Then the counting function is
9 accomplished for all voters regardless of
10 physical capacity in the same way.

11 In contrast, the DRE system bundles
12 recording and counting in one device. This
13 bundling will lead to tremendous reliability
14 problems and higher costs.

15 In Definition 14, of "Hardware," is
16 "the actual voting or ballot counting
17 device" in the draft. Here is the perfect
18 opportunity to introduce the two fundamental
19 aspects of the voting system: (1)
20 recording, and (2) counting. A better
21 definition of hardware would be this: "The
22 actual vote recording or vote counting
23 device."

24 We find another opportunity to refer to

1 the dual aspects of recording and counting
2 in Definition 18 of "Source Code." The
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3 final phrase should be amended to read
4 "language used to program the vote recording
5 equipment or vote tabulating equipment. "

6 And again, this distinction should be
7 drawn for Definition 23, "Voting Position. "
8 The term should refer to "an area or square
9 of the vote recording component" rather than
10 "an area or square of the voting equipment. "

11 Finally, Definition 24, of "Voting
12 System" would be improved by amending the
13 final phrase from "system" to "system that
14 allows a voter to record a vote and allows
15 election administrators to count these
16 votes. "

17 I must close to conform to the set time
18 limits. I wish to state my extreme concern
19 in the manner that new voting is being
20 introduced to New York. The voters, the
21 public, have been consistently assigned to
22 the back of the bus. We have not been made
23 aware of the process by which decisions have
24 been made.

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1 One, the failure of the State
2 Legislature to make the general public aware
3 of this, the biggest change to voting in our
4 lifetimes, is shameful.

5 Two, the voting manufacturers have been
6 all too aware of whom to contact.

7 Three, the Citizen's Advisory Committee
8 was virtually ignored, a dishonorable move

9 by the state board to exclude the public
10 while regulations were cobbled together.

11 Four, it is clear that county election
12 commissioners have been making themselves
13 available to the voting system vendors for
14 many months. The result is a good deal of
15 misinformation and biased sales
16 misinformation that have already prejudiced
17 many of these public servants, who sometimes
18 do little to conceal their disregard for the
19 voter.

20 Five, finally, the state board does not
21 even seem to be ready to insist that the
22 vendors must offer their PB/OS systems for
23 testing.

24 I leave with my testimony 400 names on

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1 petitions, all concerned citizens calling
2 for paper ballot voting optically scanned.
3 Tell me, where are all the citizens
4 clamoring for DRE machines? Where is the
5 groundswell for computerized and privatized
6 voting? It does not exist.

7 If New York installs DRE voting
8 machines, it is a triumph for corporate
9 lobbyists. But if paper ballot voting --
10 secure, reliable, and cost-effective --
11 becomes the standard for New York, it will
12 be a triumph for democracy. I hope to see
13 that day.

14 EXEC. DIRECTOR ZALEN: Thank you.

15 William Sell, Public Employees
16 Federation.
17 MR. SELL: Good morning.
18 My name is William Sell. I'm a public
19 employee. I've been employed as a research
20 analyst for the State of New York for over
21 twenty years.
22 I'm also a naturalized United States
23 citizen. And so, unlike many of you, I had
24 to take an oath. And in that oath what was

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1 promised to me was a franchise to
2 participate in my government. And that
3 franchise, I feel, is in question today.
4 I have had the honor of being elected a
5 delegate representing the Higher Education
6 Services Corporation at the Public Employees
7 Federation annual convention in Rochester.
8 PEF is a union representing the
9 professional, scientific, and technical
10 employees of the State of New York. As
11 professional public employees, we are
12 entrusted with the core functions of our
13 New York State government. Our activities
14 are transparent, and we are held accountable
15 to the public by law.
16 I'd like to thank the board for holding
17 these public hearings, giving me a chance to
18 voice my opinions, but I must note it's
19 very, very late in the process. And I also
20 must note that the commissioners who will be

21 making many of these decisions should be
22 here at this time.

23 It's been said that it's not the voting
24 that's democracy, it's the counting. The

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1 last two national elections have driven home
2 this point to Americans. The public has
3 little trust in electronic voting machines,
4 and the federal government, through the
5 General Accounting Office, has recently
6 admitted as much, saying that "votes have
7 been lost and miscast due to problems with
8 electronic voting."

9 At a time when both voter confidence in
10 new voting technologies is eroding and when
11 America continues to be shocked by corporate
12 scandal after corporate scandal, government
13 simply cannot allow the counting of our
14 votes to be outsourced to private
15 corporations.

16 The counting of votes -- which
17 actually, as has been said, is democracy --
18 must be absolutely free of the appearance of
19 impropriety. The only way to avoid even the
20 appearance of impropriety, especially where
21 any state contracts or vendor contracts are
22 concerned, is by using a transparent public
23 process with full disclosure. We have not
24 seen such a process here.

1 For reasons known only to a select few
2 government officials, the voting machine
3 selection process has not been conducted in
4 an open and transparent fashion. This lack
5 of transparency inevitably erodes public
6 trust in government. It's inexcusable, and
7 I'm going to so far as to say it is
8 unpatriotic to knowingly allow any doubts
9 regarding our own democracy to linger at a
10 time when Americans are dying almost daily
11 abroad in defense of this democracy.

12 Now, many feel that the vendors have
13 far, far too much leeway in terms of what
14 equipment is available, what they can
15 provide, and how systems are to be tested,
16 maintained and used. And the effect of
17 these regulations -- as my colleagues have
18 mentioned, these overly broad regulations --
19 is the outsourcing of our vote counting.
20 And since the counting is the democracy,
21 New York is in danger of outsourcing its
22 democracy.

23 The board puts far too much faith in
24 the vendors and does little if anything to

1 allay the public's fear of electronic
2 voting's many documented flaws. Now, this
3 lack of action in the regulations implies
4 that we trust the vendors. Why are we the

5 people allowing private, for-profit
6 corporations, which are answerable only to
7 their officers and boards of directors, to
8 handle and count our votes?

9 The solution to all of the concerns and
10 all of these horror stories regarding
11 electronic voting is really simple. We must
12 rely on a mature, verifiable technology
13 which is totally open to public scrutiny. A
14 publicly administered paper ballot and
15 optical scan system would be just such a
16 system.

17 Paper ballot/optical scan systems have
18 successfully been in use in elections
19 nationwide for over thirty years, and many
20 states have decided to turn to these
21 reliable and mature systems as their only
22 systems under HAVA. According to Election
23 Data Services, optical scan voting systems
24 are the most popular system in use in the

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1 United States.

2 Therefore, I propose that the
3 regulations be changed to provide for paper
4 ballot/optical scan systems under full
5 public ownership of all machines, all source
6 code, all documentation, and with all the
7 responsibility for testing, maintenance, and
8 operation entrusted to civil servants. We
9 need transparency. We need accountability.
10 We need to protect our votes. No

11 private-sector employee should be anywhere
12 near a voting machine in New York once these
13 machines have been delivered to government
14 and training has been completed.

15 Elections are a core governmental
16 function. All of our core governmental
17 functions must be done by civil servants so
18 that the process is open and the people
19 running it are beholden to the public and
20 not a political party or a company's bottom
21 line. Civil servants are subject to all the
22 laws that open the process up to the public.
23 If there are any questions about any aspect
24 of an election, the public must have the

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1 level of full access to detailed information
2 that only public servants, not proprietary
3 interests, can provide.

4 Now that people have finally been
5 somewhat educated about this highly nuanced
6 voting technology issue, I've found that
7 there is a groundswell of support for a
8 paper ballot/optical scan system fully owned
9 and administered by the public. And I have
10 some strong evidence of this.

11 At this year's PEF convention, I
12 introduced a resolution from the floor
13 proposing a publicly administered paper
14 ballot and optical scan system to comply
15 with HAVA. Once the delegates read through
16 this resolution, it sailed through

17 committee. Over 800 delegates representing
18 our 54,000 public employees overwhelmingly
19 adopted the proposal without debate.

20 So now these 800 delegates,
21 professional and scientific delegates,
22 immediately recognized the logic behind my
23 call for a publicly administered paper
24 ballot/optical scan system. And I must tell

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1 you that PEF members represent the state's
2 professional workforce. Their opinion on
3 technical matters should not be taken
4 lightly. I have included, for your
5 information, a copy of this resolution with
6 my testimony.

7 The overwhelming majority of our 54,000
8 PEF members are also voters. They want to
9 mark their own optically scanned paper
10 ballots, and they want public servants to
11 provide confidence and accountability and
12 professionalism in elections management.
13 They do not want and they will not trust
14 privatized elections.

15 One of the most important charges of
16 the Board of Elections is "the preservation
17 of citizen confidence in the democratic
18 process and enhancement in voter
19 participation in elections." Now, the board
20 has seen it's so important that it is found
21 in the mission statement, which you will
22 find on the website.

23 Unfortunately, I feel the board has
24 thus far failed in this mission. The

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1 current erosion of voter confidence has been
2 around since the year 2000, since the 2000
3 elections. And the Help America Vote Act
4 was passed in 2002. However, many
5 New Yorkers still don't seem to realize that
6 new technology must be soon in place. The
7 public awareness is very low.

8 However, there still is time to fix the
9 problem. Please tighten up the regulations
10 by limiting the role of vendors in the
11 operation of our voting machines. Place all
12 responsibility for the machines in the hands
13 of civil servants. Mandate the use of paper
14 ballot/optical scanning systems. Do this
15 for the voters of New York State. And you
16 must do this to maintain confidence in our
17 democracy.

18 Thanks very much.

19 (Applause.)

20 EXEC. DIRECTOR KOSINSKI: Thank you,
21 Mr. Sell.

22 EXEC. DIRECTOR ZALEN: Mr. Sell, if
23 you could just come back for a moment, I
24 wanted to ask you just a couple of

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1 questions, if you don't mind.

2 You introduced your resolution from the
3 floor directly. If it wasn't introduced
4 from the floor but it was on the agenda of
5 your convention, it would have been
6 submitted in advance, it would have been in
7 the union newspaper, it would have been
8 vetted, studied in advance.

9 MR. SELL: That's correct, sir. And
10 I was recognized by the chair and the
11 resolution was assigned to the committee on
12 domestic policy issues, I believe it was.

13 EXEC. DIRECTOR ZALEN: It wasn't
14 reviewed in any great length over preceding
15 days or weeks or months?

16 MR. SELL: It was. It was formulated
17 by my colleagues and myself.

18 EXEC. DIRECTOR ZALEN: The
19 resolution --

20 MR. SELL: When you say "reviewed,"
21 sir, do you mean by the Public Employees
22 Federation?

23 EXEC. DIRECTOR ZALEN: Well, at least
24 by the 800 delegates, minimally.

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1 MR. SELL: Yes, we had a three-day
2 convention and it was introduced as special
3 business on Day One and it passed
4 unanimously on Day Three, which was
5 September 21.

6 EXEC. DIRECTOR ZALEN: Yeah, I

7 noticed that it was unanimous.

8 I notice also by its terms it does
9 compare touch-screen computer voting
10 technologies to corruptness and to the
11 systems in Florida and other not especially
12 complementary things. As for optical scan
13 systems, no such derogatory comments were
14 made. Do you think that might have
15 influenced the unanimous vote?

16 MR. SELL: Could you rephrase that,
17 please?

18 EXEC. DIRECTOR ZALEN: No, that's all
19 right.

20 It's on the basis of this unanimous
21 vote that you feel that you can speak for
22 all 54,000 Public Employee Federation
23 members, including those who work on the
24 problem in our own office?

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1 MR. SELL: No, sir. No, sir.

2 EXEC. DIRECTOR ZALEN: Thank you.

3 MR. SELL: You're welcome.

4 EXEC. DIRECTOR ZALEN: Barbara
5 Murphy, concerned citizen.

6 MS. MURPHY: I'm Barbara Murphy. I'm
7 a Saratoga county resident and voter and a
8 vote rights activist for three years and a
9 member of many citizen action groups.

10 Before retiring, I had computer
11 programming experience in my former New York
12 State position.

13 If new voting systems are hastily
14 certified by the state board after
15 superficial examination and purchased by
16 county boards, our voting rights may be at
17 risk. Voting procedures in several states
18 have resulted in lawsuits. There's a suit
19 in North Carolina over use of undisclosed
20 computer program code. Other suits are
21 going on in Ohio, New Jersey, Florida, and
22 elsewhere.

23 If New York purchases voting equipment
24 with HAVA funds now, and these systems need

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1 to be replaced due to lawsuits or
2 malfunctioning later, the subsequent
3 equipment will have to be purchased with
4 additional New York State taxpayer dollars.
5 Of course, HAVA funds are also taxpayer
6 dollars.

7 Some of the issues for potential
8 litigation in New York State are, one, a
9 challenge to the constitutionality and/or
10 legality of elections being run with
11 undisclosed computer program code under the
12 ownership of private corporations.

13 New York State law and the recent draft
14 regulations for certification of voting
15 systems published by our State Board of
16 Elections allows the use of voting systems
17 with proprietary, secret software. In
18 contrast, Nevada has strict regulations

19 governing the proper use of gambling
20 machines.

21 Not only does the Nevada Gaming Control
22 Board have full access to all
23 private-company gambling software, but
24 additionally, the software is constantly

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1 spot-checked, standards are continuously
2 updated, manufacturers are intensively
3 scrutinized before they are licensed. The
4 one lab which certifies gambling equipment
5 is state-operated. The lab has an arm's
6 length relationship with the manufacturers
7 it polices. And the clients have a right to
8 immediate investigation in a dispute.

9 All of this is done for the right to
10 securely gamble in Nevada, not quite as
11 important as a right to securely vote in
12 New York State, I would hope. New York's
13 regulations must not be guided by the
14 vendors.

15 Computers are more easily compromised
16 than mechanical lever machines. A lever
17 machine would need hours of access to modify
18 it. With computers you can dial in from a
19 remote location over communication lines to
20 check mid-election results and modify the
21 programming or votes or tallies.

22 Computers can have unexplainable
23 programming errors in the voting software
24 itself. Computer technicians can switch

1 votes, tallies, and software when called in
2 to fix Election Day breakdowns.

3 The proposed regulations do not deal
4 with the fact that computers are volatile in
5 this way. Rather, they treat computers as
6 if they were invulnerable. But they are
7 not.

8 A second challenge is the legality of
9 not having direct voter intent to review via
10 a hand marked paper ballot, as opposed to no
11 ballot or a computer-generated paper trail.

12 As the board knows, direct recording
13 electronic voting systems are currently in
14 use in the towns of Clifton Park and
15 Halfmoon in Saratoga County, where I live.
16 Last November I asked the county board for
17 the official records of the 2004 county
18 election results. After waiting about a
19 month at the county board's request so that
20 they could officially compile the
21 information, I collected the records.

22 When I reviewed the presidential
23 election results, it showed that there were
24 7,500 more votes than voters. When I

1 questioned the county board about this, I
2 was told to come back to pick up revised

3 final results and was given a second package
4 of information and then a third set of
5 numbers. In each package, the number of
6 voters became much closer to the number of
7 votes. But when I asked why, no explanation
8 could be given to me.

9 In a separate incident, a statement of
10 one Clifton Park town board member when the
11 last DREs were purchased was something to
12 the effect that he assumes that if a recount
13 is needed, the voting machine company will
14 supply the numbers.

15 Because of my study of the election
16 results of 2004, I challenge the officials
17 across the state who cite Saratoga DREs as
18 an example of a system working well. Is it
19 possible that the computerized voting
20 systems in Saratoga County did what they
21 have done in other jurisdictions around our
22 country -- created phantom votes due to
23 programming errors? No one can know what
24 goes on inside the computer, especially with

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1 undisclosed code and a computer-generated
2 paper trail.

3 A third challenge, legal challenge,
4 potentially. There may be cause for
5 challenges to the state and county Boards of
6 Elections under New York State Article 78
7 and to the few voting machine corporations
8 vying for business in New York State for a

9 breach against federal antitrust laws in
10 restraint of trade.

11 Both the state board and some county
12 Boards of Elections have seriously breached
13 their responsibility to follow the
14 legislative mandate to present a choice of
15 DREs and paper ballot/optical scan systems
16 for use in the state. The state BOE has
17 refused to make any attempt to secure
18 optical scan voting systems for
19 certification. County election
20 commissioners have misrepresented or hidden
21 vital facts in their two separate studies
22 comparing the alternative technologies.
23 Many county election commissioners have put
24 up obstacles to public awareness of optical

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1 scan systems and made false or misleading
2 public statements about the two systems.

3 The Citizen's Advisory Committee has
4 not had a chance to examine and compare
5 systems. Currently the state board is
6 proceeding with premature certification
7 procedures for the Liberty DRE, although it
8 lacks the paper printout and all
9 accessibility features required for
10 certification, and prior to following steps
11 required for public and advisory committee
12 input.

13 In New York State presentations, the
14 corporations that make both DREs and optical

15 scan voting systems have diligently put
16 forth their DRE systems and often downplayed
17 or even hidden their optical scan machines,
18 including one federally certified and
19 well-regarded accompaniment for the
20 disability community, the AutoMark.

21 Vendors have had undue influence upon
22 New York State elected and appointed
23 election officials, both financially, at
24 government functions, and through years of

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1 paid lobbyists' efforts. I've heard at
2 least one company representative make
3 misleading statements to the media.

4 Are the corporations the source of
5 misleading statements made by government
6 officials? Is the New York State Board of
7 Elections taking into account the fact that
8 the Sequoia machines have been shown to be
9 hackable, that ES&S DREs are so plagued with
10 malfunctions that they're being considered
11 for replacement after recent purchase of the
12 machines, and that the European counterpart
13 of the Liberty machine is warehoused in
14 Ireland after being considered too
15 unreliable for voting use by an independent
16 commission in that country?

17 The recent Government Accountability
18 Office report has echoed what voting rights
19 activists have said for years: we need to
20 improve election oversight. The report to

21 Congress cited gaping flaws which currently
22 exist nationally in controls for security,
23 access, and physical hardware, in
24 ineffective federal standards, and in

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1 inadequate testing of systems by independent
2 testing authorities with a lack of
3 transparency in the testing process.

4 We have a conflict. HAVA deadlines are
5 coming soon. But rushing our voting system
6 selection can make New York vulnerable to
7 litigation if voting systems are put in
8 place and later found to be not secure.

9 I suggest the following steps to meet
10 2006 HAVA requirements and give New York
11 more time to formulate solid procedures for
12 systems selection.

13 The New York State Legislature and the
14 Board of Elections should seek from the
15 federal government an extension to the HAVA
16 deadline based on the findings of federal
17 shortcomings outlined in the GAO report.

18 Second, the New York State Legislature
19 and our state and county Boards of Elections
20 should consider a temporary minimal-change
21 system to satisfy HAVA accessibility
22 requirements for each polling place in 2006.
23 This could mean the temporary retention of
24 lever machines for use by most voters, along

1 with the use of a paper ballot system with a
2 handi capped- accessible ballot marking device
3 in each polling place. This small subset of
4 votes could be hand-counted. The most
5 efficient available ballot marking system,
6 such as the VotePad or the AutoMark, should
7 be examined for certification to aid in the
8 marking of the paper ballots by voters with
9 disabilities or minority languages.

10 The New York State Board of Elections
11 can then take a reasonable amount of time to

12 (a) rewrite the draft regulations,
13 taking into account the suggestions of the
14 advisory committee and the many interested
15 groups and individuals, including computer
16 specialists, long involved with voting
17 rights issues;

18 (b) restudy the DRE and optical scan
19 systems by comparing them on a common
20 yardstick for both systems.

21 (c) aggressively solicit for
22 certification all legally permissible voting
23 systems options. If no solution to the
24 conflict we face regarding HAVA funding can

1 be found, the Legislature and the Board of
2 Elections must consider that protecting
3 New Yorkers' voting rights for the long term
4 is more important than gaining federal funds

5 for inappropriate voting systems in the
6 short term.

7 I note that Volusia County in Florida
8 is standing up to attempts by its state
9 government to force DREs upon them over
10 optical scan. The State of New York must
11 stand up to the federal government to ensure
12 that federal standards are cleaned up before
13 New York is forced to follow federal
14 regulations.

15 Thank you for your time.

16 EXEC. DIRECTOR KOSINSKI: Thank you,
17 Ms. Murphy.

18 EXEC. DIRECTOR ZALEN: I'd just like
19 to take a moment to talk about the
20 examination of Liberty, which has been
21 criticized by a number of speakers here
22 today.

23 We, on an ongoing basis, always examine
24 any machine that a vendor asks us to examine

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1 if we have the time to look at it. In this
2 case, there was no -- we were not looking at
3 the machine for certification purposes. We
4 were looking at the machine at the request
5 of the vendor in order to be able to point
6 out to the vendor what directions the vendor
7 may have to go in order to be able to
8 proceed with the machine.

9 There wasn't even the beginning of a
10 certification process, nor can there be, as

11 all of you are aware, until we have the
12 final version of our rules and regulations.

13 The reason we do this on an ongoing
14 basis, and have for years, is to be of
15 service to the public and to do what we
16 consider to be our job in helping the
17 constituency of the election community in
18 any way that we can assist. That would go
19 for any kind of machine, vendor, system,
20 including Optiscan, if any such entity
21 wanted to speak with us.

22 We can do this at this time because
23 clearly, until such time as our rules and
24 regs are finalized and presumably we get

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1 applications to actually certify machines
2 that are HAVA-qualified, our people have the
3 time to do this. They may not have the time
4 in the future once the rules and regs are in
5 final form.

6 The reason we invited our advisory
7 committee to come review the machine,
8 although it was not for the purpose of
9 certifying for HAVA purposes, was our
10 concern that those groups that would attack
11 us at any opportunity for perceived
12 prejudices would attack us if we didn't
13 invite the advisory committee for supposedly
14 reviewing the machine in violation of the
15 law and out of sight.

16 While that would not have been true

17 under the circumstances, our concern for
18 that was so great that we did it advise the
19 advisory committee. That didn't stop the
20 attacks anyway, of course, but that was our
21 intention.

22 Mr. Van Allen.

23 MR. EDELSTEIN: Could I ask you a
24 question?

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1 EXEC. DIRECTOR ZALEN: No.

2 MR. VAN ALLEN: I brought John Joseph
3 Forgi one with me. He's on various lawsuits
4 with us.

5 This won't take long. My name is H.
6 William Van Allen. I live in Hurley, the
7 town of Hurley, Old Hurley, down by
8 Kingston, Ulster County, the second capital
9 of New York State and where they wrote part
10 of the Constitution.

11 And today I'm here as a private
12 citizen. I'm retired, basically. And we'd
13 just like to -- the forum was here. We had
14 a court case that we were supposed to have a
15 hearing this morning, and that was
16 postponed, and that court case is directly
17 on point with this hearing.

18 So briefly, and to continue from
19 yesterday's discussion at the state board
20 meeting, I just talked with Bob Freeman
21 again, and he assures me that I can enforce
22 the state board having an agenda of

23 executive session. And there's case law.
24 You know, that will be continued in another

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1 forum.

2 So you want a secret machine? Well,
3 you can't even get the secrets of the State
4 Board of Elections meeting, which is held
5 between two political parties, of which a
6 this of us are not even members of those two
7 parties.

8 Just for the information of the record
9 here, I am with what we call the
10 Nonaffiliated Voters Party, which
11 essentially is trying to get equal ability
12 to nominate candidates that any other party
13 has in this state. And that's been -- it's
14 in litigation.

15 There's -- I'm also a member of the Ad
16 Hoc New York State Citizens for
17 Constitutional Legislative Redistricting.
18 And that's the people that have the lawsuit
19 called Lober vs. Spargo. That's Thomas
20 Spargo, from the 2000 election, et cetera.

21 And that case is the one that was going
22 to be heard this morning. It's down at the
23 Second Circuit. It has to do with -- the
24 order to show cause is about HAVA. We are

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1 trying to stay the feds from allowing the
2 state to spend that money, any more of that
3 money on HAVA. Apparently they have
4 \$200 million sitting in a bank account
5 collecting interest right now. And
6 yesterday they said, Well, we can use the
7 interest maybe right now. We shouldn't
8 allow them to do anything additional.

9 I'm also a pro se plaintiff from over a
10 decade ago where several people on this
11 panel were testified or were subpoenaed to
12 testify. That was a case called Schultz vs.
13 Berman or Schultz vs. Williams, which was --
14 to get back, before you have voting
15 machines, the issue from 2000 is you have
16 people voting in multiple districts in
17 Florida, in New York City, whatever. You
18 needed a centralized database.

19 For over a decade I've tried to get a
20 centralized database out of these guys. I
21 mean, these guys are just -- obviously
22 they're just doing what the Legislature
23 does, and the Legislature is just a factor
24 from the Republican and Democratic parties.

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1 Here we got a third of the state out
2 here that -- I swear, 80 percent of the
3 people in this state would be nonaffiliated
4 voters if the system allowed them to
5 nominate candidates. Anyway, that's another
6 court case and other litigation.

7 Also, Lober vs. Spargo is in the
8 Northern District in front of a Judge Kahn.
9 It was originally in front of a Judge
10 Sharpe, who was supposed to have the case.
11 That again is all being litigated. And
12 that -- that's an important case.

13 There's a companion case out in the
14 Western District in front of a Judge Arcara,
15 who's the chief judge, I believe, of the
16 Western District federal, and that's -- John
17 is the lead plaintiff on that.

18 That one takes the issue of
19 redistricting -- the maldistricting of the
20 state, which gets back to the HAVA, and it
21 applies it to Medicaid funding and the way
22 that is distorted.

23 So we're not going to get into these
24 other issues, but I just want to make the

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1 note that they're out there.

2 And again, the take-home message, let's
3 see, not to worry, these lawsuits are trying
4 to -- well, first of all, we're trying to
5 stay any use of federal funds, we're trying
6 to say that the entire state, not just up
7 here or down in New York City, has to be
8 redistricted -- that's from election
9 districts on up to Congressional districts,
10 and has to be done by March, according to
11 the Constitution or obviously the judge can
12 give you more time --

13 EXEC. DIRECTOR KOSINSKI: I'm sorry,
14 Bill. Bill, I can just interrupt for a
15 minute? I'm sorry.

16 MR. VAN ALLEN: Yeah.

17 EXEC. DIRECTOR KOSINSKI: But today's
18 hearing is particularly on the rules and
19 regulations that this agency has put out for
20 the new voting systems that the state is
21 going to be adopting under HAVA.

22 MR. VAN ALLEN: The credibility of --

23 EXEC. DIRECTOR KOSINSKI: I'm sorry,
24 can I just finish.

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1 Do you have comments that might be
2 directed to those specific rules and
3 regulations? Or --

4 MR. VAN ALLEN: Yeah.

5 EXEC. DIRECTOR KOSINSKI: Could you
6 maybe get to that, since that's what the
7 hearing is about.

8 MR. VAN ALLEN: The whole credibility
9 of us being able to get a stay on you
10 spending the money involves all these cases.

11 Ten years I've been in front of you
12 trying to get a centralized database. Ten
13 years ago, more than that, you said -- and
14 others said, Oh, you can't make us spend
15 \$200 to go buy a 40-gig drive just to store
16 all the counties in the state.

17 Here we had -- the Motor Vehicle
18 Department obviously has a centralized

19 database, and that's been collecting data
20 here for almost a decade. What's going on
21 here? Forget about the machines for a
22 second. Let's get just to the database.

23 Dennis Karius back there, who's going
24 to testify, he testified back then in front

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1 of you.

2 So, you know, that's -- I could go on
3 and on. But that's enough.

4 EXEC. DIRECTOR KOSINSKI: Thank you
5 for coming.

6 MR. VAN ALLEN: See you.

7 EXEC. DIRECTOR KOSINSKI: Our next
8 speaker is Helena Kosorek.

9 MS. KOSOREK: My name is Helena
10 Kosorek. I'm a volunteer supporter of
11 New Yorkers for Verified Voting and the
12 League of Women Voters of New York and an
13 active member of the Hudson-Mohawk Indy
14 Media Center. My address is 172 Gifford
15 Road, Greenville, New York, 12083, in Albany
16 County.

17 I am here today because of the grave
18 concerns I have for the future of voting in
19 New York and across the country. After
20 reviewing HAVA of 2002; the Government
21 Accountability Office Report No. GA0-05-956,
22 entitled "Elections: Federal Efforts to
23 Improve Security and Reliability of
24 Electronic Voting Systems are Underway, but

1 Key Activities need to be Completed," which
2 was released on October 21, 2005, the New
3 York State law -- these are still things
4 that I've reviewed -- the New York State law
5 Election Reform and Modernization Act of
6 2005; and the draft regulations for the
7 certification of voting systems, which we
8 are here to testify about, I observe and
9 urge the following.

10 New York State adopts paper ballots and
11 either a hand count or the use of certified
12 precinct-based optical scanners based on
13 rigorous standards and certification
14 guidelines.

15 As the Government Accountability Office
16 states, there needs to be more rigorous
17 standards and certification applied to
18 voting machine systems. Then New York can
19 join 13 out of 50 states that are not going
20 to acquire machines that are not certified
21 and to a higher level of standard than
22 currently exists. We in New York should not
23 be arguing the appropriateness of one
24 machine over another when so many issues

1 regarding security continue to plague this
2 industry.

3 Now I'm going to add a point that is
4 not included in the written testimony that I
5 am providing.

6 I know of four states that are meeting
7 with a lack of openness and either a rush to
8 approve direct recording electronic devices
9 or have a degree of convoluted barriers to
10 openness for public concerns. And these
11 states, as far as I know, are California,
12 Connecticut, North Carolina, and our own
13 New York.

14 In listening to Mark Crispin Miller
15 yesterday -- he was on WAMC, a local NPR
16 station -- speak to the Commonwealth Club --
17 he's an NYU professor on media and other
18 issues, I suppose -- I found the following
19 statements invaluable.

20 He mentioned banning privatized supply
21 of voting machines, saying there should be
22 "no private vendors wielding tremendous
23 influence in our civil lives." He
24 encouraged us by suggesting revisiting the

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1 idealism that this experience was based on.
2 And he was speaking of the American
3 experience, and he went back all the way to
4 Revolutionary times.

5 He encouraged -- he explained that we
6 are much too used to viewing politics as a
7 spectacle, and that there was not a good
8 sense of civic virtue, the willingness to

9 sacrifice for the greater good.
10 A Diebold whistle-blower recently
11 stated the following: "This is a very
12 dangerous precedent that needs to be
13 stopped -- that's the corporate takeover of
14 elections." The source warned, "The
15 majority of election directors don't
16 understand the gravity of what they're
17 dealing with. The bottom line is who is
18 going to tamper with an election? A lot of
19 people could, but they assume that no one
20 will."

21 While this source is unnamed, he added:
22 "Shortly before the election, ten days to
23 two weeks, we were told that the date in the
24 machine was malfunctioning, the source

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1 recalled. "So we were told, apply this
2 patch in big rush." Later, the Diebold
3 insider learned that the patches were never
4 certified by the State of Georgia, as
5 required by law.

6 "Also, the clock inside the system was
7 not fixed," said the insider. "It's
8 legendary how strange the outcome was. They
9 ended up having the first Republican
10 governor in who knows when, and also strange
11 outcomes in other races. I can say that the
12 counties I worked in were heavily Democratic
13 and elected a Republican."

14 About testing, he stated: "There's a

15 practice in testing where you get a
16 pumped-up machine, pumped-up servers, and
17 that's what you allow them to test. Diebold
18 does it, and so do other manufacturers."

19 Although this is in simple language --
20 and the source, again, is not named -- it is
21 the same message given in great depth by the
22 Government Accountability Office. The
23 message in both is that standards and
24 security are not rigorous enough to protect

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1 the vote.

2 Now, concerning the draft regulations.
3 Concerning the draft for Subtitle V, I
4 have -- I just want to note that I have
5 submitted 28 pages of supportive written
6 testimony. I have made reference to 95
7 sections that need an addition or omission.
8 I'm putting that on the public record.

9 Concerning the draft for Subtitle V,
10 number one, added should be the term "and
11 security requirements." Oh, this is under
12 definitions, I'm sorry, No. 1.

13 No. 2, I have a question about No. 2.
14 Who determines it gives aid, and when is it
15 determined and when is it used?

16 No. 5 of "Definitions," to add at the
17 end "with votes to be tallied at the
18 precinct."

19 6, question on No. 6, "Definitions,"
20 what else is EMS used for? This should be

21 stated or investigated.
22 No. 9, cross out "by vendor or
23 manufacturer" and replace with "trained
24 New York State employees, public servants, "

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1 whatever.
2 No. 10, add "and county election
3 officials. "
4 11, add, at end, "and state employees
5 for the performance of scheduled and
6 nonscheduled maintenance and repair. "
7 12, what number of predetermined votes?
8 Number determined -- I would like to see it
9 determined by the advisory committee before
10 January 31, 2006, because I understand that
11 committee is going to be disbanded and that
12 part of the law repealed by January 31,
13 2006. And the predetermined vote should be
14 on more than one machine.
15 No. 14, delivered machines to match
16 certified machines.
17 15, I'm not sure about this; I'm not a
18 computer expert. But something about memory
19 cards, I have a question about that. Not
20 allowed after certification? Another
21 question.
22 16, delivered machines to match
23 certified machines. I have heard that
24 machines delivered are not the ones that

1 were certified for testing in other states.

2 17, who is to inspect the firmware?

3 I'd like to propose a voter advocacy group,

4 and that this group named for this

5 suggestion at this point is going to be

6 referred to at other times.

7 No. 17a, delivered machines to match

8 certified machines.

9 18, delivered machines to match

10 certified machines.

11 24, add "and/or paper ballots and paper

12 ballot counting equipment. "

13 26, 27, and 28, add "and verifying

14 their vote. "

15 I'm not going to go too much further,

16 because I just refer to the draft in the

17 papers that I've submitted, but I do have a

18 few more.

19 And the "Polling Place Voting Systems

20 Requirements," No. 2, "Provide a paper

21 ballot that is retained," to be added to

22 that section.

23 No. 3, add "cast on ballots or on the

24 machine. "

1 No. 5, "The system or ancillary system
2 for precinct-based optical scanners. "

3 And, 6, "and to apply to

4 optical-scanner systems. "

5 On the "Paper-Based Voting Systems"
6 section, on Section J cross out "not. "

7 In J(2) paper-based voting systems
8 inspected also by voter advocacy group with
9 computer and software knowledge.

10 And then again I'm referring to the
11 copies -- see the copies of 95 changes I
12 propose on draft copy of enclosed.

13 Also important, the number of the
14 machines to be tested should be sufficient.
15 I don't know what that number should be, but
16 it should be definitely more than one. I
17 don't know if it's 20, I don't know if it's
18 50.

19 And on the draft regs on page 6, change
20 "vendor" to "New York State employees." I
21 agree with Bill Sell wholeheartedly about
22 being a civil servant and being accountable
23 to New York and not to privatization and
24 profit and greed.

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1 State employees to administer the
2 elections maintenance and scheduled and
3 unscheduled maintenance and repair. I think
4 that makes sense.

5 And, again, develop the voter advocacy
6 computer specialist group previously
7 referred to as "voter advocacy group. "

8 New York has received \$190 million for
9 HAVA implementation. We are not to use
10 taxpayer money on systems that are not

11 secure. Standards and certification testing
12 at this point are not rigorous enough to
13 provide security and reliability. For this
14 reason, I stand by the use of paper ballots.

15 Just the other day I realized how
16 convoluted federal laws that have been
17 enacted have become, but they have one thing
18 in common. They act as a mandate for
19 taxpayers' money to be spent on a particular
20 industry.

21 It is ironic that the taxpayers'
22 \$190 million provided by HAVA will go to the
23 voting machine industry. This money spent
24 is, interestingly, the means by which

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1 New Yorkers will -- I had the word "will."
2 I was going to change it, but I feel like
3 that's going to happen -- will lose their
4 vote if we do not focus on integrity. It is
5 as if we are purchasing for the benefit of a
6 mugger the club that will be used to make us
7 victim to that intent.

8 Finally, we can use the lever machines,
9 as it states in the New York State law,
10 until that time when they are not allowed,
11 and I think it's 2007. Or we can utilize
12 the precinct-based optical scan system with
13 the paper ballots.

14 Thank you very much.

15 EXEC. DIRECTOR ZALEN: Thank you.

16 MS. KOSOREK: Anyone have any

17 questions?
18 EXEC. DIRECTOR KOSINSKI: I don't.
19 But thank you very much for coming.
20 Do you have something to leave with us?
21 MS. KOSOREK: Yes, I do.
22 EXEC. DIRECTOR KOSINSKI: Can you
23 just bring it up? Thank you.
24 MS. KOSOREK: You're welcome.

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1 EXEC. DIRECTOR KOSINSKI: I have
2 Rocky Carr.
3 EXEC. DIRECTOR ZALEN: Ms. Carr, you
4 are --
5 THE WITNESS: I have the honor of
6 testifying on behalf of Irene Miller, who
7 was the founder of New York Citizens for
8 Clean Elections.
9 EXEC. DIRECTOR ZALEN: Thank you.
10 MS. CARR: And these are her words
11 I'm reading into the record.
12 I want to make sure the members of the
13 New York State Board of Elections understand
14 who their employers are. Although you seem
15 to think that DRE lobbyists are the ones in
16 charge, you are mistaken. It is we,
17 New York voters, who are in charge.
18 We, as your employers, are outraged at
19 your secrecy; at your disregard of the
20 massive evidence of how easily DREs can be
21 surreptitiously rigged; your indifference to
22 the fact that DRE vendors, who represent

23 private corporate interests, are the only
24 ones who have the right to inspect the

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1 computer source code -- this claim to
2 proprietary right means we the voters would
3 never know whether our votes have or have
4 not been counted as cast; your disregard of
5 the fact that a DRE may correctly spit out a
6 paper trail of the voter's ballot choice yet
7 internally count it for another candidate;
8 your disdain for voters that you have shown
9 by commencing testing on December 7th of the
10 Liberty DRE -- this is a meaningless test,
11 since this machine is not even a complete
12 system; your disdain for voters by beginning
13 testing on December 7th without public
14 notification, even though you have been
15 repeatedly asked when testing was to
16 begin -- this runs counter to everything
17 you've been saying to the public, which
18 expects testing to commence after the
19 comment period; and your disdain for voters
20 by commencing the 45-day comment period on
21 December 7th, which coincides with the
22 holidays, when, as I'm sure you're aware,
23 most citizens are likely to be too busy to
24 comment on what you are doing.

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1 And as a personal note, I point out
2 today's inclement weather, which I think
3 would have notified you -- as a disabled
4 person who climbed out of the woods of the
5 Hudson Valley in the Catskill mountains in a
6 terrible storm -- that you might have
7 considered postponing these hearings for a
8 day where the weather might have been more
9 appropriate and you might have had more
10 members of the public testifying.

11 At the same time that you have been
12 praising DREs, you have been bad-mouthing
13 other voting systems, those which have a
14 long demonstrated history that they are more
15 secure and less costly.

16 Could it be that you are so naive as to
17 believe we do not know the influence
18 lobbyists have in this process? Or do you
19 think you can shirk your fiduciary
20 responsibility yet get away with forcing
21 DREs on New Yorkers who do not want them and
22 demand an open certification process to make
23 sure we will have a system that will
24 accurately count our votes?

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1 And that is the entirety of Irene
2 Miller's statement to you.

3 I'd like to point out that yesterday's
4 Washington Post notes that the Federal
5 Election Commission has now finally given us
6 regulations which I believe should have some

7 effect on what your plans are in terms of
8 what you test and what you certify in terms
9 of a paper trail at the very least.
10 I thank you, gentlemen.
11 EXEC. DIRECTOR ZALEN: Thank you.
12 EXEC. DIRECTOR KOSINSKI: Thank you
13 for coming.
14 Next we have Dennis Karius.
15 MR. KARIUS: Good afternoon.
16 EXEC. DIRECTOR KOSINSKI: Good
17 afternoon.
18 MR. KARIUS: Thank you for holding
19 this hearing.
20 There seems to be a pattern here,
21 having heard those who are testifying. In
22 fact, it's about to be unanimous, I believe,
23 today. There a real consensus. So please
24 stop me if you're all convinced that DREs

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1 are inappropriate.
2 (Laughter.)
3 MR. KARIUS: Otherwise, not only do I
4 believe there's a consensus here today, but
5 the other two hearings that will be held in
6 this state I believe will be unanimous
7 against the use of what they call direct
8 recording electronic voting systems.
9 My name is Dennis Karius, and I'm a
10 resident of Albany County, the town of
11 Guilderland. After graduating from RPI, I
12 went into engineering and later started my

13 own corporation to provide programming and
14 other computer services to my customers.

15 I've been programming for over twenty
16 years. And like every programmer I've
17 spoken to, I have no faith whatsoever in
18 direct recording electronic or DRE voting
19 systems. In fact, every good government
20 group I know is fundamentally opposed to
21 DREs.

22 The very name DRE should alarm all of
23 you. A programmable machine that directly
24 records your vote will not necessarily

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1 correctly process your vote. After decades
2 of programming, I wondered why I had never
3 heard the term DRE until it was associated
4 with this HAVA program. It was such a
5 nebulous term, I wondered what industry
6 could ever come up with such a perplexing
7 phrase.

8 Only Madison Avenue, in my opinion,
9 could think up such a misleading handle
10 which conveys the confidence of direct data
11 entry when describing such a fallible piece
12 of equipment.

13 So in my opinion, there's really no
14 decision. It was inappropriate for the
15 federal government to allow these machines.
16 And as representatives of the Empire State,
17 it would not be the first time that the
18 Empire State did the right thing and

19 actually ignored one of the alternatives,
20 which is the DRE, and gave your citizens a
21 verifiable method of voting, which is the
22 paper ballot.

23 And I don't care if somebody wants to
24 certify an optical scanner or not. And I

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1 don't care if people want to come in and
2 spent a second shift on Election Night.
3 After the polls close at 9:00 p.m., you can
4 have people counting paper ballots by hand
5 if you don't have a scanner.

6 I would like to see an optical scanner,
7 a simple scanner which just, as we do with
8 SAT tests or you might have seen with the
9 New York Lotto, it just simply scans and
10 does nothing more than that. No
11 programmable -- no method where it can be
12 processed incorrectly.

13 So I would prefer to see optical
14 scanners. But if -- as was said before me,
15 if this process is going to drag us down
16 some hole, then even without optical
17 scanners, I would like to see paper ballots.

18 And again, being the Empire State, I
19 would like to see our state have the courage
20 to just say that direct recording electronic
21 voting systems are totally inappropriate.

22 Thank you.

23 EXEC. DIRECTOR ZALEN: Thank you.

24 Michael Rice, concerned citizen.

1 DR. RICE: My name is Michael Rice.
2 I reside and vote in New Scotland, but my
3 postal address is 67 Nine Mile Lane, Delmar,
4 12054.

5 I received a doctorate in physics from
6 Harvard University in '58 and a J.D. degree
7 from Northeastern University School of Law
8 in '81, and was admitted to the bars of
9 Massachusetts in '81, Illinois in '83, and
10 New York in '86, but in each case I've
11 become retired from practice.

12 I retired in 1996 as chief scientist
13 and counsel of the New York State
14 Legislative Commission on Science and
15 Technology, after more than ten years of
16 service, and was technical advisor and staff
17 attorney of the Illinois Energy Resources
18 Commission prior to my service in New York.

19 I'm here as a private citizen, which
20 some have described as the highest office in
21 the land, and have absolutely no financial
22 interest, via employment, contract, or
23 investment, in any manufacturer or vendor of
24 any voting equipment. But I hope to offer

1 some modest expertise.

2 I'm here to advocate for the statewide
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3 adoption of paper ballots with optical
4 scanners at the precinct level, with one
5 ballot-marking device at each polling place
6 to accommodate people with disabilities.

7 In addition, I will argue that the
8 Board of Elections should, one, refuse even
9 to examine for qualification any DRE that
10 has not already successfully incorporated an
11 automatic printed record of each vote
12 capable of being stored and examined and of
13 course capable of being reviewed by the
14 voter before certifying that that was his
15 vote.

16 Two, to refuse to examine for
17 qualification any DRE from a manufacturer
18 who is able but unwilling to submit a
19 ballot-marking device for qualification.

20 And, three, fully address the technical
21 and economic analysis provided by
22 New Yorkers for Verified Voting. So far as
23 I know, Mr. Lipari has no personal financial
24 stake in your decision. And indeed, I

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1 endorse without reservation the entire body
2 of selfless and expert work on this issue by
3 Mr. Lipari, and I commend it to your
4 attention.

5 As a private citizen, I have voted in
6 every federal and state election since I
7 came of voting age in 1951 -- you had to be
8 21 in those days -- and I believe in every

9 local election for which I was qualified,
10 with the possible exception of one or two
11 school or library elections when I might
12 have forgotten.

13 I believe voting is important, and I
14 have been reasonably satisfied that my votes
15 have always been counted, both my paper
16 ballots in Massachusetts and Illinois and my
17 lever-machine ballots in New York.

18 My confidence in electoral reliability
19 was severely shaken by the hanging chads and
20 the poor alignment of the names and punch
21 holes in Florida in 2000, and questions
22 about touch-screen voting in Georgia in
23 2002, and especially by evidence of
24 tampering and hacking in DRE voting in Ohio

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1 and other states in 2004.

2 I am outraged that the security of
3 touchscreen voting machines is less than
4 that of bank ATM machines and that the
5 customer codes are the private property of
6 private firms -- the more so when the CEO of
7 Diebold has promised to deliver Ohio to the
8 President. That's a quote. There is no
9 function of government less suitable to
10 being outsourced to private industry than
11 that of elections.

12 From a technical standpoint -- and I
13 remind you, my background in service has
14 been both technical and legal. From a

15 technical standpoint, paper ballots are the
16 most transparent, foolproof and reliable
17 means of voting. Everyone can understand
18 them. No one need be intimidated by them.
19 The needs of voters with disabilities can be
20 met by ballot-marking devices that can
21 execute the actual marking on the ballots
22 for those unable to see or to mark them
23 manually, pursuant to oral or other
24 commands, and that allow the voter to verify

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1 what marks were actually made.

2 Following this verification, these
3 machine-marked ballots are read at the
4 voting site by optical scanners. These, in
5 turn, can and should be programmed to
6 indicate to the voter any undervoting or
7 overvoting, to allow the voter to retrieve
8 and correct the ballot, or to approve it,
9 prior to the actual storing and recording of
10 the vote or subsequent scanning of the vote.

11 If any questions were to arise, the
12 original paper ballots are stored and
13 available for a very straightforward manual
14 recount.

15 Systematic tampering, such as occurred
16 with DREs in certain places where a voter
17 voted for one presidential candidate and the
18 name of the other presidential candidate
19 appeared on the face of the machine -- it's
20 possible that such tampering that would

21 allocate votes for Candidate A to
22 Candidate B and vice versa would still be
23 possible, but would be so readily detectable
24 as to be unlikely.

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1 By contrast, DRE machines are
2 definitely liable to hacking and to
3 very-hard-to-detect tampering and, according
4 to the recent GAO report -- well, you've
5 heard about that -- have almost certainly
6 been subjected to both.

7 Whereas optically scanned paper ballots
8 are an established technology, DRE machines
9 are at best an immature technology. This is
10 especially true given New York's dual
11 hurdles, the full-face ballot requirement
12 and the verifiable paper record.

13 I'm dismayed that the board
14 contemplates qualifying DRE machines prior
15 to the manufacturer's achievement of a
16 reliable paper record, or at least that it
17 has begun looking at them.

18 But even if the manufacturer were able
19 to jump that hurdle, we would still be
20 saddled with Model 1.0 of the machine. As
21 any user of computers knows, Models 1.1,
22 1.2, and even 2.0 follow in quick
23 succession, each one designed to overcome
24 unexpected bugs in the prior version. The

1 counties would be exposed to serious and
2 repeated expenditures for necessary
3 upgrades, and bills for these would not be
4 paid by the federal government.

5 No wonder vendors prefer to promote
6 these unstable, high-priced DRE machines
7 over their well-established,
8 no-need-to-upgrade optical scanners.

9 Now, from a legal standpoint, I believe
10 the board is vulnerable to the following
11 charges. First, that it did not adequately
12 consult with the board of advisors.

13 Secondly, that it acted arbitrarily in
14 failing to insist that vendors seeking DRE
15 qualification must also submit
16 ballot-marking devices if they manufacture
17 them.

18 Thirdly, that it agreed to inspect -- I
19 guess I've mentioned that -- for
20 qualification -- and it isn't technically
21 for qualification -- for prequalification
22 machines that obviously fail to meet the
23 paper record requirement.

24 Finally, or fourthly, that it failed to

1 make a good-faith analysis of the
2 comparative costs to the state and the
3 counties of the potentially qualifying
4 devices and arbitrarily dismissed a

5 responsible analysis by New Yorkers for
6 Verified Voting, a disinterested party, in
7 favor of self-interested analyses by
8 vendors.

9 The Board of Elections has been
10 empowered to identify the best voting
11 devices that meet HAVA standards and the
12 additional standards imposed by New York
13 law, in consultation with the board of
14 advisors. It seems to me arbitrary and
15 capricious for the board to allow vendors of
16 both untested, novel, high-end devices and
17 time-tested workhorses to submit only the
18 former and refuse to submit the latter for
19 qualification. It is as if a car dealer
20 showed you only SUVs and refused to show you
21 economy cars.

22 It is up to the board to make the
23 comparison, to enable New Yorkers to acquire
24 the best and most economical voting system

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1 that is consistent with federal and state
2 law. The self-interest of vendors should
3 not drive the board's decision. The board
4 has, and should exercise, the right to
5 refuse to test only one type of machine when
6 the manufacturer makes another as well. Its
7 failure to do so leads to the inference that
8 the board is allowing vendors undue
9 influence.

10 Mr. Zalen earlier today has argued --

11 has justified the December 7th review of the
12 Liberty machine as a service to the public.
13 With due respect, to me there is at least
14 the appearance that it primarily served the
15 interests of the vendor. It may not be so.
16 However, the insistence that -- even the
17 appearance of, shall we say, kowtowing to
18 vendors should be avoided.

19 I thank you.

20 EXEC. DIRECTOR KOSINSKI: Thank you
21 for your testimony.

22 That's our list of prequalified or
23 preregistering speakers, but we do have a
24 few people that have come today to speak.

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1 And we'd now like to hear from them.

2 I have, first, Robert Millman.

3 MR. MILLMAN: Robert Millman,
4 508 Lindsay Avenue, Glenville, New York.

5 Mr. Kosinski, Mr. Zalen, my vote only
6 counts if it is in fact counted. And like a
7 lot of previous speakers, I do have a
8 preference for paper ballot/optical scan
9 over DRE.

10 But from what I've seen and read so
11 far, the advantage of the paper is as a
12 backup system. And forgetting backups for a
13 second, I'd like to look at the primary
14 system and a flaw that other people have
15 mentioned as well but deserves repeating.

16 Whether one favors DRE or op scan, the

17 one issue I hope to express is that
18 proprietary software that cannot be reviewed
19 independently is a fundamentally bad idea in
20 voting machines of any kind.

21 In reading about the advance of
22 electronic voting machines, I've heard, in
23 regards to Diebold in particular, that we
24 can feel confidence in the security because

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1 they have a history in electronic banking.
2 I have no idea if this affects how you
3 gentlemen might look at it or not, but I
4 find this an absurd comparison, because I
5 can keep a record and can verify my bank
6 account. I cannot verify my vote account.
7 That, in fact, is your job.

8 So, in sum, secret software is wrong.
9 And to illustrate that, I want to put into
10 the record a few articles and just read a
11 very brief paragraph or two from them.

12 Tallahassee, Florida, Associated Press:
13 "Tests on an optical scan voting machine
14 used around the country showed it is
15 vulnerable to hacking that can change the
16 outcome of races without leaving evidence of
17 fraud, an county election supervisor said. "

18 Further on in the same article: "The
19 researcher who had hacked into the voting
20 machine's memory card was able to hide
21 votes, make losers out of winners, and leave
22 no trace of the changes. " That's from USA

23 Today, an AP story.

24 Also, from a website called Security

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1 Pro News, an article on the same subject
2 says: "Consider that researchers examining
3 machines in Florida were able to use a
4 modified memory card to alter the vote
5 tally. This was done in conjunction with
6 the Black Box Voting project. This shows
7 just how susceptible the election machines
8 can be. "

9 And, he notes, "If a simple memory card
10 change is all it takes, perhaps closer
11 security is required of these machines. "

12 This came out of an experiment or an
13 effort by Black Box Voting, and a quick
14 paragraph from them is: "At the beginning
15 of the test election the memory card
16 programmed by Harry Hursti was inserted into
17 an Optical Scan Diebold voting machine. A
18 'zero report' was run indicating zero votes
19 on the memory card. In fact, however,
20 Hursti had preloaded the memory card with
21 plus and minus votes. "

22 Gentlemen, I just want to express that
23 the secret ballot is a fundamentally good
24 idea and that secret software is a

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1 fundamentally bad idea. And I ask you
2 gentlemen to take personal responsibility
3 for the software that may in fact be used to
4 count my vote. And if I could leave these
5 as part of the record.

6 EXEC. DIRECTOR KOSINSKI: Certainly.
7 Thank you, Mr. Millman.

8 EXEC. DIRECTOR ZALEN: Vic Bobnick.

9 MR. BOBNICK: Good afternoon.

10 I know it's been a long day so far. If
11 I could beg your attention for a little
12 while longer, what I have here is only two
13 pages long.

14 My name is Vic Bobnick, and I'm from
15 Schenectady County, a private citizen.

16 I'm just starting a computer business.
17 And actually I have a demonstration on disk,
18 on several disks here I'd be willing to
19 offer along with the written version, about
20 how easy it is to tamper with the vote on
21 computer.

22 The reliability of a voting system --
23 that is, that the totals recorded for each
24 candidate or proposal accurately reflect the

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1 actual total votes of all the voters -- is
2 paramount in importance of all
3 considerations. And just below this is the
4 importance of the privacy of one's vote, the
5 secret ballot. If these cannot reasonably
6 be assured by any system, then that system

7 is inadequate as a means for counting votes,
8 and therefore invalid.

9 These two characteristics are above all
10 others and cannot be thrown into the balance
11 to be weighed against other considerations
12 of cost, ease of use, efficiency, or
13 anything else.

14 There are no considerations,
15 individually or all together, that warrant
16 the use of any system that has questionable
17 accuracy or questionable security of the
18 voter's privacy. In a country that lauds
19 its system of democracy, of majority rule,
20 these two qualities are simply
21 nonnegotiable.

22 If we were to use computers in the
23 election process to count votes, we would be
24 using a system that has one of the least

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1 degrees of transparency to date. How many
2 of us understand the programming of a
3 computer? Oh, there are a few, but not
4 many.

5 Within a computer there is the
6 capability for many things. Do you realize
7 that there can be different levels of
8 programming, some visible, some hidden?
9 There can be a program for vote tabulation
10 that appears valid, but this can be a dummy
11 program.

12 Another program can exist within the
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13 computer that can be fraudulent and biased,
14 that could become active only under certain
15 conditions -- for example, only on a Tuesday
16 calling anywhere from the 2nd to the 8th day
17 of November.

18 Such a program does not need its own
19 file, but can be hidden within another file
20 or program. Only the person or persons who
21 put it there may know that it is there and
22 just where it is located. Computer experts
23 who do not know how it was written or where
24 it is cannot necessarily find such a file.

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1 Or such a program could be the primary
2 program and when the computer senses someone
3 is trying to access it, the computer will
4 activate the dummy program instead for the
5 auditor to inspect.

6 In any area, the one whose job it is to
7 find something must be more knowledgeable
8 than the one who is hiding it. Isn't this
9 true? Yet how intelligent are the ones
10 hired by computer companies to write
11 programs as important as these? Would they
12 not also likely know the means for searching
13 the computer code programs?

14 Even presuming that everyone currently
15 associated with the designing, the writing,
16 manufacturing and storage of computerized
17 voting machines is honest, we know that
18 there are people who would resort to

19 deceitful and illegal means to promote
20 certain election results. Such people will
21 be focusing on these computerized machines
22 as their means of working their treachery.
23 And because they are so complex and
24 intricate, no one else may ever know until

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1 long after the election is over. It would
2 eventually be discovered, but at the cost of
3 how many corrupted elections and races?

4 Even if there are some relatively few
5 computer specialists who will have the
6 chance to inspect these machines and who
7 might feel confident that they are accurate
8 and secure, all the rest of us -- that is,
9 nearly all of us -- are required to trust
10 them. But I do not feel that we should have
11 to place our trust in so few people and in a
12 system we do not understand. The system
13 must be transparent, its basic operating
14 structure plain to see and understand for
15 all those who wish to.

16 Computers have become very popular, it
17 is true, and they can do many things well.
18 They have various advantages, but
19 transparency is not one of them. Simply
20 because they are very good at some things
21 does not make them suitable for being the
22 keepers and counters of our ballots.

23 We have advanced as a society, but this
24 does not always mean in our most important

1 arenas we must necessarily use our most
2 advanced and complicated tools. Our
3 cultural development should mean that we
4 have learned when, where, and how to use the
5 best tools and the best methods or each
6 particular purpose. If counting votes by
7 hand were the most accurate and secure way
8 to conduct an election, the smartest society
9 will use that method, saving other methods
10 and devices for those tasks for which they
11 are best suited.

12 These observations also apply to the
13 paper-based optical scan systems, as I have
14 been told by informed sources at the
15 Schenectady County Board of Elections that
16 these PBOS systems also use the same
17 programming to count the votes as some of
18 the DRE systems.

19 And if accessibility for those with
20 disabilities is an issue, as I understand it
21 is, separate accommodations should certainly
22 be made for them, preferably with as little
23 computer involvement as possible, for the
24 reasons I have just stated.

1 Thank you again.

2 EXEC. DIRECTOR KOSINSKI: Thank you
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3 for coming.

4 EXEC. DIRECTOR ZALEN: I'm not quite
5 sure how to pronounce your name. I believe
6 it's you.

7 MS. SHPIRT: My name is Marina
8 Shpirt, S-H-P-I-R-T.

9 Sorry, I didn't have anything written
10 down. I wasn't sure I can come in time for
11 the meeting.

12 I have a few very short comments,
13 because actually what I wanted to say to all
14 of you was said before me. I don't want to
15 repeat everybody.

16 Just a few comments. I represent just
17 myself. I'm a member of many, many
18 organizations, completely nonpartisan,
19 nonpolitical, like League of Women Voters
20 and New Yorkers for Verified Voting and
21 Citizen Action Committee and Senior Citizens
22 Action.

23 Anyway, but I represent, as I said,
24 myself. And I'm a New York State resident

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1 for over thirty years and proud to be one.
2 And every time, when I'm asked who I
3 represent on voting issue, I'm saying I
4 represent voter, because I'm voting all the
5 time. And I'm very concerned about my
6 votes.

7 This issue really bothers me. I don't
8 know much about computers. I use computer

9 like I use my car. I know the gas pedal and
10 brake pedal, that's it. I don't know what's
11 inside.

12 But according to the situations since
13 the year 2000, in all the states in the
14 union -- in many states of the union who
15 adopted DRE systems, including California,
16 Florida, Ohio, New Mexico, Nevada,
17 Pennsylvania, we had so many doubts about
18 the results of elections that actually, for
19 the voter, it's a scary thought. It is
20 scary that people don't believe in the
21 results.

22 And maybe in the year 2000, 2001 or
23 2002 it was considered conspiracy theories.
24 But after 2004 elections, those polls showed

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1 that over 40 percent of voters in the red
2 states and over 56 percent of voters in the
3 blue states were absolutely sure that the
4 elections were stolen.

5 This is appalling. How can we allow
6 that? We can't.

7 That's why I beg Board of Elections to
8 take very serious consideration of what kind
9 of machines we use. I tried to talk to our
10 counties -- county election officials and
11 tried to convince them not to buy, not to
12 purchase DREs and purchase instead paper
13 ballot/optical scanner system. They said
14 it's not certified.

15 And according to what I know with the
16 board, companies are not even presenting
17 this paper ballots/optical scanners for
18 certification.

19 And this is not acceptable. You have
20 to insist for every person -- every company
21 who sends their machine for certification,
22 they have to present them not just DRE, but
23 optical scanners too. Because we will have
24 a disaster.

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1 And experience of other states. Like,
2 for example, Miami-Dade County -- even the
3 big counties -- but they spent \$32 million
4 on purchasing DREs, and they scrap it.
5 \$32 million. And they -- now they're
6 purchasing optical scanners. Can we afford
7 it?

8 One more very important thing. As a
9 few people said, we are -- the people of
10 New York State, we are your employers. And
11 we will insist on you acting properly. We
12 will hold you responsible if we have to
13 replace our systems two or three years after
14 another disastrous election and spend money
15 on new machines. So this is one point.

16 The other point, like -- I noticed that
17 Mr. Zalen said that Liberty election system,
18 it wasn't a certification process. It was
19 just you wanted to understand, like, what
20 they're presenting.

21 And reading this State Board of
22 Elections to the advisory committee members,
23 the letter, you're saying that -- it said
24 that they submitted for certification

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1 Thursday. And the phase on December 7th was
2 the first phase of this process. So I don't
3 understand the discrepancy of that thing.

4 Another small thing. Like, I spent
5 half of my 67 years living in Soviet Union.
6 And, you know, Stalin said that the people
7 who cast votes don't decide the election,
8 people who count votes do. And I
9 participated in many elections, being a
10 graduate and postgraduate student in the
11 Soviet Union, where we're always responsible
12 in Moscow, for certain areas in Moscow to
13 bring all the voters to the polling, because
14 in Soviet Union voting is mandatory.

15 I was in a district where overwhelming
16 majority of people hated the candidate,
17 hated -- I mean, really hated, for all the
18 shenanigans and everything. And you know
19 what? The candidates won 99.9 percent in
20 elections. I know that nobody ever counted
21 ballots in Soviet Union.

22 But nobody ever thought that Soviet
23 Union is a democracy. We've always thought
24 that America is. And in my over thirty

1 years being American, every day I am ready
2 to kiss the soil of this country, believing
3 that we are determined, that our
4 representatives will do the way we want to.
5 But they won't if they know that voters'
6 votes will be stolen.

7 So we're losing our democracy. And
8 voting is the main thing for democracy.
9 Please be very, very careful with your
10 decisions.

11 Thank you.

12 (Applause.)

13 EXEC. DIRECTOR KOSINSKI: Thank you.

14 EXEC. DIRECTOR ZALEN: Jessica

15 Wisneski.

16 MS. WISNESKI: Hi. Thank you guys
17 for staying here so long. I think I might
18 wrap it up.

19 Good afternoon. My name is Jessica
20 Wisneski, and I am the clean money, clean
21 elections coordinator for Citizen Action of
22 New York.

23 I'd like to start by sincerely thanking
24 you for this opportunity to testify today.

1 Indeed, it is the voter's perspective that
2 is most important during this time of grave
3 decision on how we cast our ballots in
4 New York State. I appreciate the time

5 you've taken and the open minds that you've
6 come with here today to listen to our
7 comments and suggestions.

8 I joined the Citizen Action staff back
9 in September to launch a campaign for
10 campaign finance reform. Back in September,
11 every former volunteer that I called to
12 recruit for my campaign said, "I just don't
13 have time to deal with campaign finance
14 reform, we have to get -- I am going to
15 spend every last hour working on fair,
16 transparent paper ballot/optical scan type
17 voting machines for New York State. So
18 don't call me again till that's over."

19 After calling volunteer after volunteer
20 and getting the same response, it was clear
21 to me that I really needed to pay attention
22 to this important issue.

23 It took me very little time to realize
24 that the process of choosing new voting

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1 machines in New York State was headed in the
2 wrong direction. There was a lot of talk
3 about DREs and computerized voting machines
4 and way too little talk about the other
5 options, better options that were available.
6 It was clear to me that the voting machine
7 vendors were leading the discussions of what
8 machines were best for New York, implying
9 that the DRE system, or computerized voting
10 system, would be our best bet.

11 But still, each citizen I spoke to
12 insisted that computerized voting machines
13 or DREs would be a disaster. In fact, my
14 volunteers flooded me with emails of
15 reports, studies, and articles from around
16 the country of the horrors of using DREs and
17 the positive experiences and outcomes of the
18 optical scan with a paper ballot voting
19 option.

20 Now, I grew up here in New York State
21 and started my voting experience on the good
22 old lever machines. And it wasn't until my
23 citizen volunteers and activists at Citizen
24 Action told me about the optical scanners

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1 that I realized I'd actually used that
2 system also. I, believe it or not, moved
3 back this summer from Honolulu, Hawaii --
4 I'm calling into question, as I drove in the
5 snow this morning, that decision. But
6 still, I did get a chance to vote in 2004 in
7 Honolulu, and I recalled my experience
8 voting with an optical-scan-type system.

9 There were no lines to wait on to use
10 the machine, because there were no machines.
11 I walked into the voting booth after picking
12 up my paper ballot and immediately thought,
13 How strange and how old-fashioned. It took
14 me about two seconds to get over my
15 nervousness of knowing what to do. I simply
16 took the pen provided, filled out the paper

17 ballot -- just like I would an affidavit
18 here in New York, or like I did on Scantron
19 tests in high school or when I go by my
20 lotto tickets -- and, when I was done, came
21 out and was directed by an elections
22 inspector to the optical scanner and put my
23 own ballot in there.

24 Now, I'm of a generation that is nearly

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1 completely dependent on computers. But even
2 with my dependence, I realized that day that
3 I used the paper ballot that there are some
4 tasks that should be kept simple, some
5 fundamental tasks as a citizen that should
6 be kept simple -- simple enough that I don't
7 have to worry about a computer making a
8 mistake with my most important action as a
9 citizen, my vote.

10 I've experienced the horror of my
11 computer losing my saved 50-page college
12 thesis paper. But even that loss of my
13 paper my senior year would not have been as
14 damaging as the loss of my vote on Election
15 Day. That is more important to me.

16 So I'm here today to encourage you, the
17 New York State elections commissioners and
18 friends, to create your voting system
19 guidelines to ensure that the many citizens
20 that I know who care about this, and so I
21 know that when I cast my ballot, I'll have
22 the confidence of knowing that it will not

23 disappear into the abyss but will be right
24 there in front of me on the paper ballot

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1 that I filled out and that I know will be
2 the exact same ballot that is recounted if
3 needed.

4 You've been presented today with a
5 series of requests by Bo Lipari from
6 New Yorkers for Verified Voting and others,
7 of Aimee Allaud, who is certainly an expert
8 on this issue. And I ask that you support
9 the standards which Bo and Aimee and others
10 have presented. I'm one of the thousands of
11 voters and citizens around the state that
12 agree with their comments and suggestions.

13 In a perfect world, there would be no
14 reason for us voters to be dependent on
15 voting machines that were manufactured and
16 sold by profit-seeking private voting
17 machine vendors. We understand, however,
18 that it is necessary to work with a variety
19 of corporate vendors in order to choose the
20 new voting systems for the state.

21 I know many of the voting machine
22 vendors have optical scanners available with
23 paper-based ballots. And I voted on one in
24 Hawaii two Novembers ago. So I know they're

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1 there and able to be used in our
2 circumstances also.

3 That is why the voting system
4 guidelines are so important. They are the
5 public safeguard to ensure that the voting
6 systems we choose meet the highest
7 standards. I again encourage you to
8 incorporate the public suggestions you've
9 heard from the variety of groups today.

10 Thanks so much for the opportunity for
11 me to share my personal story and
12 experience. I hope next year and for all
13 the years after -- I think I'll be voting
14 longer than anybody here -- that I can be
15 proud of your decision for creating
16 standards that will allow for the
17 responsible choice of ensuring that we can
18 vote using a verifiable paper ballot and
19 optical scan machine.

20 Two last notes. My 82-year-old
21 grandmother, who's voted every time she
22 could since 21 years old, hates the idea of
23 using a computer, and I hope she won't have
24 to face that next election year.

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1 And I look forward to getting -- you
2 have a lot of work to do on these draft
3 regulations, and I look forward to seeing
4 the next draft and having us all be able to
5 be a part of the process and give comment
6 again.

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Thank you so much.
EXEC. DIRECTOR ZALEN: Thank you.
And thank you for your commentary on our age. I think we fit right with your grandmother there.
Thank you all for coming and for giving us your serious thoughts. We do appreciate it.
EXEC. DIRECTOR KOSINSKI: I'd also like to thank everybody for coming, especially on a day -- and I know the weather didn't quite cooperate today, but we really appreciate your coming out.
You know, just so you know, just to remind you, this process is ongoing. We do have another hearing next week in New York City. Even with the looming transit strike, we're hoping we can accommodate that

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New York City hearing. And we are anticipating scheduling another hearing in the Lower Hudson Valley in early January.
The process ends on January 23rd, and we would encourage you to continue to be involved. And if you have any more comments beyond what you've given today, please feel free to give them, and you can forward them to our offices down here on Pearl Street in Albany, New York.
But we do want to thank you for coming, and we appreciate your time.

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(Whereupon, the proceedings
concluded at 2:05 p. m.)

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TESTIMONY CLOSED

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