

NEW YORK STATE
BOARD OF ELECTIONS

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Public Hearing: :

Voting Systems Regulations :

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Senate Hearing Room
250 Broadway
New York, New York

December 20, 2005
10:45 a.m.

Before:

DOUG KELLNER
Commissioner, Board of Elections

STANLEY ZALEN

PETER S. KOSINSKI

Co-Executive Directors

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PROCEEDINGS

EXEC. DIR. ZALEN: We are going to begin.

I'm Stanley Zalen, Co-Executive Director of the New York State Board of Elections.

With me is the Co-Chairman of the New York State Board of Elections, Douglas Kellner, and my fellow Co-Executive Director, Mr. Peter Kosinski.

We really compliment all of you for coming. This was not an easy thing by any means and it just shows how important all of this is to all of us that we get this done and we get this done right.

So we thank you for coming very much.

We will, however, have to ask you, because we have many people on our list to speak, to please keep your comments to ten minutes.

And with that, John and George, would you like to begin. John and George are the Executive Director and Deputy Executive Director respectively of the New York City Board of Elections, John Ravitz, George Gonzalez.

Thank you, gentlemen.

MR. JOHN RAVITZ: Thank you very much, Commissioner Kellner and Executive Directors Kosinski and

Zalen.

I'm John Ravitz, the Executive Director of the New York City Board of Elections. I'm joined by George Gonzalez, the Deputy Executive Director, Pamela Perkins, the Administrative Manager, Steve Richman, our General Counsel, Lucille Gramaldi, the head of our electronic voting systems department, John O'Grady, our chief voting technician, and many staff members who are here today.

Just for the public's awareness, I am going to be citing sections in the document of the Rules and Regulations in my testimony, and hopefully we have enough copies. We have the exact page and section of the areas that we will be discussing for people to follow along on.

But as I said, we want to thank you for giving us the opportunity to address you this morning on behalf of the Board of Elections in the City of New York. And we at the Board appreciate the work that the State Board performed in preparing the draft Voting Systems Standards.

Our Board undertook a detailed analysis of the draft to ensure that the specific requirements of the voters in the City are addressed. We believe that the findings and recommendations are not representing a narrow parochial interest, but hopefully will help all of the other county boards as they go through this process.

We understand that the State Board seeks to address the requirements of two major audiences:

First, the voting system vendors, to communicate to prospective voting system vendors the requirements of the State Board for certification of voting systems for use in the State;

And to the County Board of Elections, to communicate to County Boards of Elections the process and requirements under which they will be able to acquire new voting systems, as mandated by the Help America Vote Act of 2002.

I know that the Election Assistance Commission adopted its 2005 Voluntary Voting System Guidelines, which is Volume 2, the Voting System Performance Guidelines, on December 13th. Although the EAC has not yet published the final version, we sincerely hope that the requirements that the State is drafting will comply or exceed the voluntary guidelines when effective in 2007.

Now, during the week of December 4th, the Board of Elections in the City of New York conducted a series of marathon work sessions to review the Draft Voting System State Standards. We analyzed and edited the original document with revisions and enhancements to reflect specific needs for the City of New York. I have provided you with the document showing all the recommended revisions and additions which are highlighted in

blue ink, starting with the addition of a Table of Contents.

I am pleased to present a number of key findings, which we believe will make the final New York State Board of Elections Voting Systems Standards a comprehensive document that fully addresses the requirements for new voting systems in the Empire State.

The major changes the City Board recommends are in the following areas:

Definitions.

We substantially revised and supplemented the definitions to establish necessary distinctions for the remainder of the document.

The Purchaser of Voting Systems.

The draft document does not make clear who is the purchaser of the new voting systems. It stipulates that purchases will be made under a statewide Office of General Services, OGS, contract and details some of the actions which the purchaser will take.

The document needs to explicitly state whether OGS, the State Board of Elections, or County Boards of Elections is the purchaser.

Furthermore, it needs to specify who and how the requirements of the County Boards will be incorporated into the contracts with the respective vendors.

And, finally, it needs to detail the steps for each County Board to communicate in its order the County's requirements, particularly in regards to type, quantity, delivery requirements, support levels, training services, software functional requirements, et cetera.

Contract Requirements.

The area of contracting in general needs to be aggressively addressed. We believe that a meeting should take place between OGS, the State Board and representatives of the County Boards to determine the manner and procedures by which:

One, statewide requirements and mandates will be developed and incorporated into the contract; and

Two, County Boards' specific requirements can be negotiated for additional services required by individual counties, such as level of training, support service and functionality of the voting system.

Training.

We will require training from the vendor in the use of voting system supporting software for both our clerical staff and our machine technicians.

We will also require training from the vendor on the use of the Election Day Tabulation Equipment at our poll worker training classes.

We have provided provisions which outline

the scope of curriculum, training materials and training personnel requirements.

Vendor Support.

We have suggested revisions that address required vendor support for the County Boards during acceptance and throughout election time, which includes testing, pre-election activities, on Election Day and post-election activities, over a period of at least five years.

Delivery Time Frames.

The three-month delivery requirement is not sufficient. We recommend at least a six-month prior to Election Day delivery date for the voting system supporting software for setup, development and testing, especially for interfaces to the County Board's Election Management System, as well as at least fifty percent of the election day tabulation devices.

Consolidation of Direct Record Electronic (DRE) and Paper-based Requirements.

The draft standards contain separate sections for requirements for a voting system depending upon type. We have revised the document to consolidate these requirements into a single set noting, where appropriate, any requirement differences applicable either to DRE or Optical-Scan, Paper-Based systems.

This consolidation also included

standardization of testing requirements for both types of voting equipment.

Equipment vs. Voting System.

We suggest that the standards be expanded beyond Election Day Tabulation Equipment to encompass the entire voting system including voting system supporting software.

Security.

Currently, the EAC testing and certification process focuses on functional testing, not security testing. We believe that the State of New York needs to address this area aggressively.

Requirement for Submission of All Machine Types by a Vendor.

The City Board unanimously recommends that the State Board require that any vendor that submits a system to be certified must submit both DRE and optical-scan systems if both are available.

Functional Scope of Testing.

We recognize that there will be EAC-directed testing and certification. We recommend that the State Board complement this testing by specifically testing the full scope of the proposed voting system including its voting system supporting software.

Performance Testing.

In addition to security limitations of EAC-directed testing, EAC testing focuses on tabulating equipment and not the more comprehensive voting system testing. We believe that the State of New York needs to take a broader view encompassing the integration of voting systems and the voting system supporting software.

City of New York Volumes.

We have included a section on the volumes of the City of New York voting to ensure that all prospective vendors are aware of the sizes of New York City voting for scalability calibration.

We further suggest that the State Board develop a similar section for each county in the State.

Interfaces to Election Management Systems (EMS) in County Boards.

In further recognition of the impact of voting systems and voting system supporting software on the operations of County Boards of Elections, we believe that the State Board should require that the vendors selected work with the County Boards to ensure that the new systems will work with existing Election Management Systems.

Now the City Board recognizes the enormous challenges that election administrators face at both the State and County level during the next few years and we pledge to

work collaboratively with you and all of our colleagues, as well as concerned voters and their representatives.

But I would be remiss if I did not take this opportunity to voice our Board's concern with the abbreviated timeframe that has been presented to us to fully implement the transition required by the Election Reform and Modernization Act of 2005. I remind you that the City of New York is required to have a new Election Day Tabulation Device and supporting systems in place for the September 2006 primary in each of our current 1,396 poll places.

And as always, my team and I are available to answer any questions that you might have.

EXEC. DIR. KOSINSKI: Well, I don't have any specific questions, but I mean just looking at the document you presented to us, you guys have obviously done a significant amount of work on this and we really appreciate the time that you've taken to do this.

We also, I think, understand the uniqueness of New York City's voting and New York City certainly does have some unique needs that don't necessarily apply to other areas of the State. And certainly we'll be looking to take those into account when we do the final regulations.

But thanks again for your help. And if you guys have any other questions, you know, we would like to sit down

and talk with you about them, explore those.

COMMISSIONER KELLNER: I would just like to second Mr. Kosinski's commendation of the effort that the City Board has put into it. It's obvious, John, you and your staff have worked very hard on this and I certainly applaud the effort and I share the sentiment of the issues that have to be expanded and dealt with in the State regulations.

I haven't read the details yet, but I think that it does show that New York City is on top of the curve here, that the New York City Board of Elections is ready to go once the State finishes what it has to do.

But I also think realistically that you are correct in pointing out that it's probably already too late to expect full compliance with the Election Modernization Act given the timetable of when the State will finish the certification process. And, of course, until that process is finished, the City can't even begin the contracting process.

MR. JOHN RAVITZ: That's correct, Commissioner Kellner.

And, again, I think for the record it should be noted -- and we have had many meetings, Ms. Grimaldi and her staff, the PMQA team that we've brought in from Gardner, Inc., and we have really looked at the calendar and it is our best determination that if we do not have at least the software for the

new system by March, it is going to be very hard for us to even begin to think about rolling out these new systems in each one of our poll sites.

So the calendar days keep going quicker and quicker and we are facing the reality that -- again, when we did this document - and I think it's important to say we did not think that we have all the answers. We did think though that by taking it apart and putting it back together again and adding things, hopefully we have been helpful, again not just for us but also for the other counties around the State as well, including obviously the other big cities and some of the larger counties.

So this is a work that clearly we are going to share with everybody and we do not have a patent on it. People can use this as a model if they care to. And it is our hope that this will help the process.

But, again, we are very worried about the short timeframe that you all have and we all have for a whole host of reasons.

EXEC. DIR. KOSINSKI: John, can I ask you a question?

Are you sharing this document with the other counties?

MR. JOHN RAVITZ: We are going to. Once we've released it today, it is our intention to send this to all of the

other counties, to the attention of their commissioners, for their review, and obviously at the State Commissioners Association meeting next month at Cooperstown, if people want to discuss it, we'll have our staff there ready to discuss it as well.

EXEC. DIR. KOSINSKI: Okay.

EXEC. DIR. ZALEN: Thank you, gentlemen.

Very helpful.

Next we have Mary Lou Urban, Co-President of the New York City League of Women Voters.

She looks a lot like Donna of our office.

(Laughter.)

EXEC. DIR. ZALEN: Is anybody here to testify for the League of Women Voters?

A VOICE: I'm kind of here.

EXEC. DIR. ZALEN: I'm sorry?

A VOICE: I'm from the League of Women Voters but St. Anthony's.

EXEC. DIR. ZALEN: St. Anthony's.

A VOICE: You know, they couldn't make it in. But I know several people out from Long Island who called yesterday. They wanted to speak. And they were told that if there wasn't a good turnout -- and I know at least seven or eight people from Long Island, because they're elderly and they thought they might have to walk fifty or sixty blocks, couldn't come and several

were from the League of Women Voters --so they're hoping to have a second chance.

EXEC. DIR. ZALEN: All right.

We'll move on to it looks like an entire group of persons.

All right. Theresa Hommel, Community Church of New York Task Force on Election Integrity.

Let me ask.

Theresa?

MS. THERESA HOMMEL: Yes, sir.

EXEC. DIR. ZALEN: Is anybody testifying -- I see a group of folks right behind you. You're all prepared to testify at this time with Theresa?

VOICES: Yes.

EXEC. DIR. ZALEN: Okay.

Then I'm going to ask, if you don't mind waiting one person - and I apologize for that -- if we could get the Nassau County Board of Elections on in here to go along with the New York City Board.

Why don't you come on up and let's hear at this point from the Nassau County Board of Elections.

And we have Carol and John.

John is the Commissioner for the Nassau County Board and Carol is the Deputy Commissioner. It's good to

see you.

There's somebody sitting next to you I notice.

MR. JOHN DE GRACE: John Maloney who heads our technology department.

Gentlemen, thank you very, very much for this opportunity.

Ladies and gentlemen: I'd like to again thank the State Board of Elections for this forum.

My name is John A. DeGrace and I've been the Republican Commissioner of the Nassau County Board of Elections since 1995.

The function of the Nassau County Board of Elections, as well as every Board in New York State, is to register voters and maintain their lists, to conduct elections in a fair manner and to certify the results thus be certain as to who has been elected.

The Congress passed the Help America Vote Act, HAVA, in 2002 as a reaction to results in the State of Florida at the 2000 Presidential Election that to some were considered uncertain and to reassure voter confidence in the election system.

I can only speak for myself, although I am certain that all other Commissioners in the State of New York feel

as impassioned as I do. My main responsibility is to the voters, to ensure that my Board does all it can to implement the law as well as to guarantee fair, just, accurate elections.

Up until now I have felt secure and confident that I have been able to do this. Through the use of the Automatic Lever Voting Machines, though aged, I am able to certify election results and I am certain of the accuracy by which we conduct our elections.

I am very fearful that, due to the current calendar of events, that I will not be able to feel the same security due to an inability to choose a voting machine which has been tested and proven in a real election.

I, along with other professionals in the field, am very concerned that we will be able to successfully comply with the deadline of September 2006. I do not see any way that Nassau County will be able to select, test, train and put into effect these new voting machines, whichever one is chosen. I don't feel I will have the capability to intelligently decide on a machine in such a short timeframe. Because of the current calendar, we won't be able to even select a machine until April.

The purpose of HAVA is a good faith attempt to update the voting process and bring it into the 21st century. The process was begun in 2002 with the intention of having plenty of time to re-evaluate, re-certify, re-invent and re-

write what is needed to procure electronic voting machine systems, ones that will ensure accessibility to voters with disabilities and language barriers as well as train all other voters who will be using them.

Much still has to be done. The current timeframe leaves little time for any of the testing and training required to completely revamp a system that has been used for over one hundred years.

The State Legislature has given themselves as much time as they needed, as had the State Board of Elections, leaving the local Boards, those with the ultimate responsibility, very little time to accomplish the most important act, to choose the right vendor for their county. This decision will be one that we will have to live with for a very long time. Never again will monies be allocated. We must be prudent with our choice and cannot make a mistake. Little time is given to the public who it affects the most.

The New York State Board of Elections, in response to their responsibility to see that HAVA is put into effect, did a very good faith job in writing the State Draft back in August, 2003.

The necessary Federal and State legislation was unable to coincide in a timely fashion causing a major disruption in the local election board's implementation process. It wasn't until the end of the legislative session in 2005 that the

appropriate legislation was passed. This amends the requirements that had already been in place for the certification of new voting machines by adding the "voter-verifiable permanent paper record." Also all machines must have a "full face" ballot.

Rather than wait, we began this summer with collecting information and data regarding all the current machines that are out there that might even try to become certified.

None of the machines we looked at are the exact machine that we would be contemplating buying because of the additional requirements added by the legislature. Each machine has been adapted and changed in order to comply with the new regulations and none have been used or tested. We will be buying basically untested machines and we will go into untested waters.

There are 19,843 lever machines currently in use in New York State that now must be replaced. I cannot see any way that all these machines can be replaced in time for the September 2006 primary. It will be very, very, very impossible in my opinion that we will be able to contract with a company and basically, you know, go through the certification process in a timely way and negotiate the contracts.

What has happened between the enactment of HAVA in 2002 and now? Voting machine replacement should have been done by the federal election in 2004. A waiver was

applied for by the State giving us until the Federal election in 2006 and obviously the 2006 primary.

The waiver has now been exhausted, time lost. No one took full appreciation of the extension allowed with the waiver.

And now who suffers? Certainly we, the local boards, who will be under strict scrutiny. We will be watched closely and criticized no matter what we choose to do. It is an unfair burden to put upon us.

Truthfully, it is the voter who will suffer. They will be required to be newly educated in the workings of these new machines. Voting will take now longer, However, Election Day still will end at 9:00 p.m. It will be more confusing to them and the inspectors who are supposed to be able to help them.

How can we guarantee to them that these new machines will correctly tabulate their votes when these machines have never been used in an election before?

To sum up, I feel that we in Nassau County, a county with a large and diverse population, will have a near impossible task of complying in a timely fashion.

Ample time must be allowed for:

Voter education;

Employee training;

Inspector training;

Setting up a system for election night;
Creating an absentee ballot system to
coincide with the new system.

I am sure given more time for choosing,
training and testing that we can come up with a suitable answer
that all parties will be comfortable with.

I'd like to take this opportunity to thank our
Deputy -- Republican Deputy Carol Busketta for all the input she
gave in this testimony as well as our technology supervisor, John
Maloney.

Gentlemen, thank you very much.

EXEC. DIR. KOSINSKI: Thank you,
Commissioner.

I just have a question. Do you have a sense
of the timing that you feel would be necessary in order to comply
with this year's election for new voting machines?

MR. JOHN DE GRACE: Well, I can only
speak for myself, but I really believe that it will be very, very difficult
to comply for this election simply because of the primary that we
know will ensue, number one, and obviously the same system
would have to be used for the general election which I think would
also be a real obstacle for us.

So I obviously feel that one more cycle is
necessary for us to fully comply. That is my best estimation.

COMMISSIONER KELLNER:

Commissioner, doesn't it actually make more sense to bring in the new system in the off-year, in 2007, --

MR. JOHN DE GRACE: That's exactly --

COMMISSIONER KELLNER: -- although that's not necessarily an off-year in Nassau County?

MR. JOHN DE GRACE: Obviously we've talked about that and we believe that would be the best possible time because we believe that the voter turnout, as you know, will be quite a bit less. Percentagewise it will be -- and it just gives us another year to actually train our employees, train, you know, our inspectors.

And as you know, we have a very, very aging population in Nassau County and most of our inspectors are elderly. And they would have a real problem with the new system. Obviously it's something that they cannot handle, but they would need more time to be trained.

So I really, really lobby the Board and our Legislature to give us the time we need to do this effectively because I really believe we can have some tremendous problems in this particular year, which is a gubernatorial election.

COMMISSIONER KELLNER: And that the cure may be worse than the disease.

MR. JOHN DE GRACE: Yes, sir.

COMMISSIONER KELLNER: I appreciate that.

Has the Nassau staff taken a hard look at these regulations? Do you have a sentiment of whether they are ready to go or have you looked at some of the comments of the New York City Board on the regs?

MR. JOHN DE GRACE: We haven't had a chance to review the City recommendations and obviously we would like to share that with them.

We've taken a look at it and obviously we have some concerns. But at this time our major concern is the implementation process of the new machines.

I think you did a great job. I commend you. Because everyone, I think, has had, you know, this time factor working against them. So I really would like to congratulate you and your staff for what you've done.

EXEC. DIR. ZALEN: Just a couple of things.

Do you have a copy of your testimony for us to have?

MR. JOHN DE GRACE: Yes.

EXEC. DIR. ZALEN: It would be nice to have it.

MR. JOHN DE GRACE: Carol dropped that

off.

EXEC. DIR. ZALEN: Your comment about lobbying the Legislature is what would have to be done because the law as it stands requires a disabled machine, a machine for the disabled, in every polling place in this election.

MR. JOHN DE GRACE: Yes. We understand that. We would be very much willing to work --

COMMISSIONER KELLNER: And Congress.

MR. JOHN DE GRACE: -- on that.

COMMISSIONER KELLNER: But the fact is is that we also have to be realistic in complying with the statute.

The key thing is that both the State Commissioners and the County Commissioners be acting in good faith to do the best job they can to comply with the new Federal and State law.

But if it's impossible, where compliance in a technical sense will create so many other problems, that fundamental constitutional rights will be impaired, then I think we owe it to the regulators in the Department of Justice as well as Congress and the Legislature to speak truthfully and do the best we can in the spirit of compliance.

But if we can't do it, we can't do it.

And I think the Commissioners -- I remember

Commissioner DeGrace saying this two years ago and the Election Commissioners Association is on record saying that if Congress -- if the State Legislature didn't act by the close of the 2004 session, it would be impossible to comply.

And it's a year later and I think that you're being realistic and that it's -- I commend you for speaking up and letting everybody know that that's an issue just as Mr. Ravitz did before you.

EXEC. DIR. ZALEN: Thanks, John. Thank you, Carol.

MR. JOHN DE GRACE: Thank you very much. Have a nice day.

EXEC. DIR. ZALEN: All right.

Theresa, please, come up. I'm sorry that --

MS. THERESA HOMMEL: No problem.

EXEC. DIR. ZALEN: -- we had the Election Board.

MS. THERESA HOMMEL: That's no problem at all.

Good morning.

Thank you for the opportunity to speak before you today.

My name is Theresa Hommel. I am Chairwoman of the Task Force on Election Integrity of Community

Church of New York.

I will start by describing the process of evaluating a computer system that I observed for a client. It lasted for over a week.

Five men stood in the front of a huge conference room, two Vice Presidents and three technicians from a software vendor. Sitting around the room were twenty to thirty of my client's technicians. These are like \$250,000 a year guys. They're not just guys that plug in the equipment.

So our guys asked questions and their guys answered. We wanted demonstrations, explanations, code walk-throughs. We handed them over 100,000 test cases and we audited every line of the results.

The questioning was so intense. I asked someone about it. And he said we were too trusting with the last vendor and the system never worked. We learned our lesson. If they can't answer questions and prove everything works before we pay for it, it will never work afterwards.

And that system was less than \$2 million.

Looking at the regs, let's see what it takes to convince the New York State Board of Elections that some computer systems work before we spend over \$100 million on them. It looked to me like a pile of documentation programming for two ballot faces, tallies for 200 ballots, and a check for \$5000.

I'm not trying to be flip and I'm not trying to be insulting, but what I'm trying to give you is the sense of the vast disparity between what happens in the professional world and what's happening in the realm of elections.

It does look like something is wrong here and people say that the vendors wrote the regs. And that's because they are so poor in their -- almost impossible to fail.

Someone said he could submit a ham sandwich -- who said that? -- and it would pass these regs.

So with all due respect, they are not adequate.

Whoever evaluates electronic voting systems needs to look at everything. I mean everything, every aspect of the hardware, all the programming, whether it's firmware, software or any other kind of programming, every file in the system, every part of the system. You cannot just look at what the vendor gives you. And that's what the regs require.

The State Board's regulations are like a house buyer. It doesn't look at anything except what the seller wants to show. So somebody selling a house is not going to show you the termites in the basement or the leak in the roof. And Sequoia, ES&S and Liberty are not going to show you anything that looks bad.

So I suggest that the State Board needs to

ask some hard questions.

I would start by reading the 120-page list of documented failures of electronic voting systems around the country in recent years because this document will give you a clue, will give you guidance, as to what goes wrong and what you have to look at.

I also at this point would suggest hiring a team with experience in evaluating computer systems.

I would suggest commissioning a professional "red test" to conduct a hacker test.

I would suggest inviting the public to try to break into the system and invite them to do their worst because that's what is going to happen during elections. We can't assume that if we go to electronic voting, all of a sudden everyone is going to be a saint and nobody is going to try to hack into the systems. So let's make sure that they are not hackable or at least not easily hackable before we buy them when the vendors have the motivation to fix them.

I urge you to conduct a large public test to be run entirely by election staff drawn from our counties who have been trained by vendors with test voters and test poll workers trained by vendors, and use camcorders, if necessary, to make sure that everyone sees everything: extract the tallies, examine the activity logs. Either the system works under human conditions that

are similar to what's going to happen in an election or they don't and let's find out before certification.

And let's not make the mistakes that other states are making with spoiled elections, loss of voter confidence, public cynicism, lawsuits and coverups after the fact to save face.

Because of our unique requirements, which everybody is acknowledging - the voter verified printer, the accessibility attachments, minority language capability and the full-face ballot - we are going to be getting systems that are made just for us. And they'll be put together with spit and bubble gum as they go out the factory door just before the delivery deadline. And this is why our testing needs to be professional and rigorous.

I'd like to mention also that people are saying around the country now that the systems that are submitted for certification are souped-up versions of not what is actually delivered and that needs to be checked also after delivery to make sure that what was delivered is the same as what was certified.

On October 20th I had the opportunity to observe a sales presentation by Sequoia. The salesmen were great. I was a marketing representative for IBM back in the 1970s, and one of my co-workers told me then if you can make a cardboard box look like a working computer, you're a real marketing rep.

The Sequoia salesmen were real marketing

reps. Halfway through their presentation I had stars in my eyes. I was thinking this is wonderful, this is the answer to all our problems. Now I can go back to having a normal life and do something else.

And then I had to pinch myself. I had the list of documented failures for Sequoia, twenty-three pages, in my hand. I had the report from New Mexico where the Sequoia push-button machines appeared to disenfranchise large percentages of minority voters, Native Americans and Hispanics. And the voting system that Sequoia was showing that day was not a working model. It didn't have a printer. It didn't have accessibility attachments. It was an updated version of a cardboard box. It was a plastic box.

But I was taken in. With thirty-eight years of experience working with computers, a short-term contractor who has worked for hundreds of Fortune 500 companies, every industry, Department of Defense, around the world, you name it, I was taken in.

But what if I didn't know anything about computers? What if I didn't know what was going on around the country where these systems have been failing in real elections? What if I were an election commissioner who could barely send an e-mail and didn't listen to anyone else except the vendor salesmen?

I wouldn't have had any reason to doubt and the pinch wouldn't have happened. And I think this is why we have a problem because some of our commissioners are acting like children when you try to take away their favorite toy. They don't want any person or information to come between them and their perfect dream election machine.

It is unfortunately the responsibility of the State Board to wake up the commissioners to the facts. The perfect dream election machine does not exist yet. If you test these computers in large public tests under real conditions, I think that will be all that will be necessary. If they work, the public will be reassured and I'll shut up. And if they don't work, then the commissioners and the State Board need to take cognizance of that.

We are seeing foolishness on the part of our commissioners around the State, especially upstate. I'm not saying this is true of the City Board of Elections which has been receptive to information from citizens.

But some commissioners are very reluctant or refuse to listen to citizens such as myself or Bo Lipari of New Yorkers for Verified Voting, representatives of the League of Women Voters of New York State, or hundreds of other activists. The commissioners are foolish because we all have the same interest at heart and we should be on the same side. We all want

secure, reliable, easy-to-manage, cost-effective election technology.

Throughout the draft regulations there needs to be recognition of voters, members of the public, as interested parties. The public is the primary stakeholder in elections and members of the public must have an opportunity to observe and participate as much as possible with suitable notice in advance. The State Board should be opening the doors for public participation.

Attached to my testimony is a detailed evaluation of the new law, the Election Reform and Modernization Act, pointing out all the areas where the State Board needs to fill in what the Legislature left out, and a detailed evaluation of the Voting Systems Standards with ninety-one comments imbedded in the text.

Thank you.

EXEC. DIR. KOSINSKI: Thank you.

Are you appearing as a panel?

MS. THERESA HOMMEL: We've coordinated our testimonies so you don't have to hear the same thing more than once.

EXEC. DIR. KOSINSKI: Are there more people on your panel?

MS. THERESA HOMMEL: There are seven

of us.

EXEC. DIR. KOSINSKI: There are seven of you.

MS. THERESA HOMMEL: Not all the testimony is as long as mine.

EXEC. DIR. KOSINSKI: You are going to each testify individually though?

MS. STEPHANIE LOW: Good morning. Thank you so much for the opportunity to speak before you. My name is Stephanie Low. I am a member of New Yorkers for Verified Voting and a very concerned citizen.

The Board's mission statement says that it is charged with the, quote, preservation of citizen confidence in the democratic process and enhancement in voter participation in elections, unquote.

The draft regulations for Voting Systems Standards do not comply with that mission. I wish to make the following suggestions.

One, simultaneous submission of both PBOS and DRE systems.

Each vendor must be required to submit both PBOS and DRE systems at the same time if they normally make and sell both kinds of systems.

It is not enough to require both kinds of

systems to be submitted. They must also be required to be submitted at the same time. Otherwise, as we have seen in other states, DREs may be submitted immediately but PBOS systems may be submitted only after all counties have already purchased DREs.

Two, public test.

Before any voting system is certified, the State Board must run a public test with a large number of such systems, such as twenty, fifty or one hundred, and the system must pass the test.

Systems used in the test must be exactly the same as what will be sold in New York in hardware, programming and every other way.

Every machine in the test must work with no errors or failures.

Vendors must supply the machines without charge.

Vendor may assist in running the test, but members of the public must act as test voters, test poll workers and test observers.

Test observers must closely observe the entering of test votes, the printing of each voter-verified paper record by DRE equipment, and the extraction of end-of-election tallies and other information by test poll workers.

The voter-verified paper record for DREs, tallies and logs must be one hundred percent accurate.

If any system is going to fail or is unusable by the kind of people who will be voters and poll workers, it is better to discover this before certification. This is when vendors are most highly motivated to fix their systems or simplify their use. If such a test is not done, voters will be the ones to discover failures and malfunctions during the first rollout of the equipment in an election which will cause chaos and lawsuits.

Attached to my testimony are two reports of such a test conducted by California earlier this year.

A second reason for conducting a large public test is that distrust of DRE voting systems runs deep in our State. If the equipment works, it is better for the public to see that before cynicism about the equipment lowers voter turnout. Merely demonstrating how to use the equipment will not reassure people.

A third reason for such a test is that most of our election commissioners have not yet seen a demonstration of PBOS systems. It is an outrage -- and I repeat -- that it is an outrage that many election commissioners have already decided to select DRE equipment for their county without ever seeing PBOS systems in action.

The third point, red test.

Before any voting system is certified, the

State Board must commission a professional hacker test and the system, including all communications capabilities, must withstand such a test.

If a system is easily hacked, it is better to discover this before certification. This is when vendors are highly motivated to fix their system. If such a test is not done, then after the first use of the equipment we will deal with the kinds of problems that other states have experienced when the election outcomes differ significantly from pre-election polls. We will also face massive problems of recounts when electronic tallies differ significantly from tallies of the voter verifiable audit record.

Attached to my testimony is also the cover of the report of such a test commissioned by the Maryland General Assembly and performed by RABA Technologies, LLC.

Thank you so much.

EXEC. DIR. ZALEN: Thank you, Ms. Low.

Do you have your own order? I guess you do have your own order.

MS. MARJORIE GERSTEN: Good morning. Marjorie Gersten from a concerned voters group in Brooklyn.

Thank you for the opportunity to speak here today.

I will discuss the auditability of voter-verified

paper audit records, VVPAR.

Our new Election Reform and Modernization Law requires an audit to be done for three percent of voting machines.

The regulations for Voting Systems Standards must clearly require that the VVPAR paper strips produced by DREs are, in fact, auditable by people by hand. This must be done by setting standards for ease of human reading and handling and requiring a test to determine whether or not such standards have been met. DRE systems must pass the test before certification.

What I mean is, after a mock election in which two hundred ballots are cast on a DRE, a team of test counters must be able to count the votes on the VVPAR with reasonable ease. These test counters must be representative of the people who would be performing such a count after a real election. The count must be doable in terms of size of print, quality of paper and design of what is printed.

I have here the relevant paragraph from law if you care to read it, or I could just go on.

Two phrases seem to be in conflict.

Line 43, "shall manually audit the voter verifiable audit records."

Line 51, however, says: "The audit shall be

conducted in the same manner, to the extent applicable, as a canvass of paper ballots."

These two lines appear to be in conflict because manual means by people by hand, but a canvass of paper ballots in many counties is done by optical scanners.

At this time the use of a computerized optical scanner with the VVPAR would not be possible because the paper strips do not have the same format as a regular paper ballot that our current optical scanners recognize.

However, vendors are not developing computerized optical scanners to count the votes on the paper strips. Once such machines exist, lawsuits may be needed to determine whether using them meets legal requirements of "manual audit," "the same manner" and "applicable."

For this reason I urge the State Board to clarify that for DREs the manual audit means a human hand-to-eye count, not a computerized count.

The purposes of an audit are election integrity and public confidence. In counties that use DREs, if voting, vote tabulating and auditing are all conducted inside computers, then people cannot observe any part of the process in a meaningful way, thus defeating the two purposes of the audit: to avoid fully electronic handling of votes, and to enable observers to witness the handling of the VVPAR and the counting of votes, and

to confirm that electronic tallies are accurate.

In conclusion, I would like to say that the State Board could do much to increase citizen confidence and voter participation. My suggestions are for that purpose.

I thank you.

EXEC. DIR. ZALEN: We appreciate it.

Which one of you intends to go next?

MR. DAN JACOBY: Dan Jacoby. Hi!

I actually, thanks to some people we won't mention, I got to walk seven miles just to be here today, but it's that important.

COMMISSIONER KELLNER: You'll live longer.

MR. DAN JACOBY: Well, I needed the exercise.

I'd like to focus my testimony today on one portion of the draft Voting Systems Standards. It's Section 6209.2, Paragraph A, Subparagraph 5. I will read it since it's very short.

"The system shall contain software and hardware required to perform a diagnostic test of system status, and the means of simulating the random selection of candidates and casting of ballots in quantities sufficient to demonstrate that the system is fully operational and that all voting positions are operable."

The main problem here is that a simulated test is not a test.

Unless all parts of the voting system that will be used on election day are tested, a large potential remains for serious problems. There can be discrepancies between the actual votes cast and recorded on the voter-verified paper audit record and the vote tallies reported by the computer.

Also, election day may prove chaotic when voters discover that the touch screen and accessibility attachments, as well as print and minority language displays, don't work.

With Precinct-Based, Optical Scan, PBOS systems, a simulated test won't detect whether ballots marked in different ways will be accurately read. Different people fill in the circles on the paper ballot with different degrees of totality. Additionally, many people's marks will extend outside the circles. A simulated test cannot determine accuracy for these real-world circumstances.

With DREs, a simulated election has many problems.

First, the mechanism used to select a candidate, whether touch screen or pushbutton, will not be tested. Faulty buttons, desensitized portions of the screen, and errors in screen calibration, can result in failure to record votes and

inaccurate vote counts on election day. Only by having people press these buttons or touch the screens can we test whether these parts are functioning properly.

Second, in a simulated test the correlation between the voter verifiable paper audit record and the votes displayed on the screen will not be checked. On election day, if voters discover discrepancies, there will be no method in place to correct the situation. People will lose confidence in the election and in future elections as well.

Third, a simulation interacts with the voting system software in a different manner from the way a real-time election conducted by people does. Software glitches will go undetected until they occur on election day.

In addition to the shortcomings of a simulated election test, many hardware and software problems, problems too numerous to list here, cannot be detected by a self-run diagnostic test. Anyone with diagnostic software on their computer, Norton Disk Doctor for instance, knows that diagnostic tests miss a lot.

In short, a diagnostic program and simulated election cannot detect hardware and software flaws and will not serve the purpose of determining whether the system works.

In an election run on insufficiently tested

voting systems, machine failures, high phantom votes and undervotes, and results that are vastly different from pre-election or exit polls, will make New York the next Florida or Ohio.

The only way to minimize discrepancies and chaos is to test the equipment, including hardware and software, by conducting a test election with real people entering votes manually on the touchscreens or pushbuttons, using all the accessibility attachments and minority language displays, examining the voter verified paper audit record and extracting the vote tallies afterward to check that they match the votes entered.

Testing needs to use live test voters at all stages of the test. Testing needs to use live test poll workers who turn the machines on and extract the tallies and other records after the test votes are cast.

Only by conducting real-time, live ammunition tests of both the hardware and the software with real people performing all the tasks can we do as much as possible to ensure that the voting systems and especially computerized election equipment will work on election day.

And then I have a website also to check.

EXEC. DIR. ZALEN: I find that interesting because I don't see that you're disagreeing with the idea of a simulated test, but you want the simulated test, the way I heard you, to be totally representative of a real election and not any shortcuts.

MR. DAN JACOBY: Yes. The problem with simulated tests usually, and the way it is in the regs, is that it will be done basically through a computer and not done by real people in real time.

EXEC. DIR. ZALEN: But your real people, real time, is still a pretend election, but just like a real election.

MR. DAN JACOBY: Yes. It's got to be run exactly like a real election. And the word "simulated" is going to cause all kinds of problems.

Thank you.

EXEC. DIR. ZALEN: Thank you.

MR. RICK SCHWAB: Hi!

My name is Rick Schwab and I live at 341 Third Street, Brooklyn.

Thank you for hearing me today.

I believe that we must take every opportunity to safeguard our bipartisan administration of elections by public employees.

Two alternative ways to do this are:

Number one, let vendor technicians serve in an advisory capacity only and not perform tasks on behalf of bipartisan election staff.

Another way is to let all tasks performed by vendor technicians, involving direct or indirect contact with voting

or vote-tabulating systems, be observed, fully understood and logged by bipartisan elections staff.

Our challenge is that bipartisan elections staffs must be fully trained before they can function independently with their new equipment - I stress "independently" - or observe, fully understand and log the actions of vendor technicians in case vendor technicians are involved.

I urge you to strengthen the regulations in this area to require submission of all training materials and manuals that may be needed to fully train election staff to run elections independently without the continuing assistance of vendor technicians, or, again, or to observe, fully understand and log the actions of vendor technicians when they're needed.

I urge you to thoroughly examine and test such training materials for elections staff. Only in this way can we ensure that vendors are prepared to fully train elections staff and that their materials are adequate.

Ladies and gentlemen, we simply have to kick the tires.

Other speakers today have called for a large public test of equipment, both to make sure that it works and to demonstrate to the doubtful public that it does work. The need to test training materials and the capacity of vendors to train bipartisan elections staff can also tie into the public testing of this

same equipment.

We urge you to select a county and provide adequate training to its elections staff. After such training, the large public test can be conducted solely and independently by the newly-trained county staff. This would test their training as well as the voting system under real-world conditions.

We do not want private companies running our elections.

Training materials for poll workers and voters must also be tested. Only in this way can we help our State avoid the many problems that other states have experienced in recent elections, problems that have been consistently blamed on poorly-trained poll workers and voters.

Of course, in the large public test of equipment, test voters and test poll workers can be trained by the vendor with the materials provided by the vendor because they originated the technology.

But before you shake your head about how complicated this is, think that New York is about to spend hundreds of millions of dollars in order to switch to all new technology. The testing we do before certification of new equipment should be commensurate with our investment and the importance of our democracy. So far the requirements and procedures set forth in the draft regulations are inappropriately minimal, less than what a

conscientious buyer would do when buying a home.

Part Two.

The use of vendor technicians opens vast opportunities for technical-insider tampering. This risk has long been an argument in favor of Precinct-Based Optical Scanners because simpler technology keeps elections more manageable by bipartisan elections staff and more honest.

A voting machine is a calculator. One vendor technician may be able to taint the entire election process, especially if these computers have communication ability, wireless or phone.

And the voting machine is run by a computer program which is software-based, not firmware based. Software is infinitely malleable and leaves no footprint.

The Sherole Eaton-Triad scandal in Hocking County, Ohio is an example of the problems that can occur when elections staff are untrained and dependent on vendor technicians. There's a website.

New York State's Election Reform and Modernization Law contains weak, self-contradictory provisions. They are listed here. I will just say:

S 7-204;

S.5877; and

A.8969.

Basically what they say is that the guidelines on training poll workers and giving them technical support are vague and potentially dangerous.

Training in the operation of such machines or systems is essential, but assistance and service performed by vendors opens the door to problems.

Number one, in the absence of thorough training, these provisions will tie county boards to their vendors and create opportunities for taking the elections and price gouging of the machines. New York's new election law did not require open source software which would have enabled bipartisan elections staff to become fully knowledgeable about their own equipment and achieve independence in using it and confidence, and would have enabled competitive companies to also compete to build competing equipment.

The software is specific only to these machines and can be very opaque and difficult to learn.

Number two, these provisions allow county Board of Elections to abdicate their responsibility to ensure bipartisan handling and control of voting and vote-tabulating equipment. It allows county Boards to delegate the entire management and servicing of the equipment to vendor technicians who have no effective or meaningful supervision whatsoever. We again do not want private companies running our elections.

Number three, the first-year vendor assistance provision means that vendor training can be inadequate and that elections staff need not become independent and competent in the operation of their own equipment or in the conduct of the elections. So who will be? Sequoia?

Number four, the lack of a requirement that vendors provide training in the servicing of their equipment, in combination with the five-year service provision, means that elections staff will not become independent and competent in the servicing of their own equipment. Privatized service of equipment would not be under effective or meaningful bipartisan oversight and outside technicians would have effectively unsupervised access to and control of the voting systems.

Ladies and gentlemen, we are taking the cookies out of the sealed cookie jar and putting them on a beautiful serving platter.

The Election Reform and Modernization Law continues:

6 through 10, all contracts shall also require the vendor to guarantee in writing to keep such machines and systems in good working order for at least five years without additional cost and to perform satisfactorily its training and service obligations under the contract and to give a sufficient bond conditioned to that effect, a guarantee.

Again, it seems reasonable for vendors to warranty good working order for their equipment for five years, but this is our voting equipment, not a new TV. Outside technicians should not have access to voting and vote-tabulating systems unless they are meaningfully, closely supervised by bipartisan elections staff and/or multipartisan observers.

Training in the servicing of the equipment must be required in the regulations since it was omitted from the law.

The only measure of training effectiveness is that the trained personnel can perform their tasks independently. But if the vendor performs the tasks, then elections personnel will forget what they learned since they won't be using it, and they won't have an opportunity to test their learning by trying to perform the tasks for what they were trained. The power of our government will be taken out of their hands.

As a side matter, I want to emphasize a point made by another speaker. If the regulations for certification do not define all terms, then litigation will be required to define them. Are we going to have our democracy end up in the courtroom? What is "good working order?" And what does it mean "to perform satisfactorily its service obligations?" If a voting machine fails during an election, is this evidence that it was not in good working order and that its service was not performed

satisfactorily? If it fails during two elections or three?

The section of the regulations on rescission of certification is the opportunity for the State Board to complete the work of the Legislature and provide a non-exclusive list of malfunctions of equipment which mean that the equipment is not in good working order. We need backup.

We must view the requirement for good working order and satisfactory service in the light of what has already happened in other states with electronic voting systems. I have a list right here. It's an abbreviated small list.

Many Boards of Elections have responded to failures of their electronic equipment by (a) trying to conceal them, (b) blaming voters and poll workers, (c) defending or excusing vendors and equipment.

Voters and candidates have been forced to accept election outcomes in spite of grave irregularities resulting from malfunctions of computers.

For these reasons the independent competence of the bipartisan staff of our county Board of Elections in the servicing of their own equipment is of utmost importance.

The regulations for certification of voting systems must define all terms and test the capacity of Boards of Elections to conduct elections with the new equipment we may buy before these systems are certified, purchased and used. Only in

this way can the State Board comply with its responsibility and its mandate to protect our future election integrity and the legitimacy of our representative government.

In closing I would like to say this. I am a computer artist and I love the new technology. What I love best about this new technology are the options I now have. As a filmmaker, I now can choose either to make a small romantic comedy about a divorced mother and her daughter who adopt a lost dog or I can make a sweeping epic about a giant ape battling thousands of mutant warriors.

As an artist, I will pick the story that makes the best art.

New York State needs to pick the technology that best expresses the wonderful art of our American democracy.

EXEC. DIR. KOSINSKI: Thank you, Mr. Schwab.

MS. KATHERINE WOLPE: My name is Katherine Wolpe. I'm testifying on reasons and procedures for rescission of certification.

I just wanted to mention that I served as a Democratic District Leader for eight years and have worked with every election as an election observer, opening and closing polls. So I know the various problems that local election inspectors and County Boards face very personally.

I have -- there's written testimony.

Thank you for the opportunity to speak before you today.

I will comment on Section 6209.8

Rescission of Certification. I don't know if you have this section in front of you. It's included in my testimony.

The section is very short. I won't bother to read through it.

Section 6209.8 needs to list specifics:

Non-subjective criteria for rescission;

Realistic procedures and timeframes for voters, poll workers, candidates, political parties and County Boards to notify the State Board of problems with equipment and for the State Board to respond;

Who are "any users" and "interested parties" - these are quotes from regulations;

And requirements for who will pay for re-examinations.

Rescission has occurred in other states due to malfunctions, including complete failure, during elections and tests. New York must prepare realistically to deal with the possibility of computerized voting system malfunction and the need to rescind approval of systems in order to protect the integrity of our elections.

New York's new law, the Election Reform and Modernization Act, also failed to provide concrete specifics.

And the text is also included in my testimony. It's page 4, lines 15 to 30 of the Election Reform and Modernization Act.

ERMA lacks:

Criteria for rescission;

How many days is "forthwith," which is used in the Act;

Procedures for voters, poll workers, candidates, parties and County Boards to notify the State Board of malfunctions;

Who will pay for re-examination of the system in question;

Who will pay for examination of all machines or systems of such type;

Timeframes for the State Board to examine all machines or systems of such type.

So neither the law nor the draft regulations provides enough information to be useful.

Here are my suggestions.

The regulations must clarify ERMA's subjective, quote, any reason to believe, end quote, and, quote, safely and properly, end quote, standards with a non-exclusive list

of concrete examples of malfunctions that will trigger examination and that will trigger rescission of approval:

After an election in which some forty percent of systems failed -- one election official proclaimed that nothing could make him lose faith in his county's computerized voting systems - forty percent;

A voter or poll worker might have reason to believe upon the first system failure, upon seeing a vote switched by the computer to a different candidate on the screen, upon finding that not all races are displayed, et cetera;

A worker counting the votes on the voter-verifiable audit record might have reason to believe when the electronic count does not match the paper count.

And I can tell you at the end of a very long election day poll workers want to go home. So the temptation to slide over problems is always very present.

Below is a suggested starting point for a list. These visible malfunctions should prompt poll workers to take a machine out of service, the County Board to notify the State Board, and the State Board to rescind certification of a machine.

And I'm going to give you a number of possibilities:

A voter sees his or her vote switched to a different candidate on the screen;

A voter touches a touchscreen or pushbutton for a candidate but the vote does not register;

The screen, when it first appears, contains votes already registered that the voter did not enter;

One or more candidates or questions are missing from the ballot displayed;

The wrong ballot is displayed on the screen;

The final summary screen does not accurately contain the voting choices made by the voter;

The voter cannot change a vote displayed on the screen;

The voter-verifiable printout does not contain the choices that the voter entered;

The number of votes recorded by the machine is greater than the number of voters who used it;

The printer or accessibility attachments do not work;

The machine fails to boot up at the beginning of the election day;

The number of blank votes, also called undervotes, is higher than one-half percent;

At the end of the election day the votes cannot be extracted from the machine or memory cartridges;

At the end of the election day the memory

cartridges are all blank.

In other jurisdictions these malfunctions have been attributed to the truck hitting a bump in the road on the way to the poll site and making the computer screen lose its calibration, or wrong ballot programming, or a voter or poll worker made a mistake.

But these excuses indicate that the equipment cannot safely and properly be used. There will always be a bump in the road. If the equipment cannot be relied upon to work under real-world conditions, it should not be used.

Second, the regulations must specify procedures by which voters, poll workers, candidates, political parties and County Boards may submit reports of malfunctions.

Third, the regulations must specify procedures and timeframes for acknowledging receipt of reports of malfunctions and for examining a machine for which reports have been received. Otherwise, it is unlikely that the State Board will examine any machine or rescind its approval regardless of the severity of reported malfunction because they will have no procedures or timeframe requirements for examining the machine.

Fourth, the regulations must specify procedures and timeframes for examining all machines of a type for which approval has been rescinded. Otherwise, it is unlikely that the State Board will rescind any machine approval regardless

of the severity of malfunction because they will have no procedure or capability of examining, for example, a thousand machines.

Fifth, the regulations must specify that "any users," "interested parties" to be notified of rescission include voters, poll workers, candidates, all statewide-recognized political parties, County Boards and the general public. The draft regulations say that if the State Board rescinds approval of a system, "the Board shall notify any users and vendors" but the term "any users" has not been defined.

Sixth, the State Board must solicit reports of malfunctions from voters and poll workers who have used each type of system. These users would have the most direct experience and first-hand details of problems if any have occurred.

Seven, the State Board must maintain a record of all reports of malfunctions received from voters, poll workers and all other users and interested parties. Such reports and the response to and resolution of each report must either be posted on the State Board's website or available on paper copies to the public within a week upon written request.

Eight, the regulations must ban further use of systems after approval is rescinded. The State Board has an obligation to protect the integrity of elections, and simply banning future sales does not achieve this.

After rescission, if the State Board receives a request to reconsider rescission, the draft regulations specify that interested parties should be able to submit testimony or documentation.

Nine, the term "interested parties" must be defined, and the regulations must require publication of notice of such hearing at least two weeks in advance, the reasons for rescission, date, time and place of hearing and notification by mail to all persons who have requested notification of such State Board activities.

Tenth, concrete specific criteria for decisions to affirm or reverse decisions to rescind approval must be specified in the regulations. Unless specific criteria are published in advance, decisions of the State Board will be considered ad hoc and will raise suspicions of influence and arbitrariness.

Thank you.

EXEC. DIR. KOSINSKI: Thank you for coming.

COMMISSIONER KELLNER: Thank you, Ms. Wolpe. That was a very thoughtful piece and I hope we can address that in the regulations.

Do we have the text, Katherine? Have you turned it in?

MS. KATHERINE WOLPE: Yes. They've all been submitted, all of these.

EXEC. DIR. KOSINSKI: Is that it for the panel or --

MS. THERESA HOMMEL: One more.

EXEC. DIR. KOSINSKI: One more.

That will be you, again?

MS. THERESA HOMMEL: I'm sorry. Diana Finch lives in the Bronx and it was a twelve-mile walk and her child is home from school today. So she sent me her testimony by e-mail this morning and you have copies of it.

This is the testimony of Diana Finch in the Bronx. And I'm just going to read portions of it.

She's testifying about the need to ban all communication capability in electronic voting and vote tabulating equipment.

She says: Computer security is impossible to control. We know this is true when the most secure installations in the world are broken into. American financial companies have had millions of accounts compromised and even our Department of Defense has been hacked into.

These breakins are possible because of the communications capability in the computers.

Wireless communication capability is as

simple as adding a wireless card in a slot in a computer, but the communication capability will not always be visible to the human eye because manufacturers are now making display screens with the wireless capability built into the screen itself as in IBM and Toshiba laptops. So you would never know whether your voting machine was communicating wirelessly or not and neither would poll workers.

By the time we vote again, many more wireless networks will be in use. Partly in response to Hurricane Katrina, the Department of Homeland Security has announced that the Justice Department will build a nationwide wireless communications system for federal law enforcement agencies called the Integrated Wireless Network, a program worth an estimated \$2.5 billion.

So wireless communications may be omnipresent.

I'd also like to point out to you that power line communications is a new technology where the electrical cord between the computerized voting equipment and the wall is a high speed internet connection. Again, who would know it unless you look at the software, all the software in the system, and see that there's communications software in there because you wouldn't see the hardware.

Communications experts say that wireless

capability is ideally suited --

COMMISSIONER KELLNER: Ms. Hommel, doesn't the statute actually prohibit it already?

MS. THERESA HOMMEL: It prohibits it, but it doesn't require examination of the systems to look for it and you can't see it just by visually looking.

COMMISSIONER KELLNER: All right.

So your point is, is that our testing regimen has to make sure that the machines are in compliance with the law, that they don't have any of these hidden means of communication.

MS. THERESA HOMMEL: Yes. By examining all the files.

You see one of the problems with the regs was the -- it appears that the State Board will only be looking at what the vendor shows. So you wouldn't notice if there was other software or capability of whatever kind was in there to support communications.

Also, the law allows telephone communications. And it doesn't really matter how people hack in from a remote location, whether they use telephone lines or wireless. Wireless is very convenient, but telephone line communications is also eminently hackable and has been for the last thirty years.

So the law -- I think someone didn't really

understand the technology enough to understand that if there is any communication capability whatsoever, that it will probably very soon be used in order to access computerized voting systems whether it's DREs or optical scanners during the election day to alter the ballots and tallies that have been entered.

So what I'm asking or what I think Diana is asking is that the regulations take a step further than the law and ban all communications, whether wireless, telephone-based, internet-based or any other capability that will be coming down the pike in the future, and also to require tests, not only hardware tests but software tests to make sure that the software capability - whether you call it firmware or whatever you call it, programming capability to support communications is not in the system.

It would be -- probably the only tip off or the easiest tip off to find communication capability would be to find a programming support for it and to have political parties and candidates' representatives, technical representatives, examine the systems before and after the elections to make sure that that capability didn't go into the computer somehow.

Because in order to put it in, you know, would take ten seconds of access to the computer.

COMMISSIONER KELLNER: How would you do that examination realistically?

MS. THERESA HOMMEL: Realistically,

you would get a disk image of everything that's in the computer memory and you would have a technical expert sweep through and examine the programming to see if there was communications support.

COMMISSIONER KELLNER: I just want to remind you that New York City hired SRI to review the code in the Sequoia -- was it the Advantage or was it --

MS. THERESA HOMMEL: The Advantage -

-

COMMISSIONER KELLNER: -- the Advantage that we were under contract to purchase.

And with nine months of effort, \$750,000, they were only able to look at ten percent of the code, of the source code.

So -- and the Sequoia machine, which has very substantial and robust security devices. And I think the Sequoia machine is -- on the spectrum of secure and insecure machines the Sequoia machine is one of the most secure that's manufactured in the country.

But one of the key security devices they had is that they work off a Z80 chip, the old CPM chip, which has very limited memory in it. And that's a security device because it forces the program to be limited to the very small memory available in that chip and that makes it all the more difficult to hack in and design

additional program code lines.

But as I say, even stripped down to that version, the technical team at SRI could only look at ten percent at a cost of \$750,000 and nine months of time when New York City had hired them to do it.

So that I just think that it's unrealistic to suggest that the political parties would be able to get experts who would be able to review the code in a manner that would give us any kind of assurance.

You wanted to say something on that?

A VOICE: Yes.

Theresa used the term "firmware." It's very important to understand that firmware and software are two types of computer programs.

A firmware is read only and cannot be changed. It's what runs your digital camera. It is loaded at the manufacturer and it performs specific functions.

Software is infinitely malleable because it takes in and, you know, changes data. That's the kind of computer program that is running DREs, software, not firmware.

COMMISSIONER KELLNER: Well, --

MS. THERESA HOMMEL: I --

COMMISSIONER KELLNER: -- there are two parts to it. I mean I do understand this part of it.

And, for example, in the Sequoia Advantage machine, which I had the benefit of studying in great detail in 1995, it works with -- firmware is in a single Z80 chip in the machine. And then, of course, there are two additional chips, at least in the 1995 versions that I'm familiar with, in which the software, operating off those firmware instructions, could be placed. And that was programmed externally through a card -- in those days a cartridge device that would insert into the machine.

Obviously, the external cartridge inserted into the machine could not change the firmware but would have to change the operations of the machine because that's what laid out the ballot and told the machine which buttons would operate which parts of the ballot.

MS. THERESA HOMMEL: I have a suggestion which involves the escrow copy of the programming.

Since the regulations don't explicitly say the word "escrow" anywhere, but they do require a system to be --

COMMISSIONER KELLNER: They do.

MS. THERESA HOMMEL: Do they?

Well, what I -- I'm sorry then. I don't remember precisely. But what I do remember is that they require a system to be left with the Board of Elections, the State Board. And I presume that that's the escrow machine; is that correct?

One way to handle the problem is to have a

full memory copy available on a CD and simply to do a comparison between that and what's in the voting systems that the County Boards will use for elections because if the escrow copy is clean and you compare it to the County copy, then the County machine should also be clean.

I'd like to say two things.

That Avi Rubin's team of five security experts in July of 2003 went through the Diebold software in only two weeks, which astonished me.

COMMISSIONER KELLNER: That's Diebold. As I told you, --

MS. THERESA HOMMEL: You think it's a smaller system?

COMMISSIONER KELLNER: The Sequoia system has significantly more security features than the Diebold. They're not comparable. It's like trying to compare a Ugo with a Cadillac. And --

MS. THERESA HOMMEL: Well, I just bring that up.

COMMISSIONER KELLNER: That doesn't mean that the Cadillac can't have flaws in it.

I'm just saying that for all of the criticism that I leveled against Sequoia as a New York City Commissioner in the 1990s, the system has very substantial robust security features it.

MS. THERESA HOMMEL: Well, why not let

--

COMMISSIONER KELLNER: It doesn't mean that it's impenetrable.

MS. THERESA HOMMEL: Why not have -- why not invite Avi Rubin and his team to take a look at the software of ES&S's equipment and Sequoia, because if they say it's okay, I'll go along with them.

You also have available to you people like Rebecca Mercury who would probably do it, you know, for very -- inexpensively just because of her intense interest in the matter.

So there are ways of doing it.

The last thing, the last point I would like to make is this. I've already mentioned that I've worked for many Fortune 500 companies and I've worked for a lot of banks and financial companies. I've worked in their international networking centers. I've been accompanied by an escort everywhere, you know, once I get in the building. I have to give them my handprint in order to even get in. They are highly secure environments.

And it's because they expect people to try to steal money.

Well, I expect people to try to steal elections. And if the field of elections cannot manage using computers in a secure way according to professional standards,

then that is a wrong technology to be used by elections.

So I would love to call Avi Rubin as soon as I leave here and say, you know, the New York State Board of Elections is interested in having you and your team evaluate Sequoia and ES&S equipment or any -- or Liberty or anyone who submits their systems. I'm sure that he would leap at the opportunity.

COMMISSIONER KELLNER: All right.

Well, I thank you on that. Again, the immediate place where the State Board of Elections is at right now is approving the regulations, the text of the regulations.

MS. THERESA HOMMEL: I'm sorry. I jumped ahead.

COMMISSIONER KELLNER: No. I understand.

I don't mind people thinking about, you know, what comes next in terms of the certification process. But we really do need to focus on the text of the regulations because come the middle of next month the regulations are going to be voted on. And if we haven't pinned down the text -- and I know that this is an overwhelming undertaking for me, that this is more than I alone can handle in terms of assembling all of the comments of people that I think are of good will on this and can make contributions on it, but we have to get this done in the next few weeks.

So I'm looking forward to Mr. Lapari's detailed commentary and whatever detailed commentary you have would also be helpful.

MS. THERESA HOMMEL: Well, I submitted that.

If you would like, I would post the State regs as they are now on a national vote leaders e-mail list and solicit input from people around the country who have done comparable tasks in every state. Every state is struggling.

COMMISSIONER KELLNER: Well, I have started that process myself. I would urge you to do it as well. And within your organization I would urge you also to be looking at the comments that the New York Board made --

MS. THERESA HOMMEL: Absolutely.

COMMISSIONER KELLNER: -- because they are extensive.

And you should be prepared to address both of them.

EXEC. DIR. KOSINSKI: I would just like to make a comment as well I guess in conjunction with that.

This is an ongoing process that we are engaged in. As Commissioner Kellner indicated, we are under some timeframes that we have to deal with as far as getting these rules and regulations adopted, but realizing that the rules and

regulations are not the only issue that we are dealing with at the State Board.

I noticed some of the comments today I think went to the issue of contracts that the State will be entering into with the voting machine companies as far as the purchase of their voting machines. And that's a next step in the process. It's really going past the rules and regulations.

That we have to also, you know, structure these contracts with the specific vendors for the specific counties in ways that ensure that the counties are given the kind of support and the kind of training that they need in order to ensure that their elections are run properly.

But those are issues that really aren't addressed specifically in these rules and regulations because they go really beyond these rules and regulations.

These are to ensure that the testing that our State Board does in ensuring that these specific machines work in the proper way is properly handled. But we realize that beyond that there's also the contracts that we have to enter into, which are going to be separate and apart really from these rules and regulations, as well as the testing that has to occur at the county level. And there has to be rigorous testing. We are very, very aware of that, that, you know, the testing does not stop once the State Board certifies a specific machine, that as machines are

delivered at the county level or in the City of New York, there has to be further testing of these machines to ensure that they operate properly.

So while these are obviously very, very important and are a very critical first step that the State's engaged in in making sure that the voting systems work properly in the State, they are not the final of that process.

So understand that once these get adopted, there will be further testing that happens down the road.

I just wanted to make that clear as we go through today's discussion as well.

I also just wanted to briefly outline for everybody that there is a forty-five day public comment period here and we have put our rules and regulations up on the web.

We are certainly interested in any comments that may come from outside of the State of New York if there are others. You know, one of the advantages, if we can call it that, that New York has in getting into this process so late is that we do have experiences from other states that we can look to to learn. And certainly if other states have experiences that can assist us in doing a better job, we're interested in those. And we are soliciting those ourselves from other states as well who have purchased machines and have, you know, gone through this process, and there is a learning curve that we can hopefully learn from

ourselves.

So any comments that we get from outside the State are welcome as well as the comments here today.

But this process does go through January 23rd. That's the formalized 45-day comment period under the State.

And then that will come back to our Commissioners at the State level once we have taken all of those comments, analyzed them and made the appropriate adjustments and changes to our rules and regs and there will be a final adoption.

I just wanted to clarify for everybody that, you know, today's hearing is not the final. As well, if you have further thoughts, further comments, we're interested. And you can reach us at the State Board either over the Internet by e-mailing us or you can call or write or however else you want to do that.

So as your group continues to moderate this, we invite other comments as well if you see them appropriate.

MS. THERESA HOMMEL: If I thought you would really look at them, I'd go through the thirty-five page commentary on the regs that I gave you and try my hand at rewriting. But I don't want to work, you know, if you're not really going to use it.

COMMISSIONER KELLNER: Theresa, let

me personally assure you that as one of the four Commissioners - okay? - who has to approve this, I will use it.

Now -- and also I am aware that the staff is at the State Board assembling all of the comments and packaging and organizing it both for their internal use, to revisit this, as well as to present it to the Commissioners.

So everything that people submit is being reviewed. The important -- the kinds of submissions that get the most priority, I would imagine, at least in my personal evaluation of them, are the ones that are addressed to the text of the regulations themselves because that's what we have to do now. We have to publish the regulations before the certification process can begin.

And, you know, we are under a lot of time pressure. So this process cannot be dragged out unduly because of the need to comply with the Federal and State laws that require machines in place in September of next year which we are going to try to comply with.

Now, New York City --

MS. THERESA HOMMEL: Did a rewrite.

COMMISSIONER KELLNER: -- you know, they weren't bashful about putting their comments in. I don't agree with every last thing they did but I really applaud the fact that they spent a lot of time paying attention to the regulations and looking down the road and saying how are the regulations going to affect

them.

MS. THERESA HOMMEL: So did you find Katherine Wolpe's testimony sufficiently detailed and tied into the regs to be of most use to you?

EXEC. DIR. KOSINSKI: Yeah. In my opinion I think it's that kind of comment that we are looking for.

I mean the generalized comments, that people are concerned about security is helpful, --

MS. THERESA HOMMEL: Right.

EXEC. DIR. KOSINSKI: -- but I'm not going to say to you it's that instructional, at least to me. I mean I'm not a Commissioner, but I think, you know, I'm looking personally for specific suggestions for changes, additions, deletions or changes to the regs that we can potentially incorporate as we go through this process.

We understand that there is a generalized concern out there. We've heard this for a long time and we are very aware of the generalized concern about the use of computers, you know, the potential for security breaches and those kinds of issues.

But I think what we are particularly interested in are suggestions that you may have of ways to address those concerns, of things that can be incorporated in the rules and regulations that we can use as part of our testing of

equipment to ensure that these are properly functioning, secure, reliable machines.

So, again, while the generalized concerns are helpful, I don't think they go to the very essence and meat of these particular regulations. And that's really what we are interested in here today.

MS. THERESA HOMMEL: Thank you, sir.

COMMISSIONER KELLNER: I agree completely with that.

I wanted to add one last thing, is that I don't know whether New York City finally came up with something to put in - maybe Mr. Richman can answer - did New York City address the issue of requiring vendors to provide both optical scan and --

MR. STEVE RICHMAN: Yes.

COMMISSIONER KELLNER: All right.

So to the extent that you are interested -- I know you're interested in that issue.

To again focus from a legal point of view, if there are any legal volunteers on that, in terms of drafting a regulation consistent with the statute and that would stand up in court, I think that that's what people are interested in.

MR. STEVE RICHMAN: Page fourteen, Commissioner.

COMMISSIONER KELLNER: Okay. So it's

in page fourteen of the City's recommendations.

Obviously, lots of people will be looking at.

But that's another area where I just reach out to the public and say if you have thoughts and ideas on this, that at least one Commissioner is interested in it, and maybe others.

EXEC. DIR. ZALEN: Councilman Perkins.

COUNCILMAN BILL PERKINS: Good morning.

EXEC. DIR. KOSINSKI: Good morning.

COUNCILMAN BILL PERKINS: My name is Bill Perkins. For the past eight years it has been my privilege to serve in the New York City Council representing the Ninth District.

I am the Deputy Majority Leader and the Chair of the Government Operations Committee. The Committee's many responsibilities include oversight of the New York City Board of Elections and of local election law.

Over the past three years the Committee has held several hearings concerning the Federal Help America Vote Act of 2002. And my testimony today will focus on HAVA implementation in New York as it relates to the Voting System Standards under consideration at this hearing.

I want to thank you for allowing me the opportunity to participate. And I want to make a special note of congratulations to Mr. Kellner for your new position with the State

Board of Elections and I commend you for the outstanding work that you did as a member of the New York City Board of Elections, as a Commissioner with the New York City Board of Elections. And we wanted to, just for the record, let you know how much we appreciate what you're doing.

I'm very optimistic about what you will be able to do for the State in your new capacity.

Machiavelli said that, quote, there is nothing more difficult to plan, more doubtful of success, and more dangerous to manage than the creation of a new system, end quote.

It appears he may have been correct as I must report that we New Yorkers should be ashamed and alarmed by the mangled process of HAVA compliance as it has unfolded in our State.

New York is the Empire State. It is supposed to act as an example to the rest of the country, indeed to the rest of the world. New York is expected to lead and we should never waver from that role.

Yet on the subject of compliance with the Help America Vote Act, our only distinction thus far is that we are running dead last in implementation. We are a State and a City perilously at risk of forfeiting substantial Federal dollars for non-compliance.

What is worse, we are jeopardizing government's credibility with the public, the transparency and accountability of future elections, and even the legitimacy of our system of government.

While every other jurisdiction under HAVA's purview has undertaken substantive measures to prepare the way for modernized voting, New York continues to dither, to misstep, to mire the process in what can only be called institutional and political dysfunction.

The catastrophe which today we call HAVA compliance in New York is yet another maddening example of the lack of leadership that has come to characterize Albany at many levels on every side of the political spectrum.

What makes this latest episode especially frustrating is the fact that so much is at stake.

Recall the events that prompted Congress to craft HAVA: the 2000 presidential election had been reduced to a circus of, quote, hanging chads, end quote, and partisan vituperation; the United States Supreme Court became an instrument of politics; and the legitimacy of an election for the highest office was encumbered by a question mark.

Our leaders in Washington understood that the time had come for bold, reasonable, decisive action. To Congress' credit, and even to the President's, HAVA was drafted,

passed and signed into law with the intention and the means to restore credibility to American democracy.

It is to Albany's discredit, however, that New York is now the leading candidate to replace Florida in the next general electoral crisis.

How did New York collapse into such a sorrowful state of affairs? It has been documented by others, but I would be remiss in my civic and official duties if I did not make a record here of the squandered opportunities as I understand them. The history of New York's HAVA misadventure is consummately relevant to the matters now confronted at this hearing.

The first blunder occurred when Governor George Pataki established the HAVA Implementation Task Force. Under HAVA the State was required to submit a Implementation Plan to the Federal Elections Commission. The Task Force was created ostensibly to perform the critical first step of preparing New York's Plan.

One would think, given the fundamental and sensitive nature of the mission confronting the Task Force, that the Governor would make it his first priority to assemble a Task Force that reflected the various constituencies of New York.

He didn't. Instead, he drafted a much more exclusive roster. Never mind that he stacked the Task Force with members of his party and of his administration. The real offense

was that he neglected to appoint a Task Force that was representative of the diversity that characterizes the people of New York. The Task Force he assembled underrepresented women and communities protected by the Voting Rights Act, and shortchanged poor, urban areas as well.

The Governor compounded matters when he by-passed the Executive Director of the State Board of Elections for the role of Chair of the Task Force. At the time the State Board Director was an acknowledged expert on HAVA and presumably the State's, quote, chief election official, a designation that was relevant because HAVA entrusted stewardship of the Implementation Plan to this office.

Since the Director was not a member of the Governor's party, the Governor reached past him and selected a Deputy Director at the State Board, a member of the Governor's party, and bestowed upon him the title of, quote, Chief Election Official, end quote, for the State, a title that had not previously existed.

It was a move that was clearly engineered to shoehorn a member of the Governor's party into control of the Task Force.

Regrettably, the Chair did not make creative or diligent use of the Task Force. He convened it just five times prior to publication of a draft of the Plan. He did not form one

subcommittee. He did not commission one study. He did not call for one vote. He refused to hold even one public hearing prior to the drafting of the Plan.

Incredibly, the Chair even denied members of the Task Force the opportunity for a substantive, collective, formal review of the Plan which was drafted by staffers at the State Board prior to its submission to the FEC.

The Chair did agree to tolerate fifteen minutes of public comment prior to some meetings, and half an hour after, which time was mostly utilized by representatives of non-profits such as NYPIRG, DEMOS, the Brennan Center, Common Cause, Citizens Union, the League of Women Voters, and others, some of which offered their valuable time and expertise to the Task Force to no avail.

Good government groups joined with members of the Task Force in repeated, concerted calls for greater diversity, more meetings, public hearings, better transparency and accountability with respect to the process.

These pleas went unheeded. The Chair consistently responded that the technique was one of discussion leading to, quote, consensus, over the course of a handful of meetings, a process that apparently would only become burdened by the formalities inherent in official hearings.

It was the Chair's position that the HAVA

timeline required such immediate action that it precluded the substantive deliberation and outreach called for by advocates and various Task Force members.

He later admitted that by consensus he actually meant the consensus of staffers at the State Board, who in his discretion as the Chief Election Official he would assign the responsibility of actually drafting the Plan.

The accuracy of the Chair's reading of the timing required by the Federal statute, and of his discretion under the statute, was questioned, but it appears that the Chair never bothered to document or substantiate his interpretation at any meeting of the Task Force.

Not surprisingly, the Plan that was submitted to the FEC was long on vagueness and platitudes and short on concrete details.

For example, the Plan provided no guidance on vital questions such as what types of voting machines should replace the almost 20,000 lever-action machines used throughout the State for half a century. It also failed to identify areas where HAVA implementation would require State legislation, to advance sample legislation, or even to acknowledge a role for the Legislature.

The Plan included no meaningful standards for compliance with HAVA requirements regarding improved

accessibility for disabled voters and it provided no mechanism for inclusion of advocates for the disabled in the certification process.

It also failed to take advantage of the opportunity to improve accessibility for voters whose English proficiency is limited.

It also missed easy opportunities to increase voter registration such as suggesting simple changes that could be made to provisional ballots, which in New York is done by affidavits that may easily be converted to voter registration applications for aspiring voters who it turns out are not registered.

The Plan had other problems. It was silent on the crucial matter of a voter verifiable paper trail, which in the minds of many is critical to accountability and credibility of the vote.

The Plan did not provide any guidance on the compilation of a statewide, computerized voter registration database, which is another hallmark of HAVA.

The Plan also did not put forth a sample Voter's Bill of Rights for display at poll sites.

One particularly glaring oversight is the fact that the Plan does not make plain the principle that every aspect of vote tabulation must remain under the public's control. Not taking a stand on this issue opens the door for private manufacturers to

infiltrate public elections through control of voting system elements such as source code, software and hardware.

Ultimately, the Task Force's failure to advance an actual, credible, tenable action plan left far too many details unresolved. Much is left to the discretion of staffers at the State Board, again without sufficient or substantial public comment.

To their credit, some members of the Task Force issued an aptly-titled Minority Report correctly identifying many of these concerns and ripping the last of the facade off of the notion that the procedure employed by the Chair of the Task Force would result in consensus.

Perhaps the most critical issue raised by the Minority Report is the Plan's failure to facilitate procurement of a single, uniform voting system for use throughout the State. This omission is particularly troubling since the Chair himself repeatedly acknowledged that HAVA's intent is uniformity in voting; that uniformity in voting is, in fact, quote, the key to success of the law's intent, end quote.

As it turns out, this is one of the more catastrophic of the many failures involved. New York lost a golden opportunity to enhance equality of voting throughout the State, and also to take advantage of economies of scale with respect to procurement and maintenance of machines, which would have

maximized taxpayers' buying power.

This is where the Governor's Task Force set the stage for the Legislature's disastrous decision to allow fifty-eight local Boards of Elections to select their own voting machines from among varying technologies and models to be certified by the State Board.

The facts that members of the Task Force felt compelled to issue a Minority Report and that the Report was more specific and proactive than the Plan itself indicate that the Task Force, despite the shortcomings of its composition, possessed the intellectual resources to create a more significant Plan.

These facts also show that the leadership of the Task Force lacked the political will or interest to produce such a substantial plan.

The Governor, through his appointment power, held ultimate influence over the Task Force. We can only surmise that it was the Governor's will that the business of the Task Force be conducted in such a manner, to be insular and partisan. It must also have been the Governor's intent for New York to submit a toothless Plan that is tone deaf to public input.

In New York's tortured march toward impending non-compliance with HAVA, Governor Pataki may be credited with having led the State in its first critical, misguided

steps.

However, the Governor was not alone. The Legislature had the responsibility to pass enabling legislation in order to comply with various aspects of HAVA.

This was easily the greatest opportunity any lawmaker in Albany would ever have to strengthen and expand voting in New York. Did they respond like individuals on the precipice of an historic moment? No. They descended to the usual partisanship and let it cloud their collective judgment.

They withheld compromise and delayed action, all of which wasted time and energy which always means money.

In the end, the Election Reform and Modernization Act, ERMA, was passed on the last day of the legislative session, in the summer of 2005, two years after the filing of the Plan, and a scant fifteen months before the fast-approaching deadline. Sadly, after all of that time, the Legislature produced legislation which remains incomplete.

Under HAVA, our Legislature was responsible for enabling legislation to provide the counties throughout the State with the tools necessary for the work of modernizing elections. These measures included a statewide computerized voter registration database, standards for new voting machines, equal access for disabled voters, provisional

ballots at the polls, the setting of standards for voter identification at the polls, creation of statewide administrative complaint procedures for voters, training for poll workers, and the sharing of accurate and comprehensive information with the voting public.

A Joint Legislative Conference Committee on HAVA was created.

Now, reasonable people understand that forging agreement on complex legislative matters can be a difficult endeavor, fraught with all manner of legal and political perils. I am especially sensitive to this.

However, there is nothing to suggest that the particular duties attendant to HAVA were so onerous as to result in the retrograde motion that characterized the Conference Committee's deliberations.

For example, it was three years after the passage of HAVA before the Legislature could finally resolve the roiling controversy over which list of identifications to approve for statewide use at the polls.

To be sure, genuine concerns were raised, such as one side believing that over-reliance on driver's licenses would disenfranchise downstate individuals and communities that are less likely to drive or own cars, and the other side's concern that lax ID standards could lead to wholesale vote fraud.

I certainly do not mean to trivialize the

challenge. But does this really sound like a puzzle that is so complicated, so confusing to the legislative mind, as to risk any part of the over \$200 million Federal dollars attached to compliance? Is it really the case that the question, "Hey, folks, what IDs should we use?" is enough to grind Albany to a three-year halt? Great and historic wars have been fought and won in less time.

Of course, there were other more serious, more complex and controversial issues for the Conference Committee to contend with. The most confusion, apparently, was sown by the question of which voting machine technology to certify for use by the counties.

Lobbyists for companies that produce voting machines descended upon the capitol, presumably to clarify the issues.

Again, there is no doubt that this particular task must have presented members of the Conference Committee with a palpable challenge. After all, the choice of voting technology is not incidental, but rather central to HAVA. Some would argue, myself amongst them, that the choice of voting technology is fundamental not only to HAVA, but to the entire democratic process. Legislative leaders may be forgiven for treating this particular point soberly, and not rushing its deliberation.

What is not excusable, however, is to delay

action to the point where a spark becomes a five-alarm fire, and then to run screaming from the room. This is what the Legislature did when it waited until June of 2005, three years after the passage of HAVA, five years after the Florida debacle, but a mere fifteen months before an intractable deadline, to finally decide that each of the fifty-eight local Boards of Elections should each select their own technologies.

The Conference Committee could not finish the job and figure out what works best for the people of the State. So they washed their hands. If this is all they were going to offer, couldn't the Legislature have had this breakthrough sooner rather than later? They ate up all of our precious time on a very critical point, arguably the centerpiece of HAVA, only to produce nothing.

The Legislature's decision to make no decision essentially guarantees the subversion of HAVA to the extent that uniformity of voting standards across the State is now a virtual impossibility. The likelihood of HAVA compliance plummeted the instant Albany punted the decision on technology to the counties and New York City.

Do legislative leaders really believe that fifty-eight local boards will more easily be able to sort through the issues surrounding the various voting technologies?

Do they believe that the local boards will be able to conclude their evaluations, complete the procurement

process, make the infrastructural changes necessary, train staff and poll workers, and perform the sundry other tasks required by HAVA compliance in a matter of months?

How about the fact that the process is now languishing at the State Board of Elections, which is responsible for certifying the actual machines available to the local boards?

In this context the Legislature's delay and ultimate abdication of responsibility all but assures that New York will not timely comply with HAVA.

Critical to an understanding of the depth of this malfunction is the knowledge that HAVA compliance always came with a deadline. The first deadline was the first Federal election of 2004. That deadline came and went with zero substantive movement in New York.

Ironically, the only real action taken by the State, other than the filing of the Plan, was an application for a one-time only waiver of the deadline, which extended the deadline to the first Federal election of 2006, which is now just months away.

The deadline is important because over \$200 million Federal dollars are at risk if we do not timely comply.

I am not alone in my frustration. Criticism and anxiety generated by this entire process is mounting in every corner. The list of organizations that have voiced serious, HAVA-

related concerns to the Governmental Operations Committee includes virtually every good government group in this City.

I am sure that the State Board has heard from all of them. Every newspaper has also lamented HAVA's stagnation in New York.

The professionals who will be responsible for the ground-level work of HAVA implementation are also concerned. The Executive Director of our own New York City Board of Elections, Mr. John Ravitz, testified, as late as this year, 2005, before the Committee that he remains, quote, in the dark, end quote, regarding HAVA implementation. Asked if HAVA non-compliance is basically a fait accompli, he responded that the very question keeps him up at night.

Mr. Ravitz is so concerned that this process has simply not left enough time to comply, that he has warned the City to engage now in pre-emptive negotiations with the United States Department of Justice.

Indeed, the Justice Department itself is already threatening that it will take action against New York for non-compliance.

Those who think that these are empty threats or that the Justice Department will only confront the State and that local boards need not worry, should know that Westchester County has already been sued under the Voting Rights Act for failing to

have an effective Spanish language election program --

EXEC. DIR. KOSINSKI: If you could just take a few seconds.

COUNCILMAN BILL PERKINS: Does water come with these cups?

(Laughter.)

COUNCILMAN BILL PERKINS:

Westchester County has already been sued under the Voting Rights Act for failing to have an effective Spanish language election program and failing to have information posted in polling sites. You may add the exorbitant cost of litigation to money that will be lost by taxpayers due to New York's poor performance.

Right now the process of HAVA compliance depends squarely upon the State Board. The Board has issued draft Guidelines for Voting System Standards. These guidelines are rife with problems. For example, there is no provision to alert voters of, quote, undervotes, end quote, and allow for correction which is guaranteed to disenfranchise voters and depress turnout in individual races, especially the ones that appear further down the ballot and are easier to overlook.

There is also no prohibition in the guidelines against communication capabilities in electronic voting equipment, which again leaves our public elections vulnerable to infiltration and corruption.

Similarly, the Board's guidelines provide for no independent audits of the computer code and software of new programming systems.

The guidelines do not create any mechanisms for testing security and assuring the public of the system's integrity. How can a public that is so familiar with the frequency of computer hacking feel any security in the integrity of votes tabulated by technology that is characterized by gaping holes of remote access and which lacks independent oversight?

There are several other problems with the Guidelines. For example, the provision regarding the voter verifiable paper record does not record tailoring for the visually impaired or for language minorities.

The Guidelines also fail to protect the State's language minorities in that they are silent on requiring machines to be accessible to groups protected under the Voting Rights Act. This is New York. We are a City upon a hill that draws people from around the world. This is also a City that has three counties that are subject to pre-clearance by the Department of Justice. New voting systems must provide assistance in the languages currently required by law and also have the capability of adding future languages.

Most relevant, I suppose, to the ultimate purpose of my participation at this hearing is the fact that the

Guidelines should have gone further to make sure that the local Boards of Elections will have a choice between various voting systems. The Guidelines should require that vendors submitting computerized Direct Recording Electronic machines for sale in New York must also submit their Optical Scan systems for consideration.

This does not mean that the State Board would be taking a stand in favor of one technology over another. However, we all know, as it has been widely reported, that vendors would prefer to market more costly DREs than optical scan systems. The Board should not stick its head in the sand on this. By not requiring equity from the vendors in terms of technologies offered, the Board is acquiescing in the stacking of the deck in favor of the more expensive technology. This is especially distressing because of the mounting evidence that DREs are the inferior choice for New York.

Optical scan systems have many advantages over DREs. For example, whereas DRE systems force absentee and provisional voters to use a different type of ballot from everyone else, the optical scan voters all use an identical ballot.

Voters will easily understand optical scan ballots, as it is basically an exercise in filling bubbles next to the names of one's selections. On the other hand, many segments of

the population, such as those with cognitive disabilities and the elderly, consistently report difficulties with DRE technology.

Optical scan ballots are automatically voter verified because the voter marks it him or herself. DREs do not require voter verification.

Furthermore, optical scan systems allow voters to vote only once. A DRE system may be compromised by, quote, smart cards to calculate multiple votes for every vote cast. But optical scan systems already in use typically have many security features for auditing and preventing counterfeiting, such as tear-off ballots with serial numbers, watermarks and the like.

There is also the fact that the voters will be assigned only the number of ballots needed at sign-in and that there may be an accounting at the end of the day of the total number of optical scan paper ballots that have been cast, spoiled or which remain unused. These can be tracked and counted and reconciled against the sign-in logs.

Optical scanners allow voters to easily correct mistakes, as the scanner will reject an over-voted or smudged ballot, allowing the voter to get a fresh ballot to correct the mistake.

Optical scan systems also warn voters in the case of an undervote, allowing for the opportunity to cast any missed votes or continue with the casting of the ballot.

Studies also consistently find that optical scan systems have lower incidents of invalid votes than DRE systems. Optical scan ballots are easy to recount by hand; no special expertise is needed. DREs, on the other hand, require a computer engineer to perform this pivotal function.

With optical scan systems, voters can vote in the event of equipment failure because they can still fill in their paper ballots. With DREs, once the machine shuts down, there is no way to record the vote, meaning that many votes will be discouraged and inevitably lost.

As if all of the preceding arguments based on accuracy, transparency, fairness, equality, simplicity, practicality, security, integrity, constitutionality, logic and reason were not enough, there is also the fact that optical scan systems are simply more cost effective than DREs. It has been estimated that the total cost for acquisition of DRE systems for the State of New York is in excess of \$230 million. The acquisition cost for optical scan systems is around \$114 million for a potential statewide savings of around \$116 million.

While optical scan systems do have ongoing expenses, especially those related to the paper involved, these are more than offset by the storage and transportation costs involved with DREs.

More to the point is the fact that the lifespan

of these technologies are so out of sync. No one knows how long DREs will last, but touchscreens are notoriously fragile and are generally not warranted beyond five years. Optical scan systems can last a minimum of fifteen years, judging by the fact that Oklahoma has been using the same optical scan machines for just about that long.

For those of us who look for silver linings, New York's delayed HAVA implementation could be seen as having one unintended benefit: we could learn from the mistakes of others.

Unfortunately, that is not happening here. Jurisdictions throughout the country implementing DRE systems have unleashed an epidemic of voting irregularities, miscounts and system failures.

In Miami-Dade County, Florida, the problems consistently plaguing their recently purchased DRE systems --

EXEC. DIR. KOSINSKI: Excuse me, Councilman. How many pages --

COUNCILMAN BILL PERKINS: I'm finished.

EXEC. DIR. KOSINSKI: Okay.

COUNCILMAN BILL PERKINS: -- included flawed counts due to hardware and software malfunctions, and

operational cost overruns way beyond expected costs.

So many votes were lost during one referendum that the controversy forced the resignation of the county's Supervisor of Elections. The new Supervisor issued a report recommending that the county would be better off scrapping its \$25 million worth of new DREs and starting from scratch with optical scan.

Is New York learning from that example? It remains to be seen.

The only machine that the State has even tested for certification so far is DRE. And what a machine it is. The model that was tested, a LibertyVote DRE by Liberty Elections Systems, is missing a voter verifiable paper audit function and a sip/puff attachment for disabled access as required by ERMA.

The State Board wrote to their Voting Systems Citizen Advisory Task Force members notifying them of the fact of the testing and indicating that they find it acceptable to test the machine as it is because they can always perform more tests when the machine is modified. Never mind that it is counterintuitive and unscientific to test a system that is missing key elements and expect that the results will be accurate.

Incidentally, the LibertyVote DRE is essentially the same model that was purchased by the Republic of Ireland at an acquisition cost of over \$60 million. Much to their

surprise, Ireland's Independent Commission on Electronic Voting refused to certify the machines due to concerns over security and accuracy. Currently they are collecting dust at an annual storage rate of close to \$1 million a year. It is unclear whether they will ever be suitable for use during an actual election.

Finally, tomorrow I will introduce a Resolution in the New York City Council that calls for the State Board of Elections to promptly certify optical scan machines for consideration by the local Boards of Elections.

It also calls for the New York City Board of Elections to choose optical scan as the next generation of voting technology for our City.

Several good government groups support this technology. Major newspapers, including The New York Times, have already endorsed optical scan as the only logical choice. I hope that our City goes in the right direction.

New York still has an opportunity to accomplish all that HAVA was meant to provide. I urge this State Board to do all it can. Move quickly, please, because we are running out of time. Be creative, act in good faith, with transparency, accountability and due diligence, and with respect for substantive public input.

Provide the local Boards with the tools for a fair and robust process. Remember that history is building on the

precedents that you establish. The future is watching everything you do.

Thank you very much.

COMMISSIONER KELLNER: Councilman, I want to thank you.

For those who may not be familiar, you were the Deputy Chief of the Manhattan Borough Office of the Board of Elections a long time ago. I guess it was about thirteen/fourteen years ago is when you left.

And as Chairman of the Government Operations Committee, I know you have taken a special interest in the Board of Elections and I want to thank you for that.

And I want to remind everyone that under your leadership that the City Council did its part for HAVA implementation, that the City Council appropriated the necessary funds for the City Board of Elections and at every step of the way you and your Committee and your colleagues on the City Council have been following what has been going on with the State and the State Legislature on HAVA implementation.

And I thank you for doing that. And I wish we had more to show for it at the State level. But thank you very much.

COUNCILMAN BILL PERKINS: Thank you.

I should acknowledge the counsel to my committee, Danny Serrano, who has done a wonderful job in

helping me and the Council understand these complex issues.

And let me say, despite what might seem to some serious criticism, I am optimistic and hopeful that we will come out of this. But I just say and emphasize that we are very concerned, especially as we hear not only from the New York City Board of Elections, with the Mayor's Task Force and so many citizens that come before the City Council when we have our hearings, who are very concerned about whether or not we are going to be in compliance and whether or not there is a sincere effort to make sure that the process is as transparent and accountable as possible.

And I feel compelled to bring this before you and for the record because we've had so much cooperation from you, as well as others, in trying to establish a record and an understanding for the people of the City as to what this means and how we can get through it.

So thank you so much for the opportunity to be with you this afternoon.

EXEC. DIR. KOSINSKI: Councilman, if I could just have a minute. I just felt some need to maybe address one of the issues you brought up as the unnamed head of that Task Force that was formed back two years ago.

I just wanted to, you know, mention in some defense of that, which I'm very proud of the work the Task Force

undertook, we were successful working on a very, very difficult timeframe back then, as well as we are now, to secure for New York the \$220 million which we did secure from the Federal government, which was a necessary part of that Task Force Report.

I also felt that we were very successful in providing a framework through that report which I think was used during the deliberations that our State Legislature used in finally enacting the legislation which did occur this year.

But not to dwell on the past, I do want to, you know, make mention specifically that we, as you are I think, are committed to trying to make sure that our Boards have the opportunity to select amongst the various voting systems that are available out there.

And I think that we are concerned that we be certifying not just DREs in the State but also optical scan machines.

And we are committed to trying to make that possible. So we share a common purpose and I very much appreciate your testimony here this morning.

COUNCILMAN BILL PERKINS: Thank you so much.

And, again, I want to thank you for coming down to New York when you were first appointed and participating

in our hearings.

And, you know, we are at our best when we are complaining and when we're critical.

A VOICE: We're New Yorkers.

COUNCILMAN BILL PERKINS: We're New Yorkers.

(Laughter.)

COUNCILMAN BILL PERKINS: So I just -- but we're proud of that because we know that it can be effective.

And so I would hope that that's the spirit in which you understand this testimony and understand the concerns that we have.

This is a big, big thing, needless to say. We want to make sure that you hear from us at least for this record.

EXEC. DIR. KOSINSKI: Well, thank you for coming today.

COUNCILMAN BILL PERKINS: Thank you.

EXEC. DIR. ZALEN: We're going to take five minutes and just five minutes.

(At 1:00 o'clock p.m. there was a recess in the proceedings.)

(At 1:10 o'clock p.m. the proceedings were resumed.)

EXEC. DIR. ZALEN: Susan Greenhalgh,

please come up.

I will say again for those of you who are here to please try to keep comments to ten minutes.

Donna or Mary, would you close that door or tell the people there to be quiet, including our Executive Director.

(Laughter.)

EXEC. DIR. ZALEN: I'd ask everybody to try to make an effort to keep to ten minutes even if it means summarizing what it is that you are saying. We do appreciate all testimony, but we need to try to move things along.

So with all of that, please go ahead, Ms. Greenhalgh.

MS. SUSAN GREENHALGH: Thank you.

My name is Susan Greenhalgh. I am the Coordinator for New York City and Long Island New Yorkers for Verified Voting.

And thank you for the opportunity to testify today.

Our great nation has the honorable distinction to be the oldest functioning democracy on this planet. Our democratic system is something with which we should all be proud, and we are.

That single, fundamental element that creates our democratic system, our right to vote, is vigorously

protected by the United States Constitution. The awesome responsibility to administer our elections, that point at which our democracy is transformed from theory to reality, has been entrusted to our state governments and to you, the New York State Board of Elections.

This duty cannot and should not be taken lightly, but instead must be undertaken with supreme gravity and thoroughness that reflects the importance of the task.

And this is an enormous task. Most of the people in this room are surely familiar with at least a portion of the administrative duties involved in running an election and will certainly agree that they are massive. All areas of election organization are critical.

We are well aware of the fact that the New York State Board of Elections faces a gigantic workload in a difficult timetable. However, that cannot be justification for the Board to cut back on the integrity of any component of the election process, least of all on the thorough, complete and scrupulous testing and certification of our next voting system.

On November 22, 2005, the New York State of Elections sent a letter stating, "The Liberty Election Systems, a DRE voting machine which has never been submitted for certification in New York, has been delivered to us for certification testing. We are prepared to conduct preliminary testing - Phase 1

of this process - on December 7, 8, and 9, 2005. This voting system, as submitted, does not include a voter verifiable paper trail nor access for a sip/puff device, as required by statute, however, we can perform certain other functional tests, in anticipation of their required modifications."

Even the most naive computer user, like myself, expects that a test of a computer system will be absolutely meaningless if the system will later be modified.

But for a better perspective, I contacted Dr. Avi Rubin, computer science professor at Johns Hopkins University, that Theresa mentioned earlier. He is also the Technical Director of the Information Security Institute. Dr. Rubin is a noted expert on computer security and electronic voting machines, having been called to testify on Capitol Hill on the issue of computer security.

And Dr. Rubin commented as follows: "In my opinion, it is a waste of time to start testing before the machine is final. Any and all tests that are performed now will have to be performed again anyhow for the full system to be certified."

Citizens are rightly troubled and alarmed that the Board has performed tests that are invalid and completely meaningless to ascertain the reliability and dependability of a voting system that could be used in the second largest State in the U.S.

We need the Board to enforce the highest standards for testing and certification possible. The Board cannot cut corners on this process. We cannot compromise the integrity of our democracy just so we can move things along more quickly.

The necessity of vigorous testing cannot be underestimated. The practice of approving a voting system after testing only a handful of machines under special circumstances has proven to be woefully inadequate.

In California, the TSx electronic voting system twice passed tests administered by an independent testing lab. However, not unlike the New York State Board tests on the Liberty Vote, these testing standards did not address the printers required for the audit trail.

Fortunately for California, the Secretary of State called for a rigorous testing process that included a mock election last July. In the mock election the screens froze, the printers jammed and overall the TSx was found to have a ten percent failure rate when employed in the same manner as a real election. Had this testing process not taken place, California would have had a ten percent failure rate on Election Day.

Our New York State Board of Elections has the advantage of learning from the failures and successes of other states. We have hard evidence that cavalier and hasty testing will result in failure.

Much of the testimony today has addressed the flaws in the testing process outlined in the current regulations. We urge the Board to heed these concerns and create an impeccable set of testing standards that will ensure the citizens of New York an unassailable election system.

Specifically, the Board must invalidate any test that is done on an incomplete system and amend the regulations to require all testing be performed only on complete systems.

Many of the groups have called on the Board today too to require a mock election and we support that recommendation.

Unfortunately, the representatives from the League of Women Voters are not here today because of the strike and we are going to urge the Board to consider their recommendations as well as the outlines and guidelines for a mock election in their testimony which will be e-mailed to the staff.

We trust the Board will recognize the importance of a thorough and trustworthy testing and certification process. The soundness of our democracy necessitates it.

Thank you very much.

COMMISSIONER KELLNER: Thank you.

EXEC. DIR. ZALEN: I've actually personally addressed this issue that was the bulk of your comments. And I am

responding now because there may be others of you who also raise this.

I've addressed that at a New York Assembly hearing last week as well as a public hearing in Albany at which I know some other persons identifying themselves as New Yorkers for Verified Voting were present.

So this seems like something that needs to be addressed here as well and perhaps the others of you will understand.

Notwithstanding the words in that letter, which after all was not a publicly distributed letter, it was distributed to the Members of the Committee and promptly was sent out to others, notwithstanding the wording there which could clearly have been better defined, it was never the intention of the Board to certify any part of a Liberty machine.

The purpose of the Board, since we had no machines and still have no machines for certification as of yet, was to utilize our staff in the best way possible to review the machine and indicate generally where the machine was deficient and what needed to be done at such time, if ever, that the Liberty machine might be brought in.

It's the same type of service we would do for any other system of any kind that requested that kind of help when we have the available resources to do it.

We don't expect to have that ability once machines come in for actual certification. Our relatively small staff will be totally utilized in actual real certification. This was not that.

We do understand your concerns. However, we were not doing what the impression of the letter apparently gave many persons.

MS. SUSAN GREENHALGH: With due respect, sir, the letter specifically says this is Phase 1 of the certification process.

EXEC. DIR. ZALEN: I know what it said.

MS. SUSAN GREENHALGH: So you're saying that -- what we're calling for is that those tests do not be considered validated.

COMMISSIONER KELLNER: There were no tests.

EXEC. DIR. ZALEN: There were no tests.

MS. SUSAN GREENHALGH: So can you tell us what happened December 7, 8 and 9th?

EXEC. DIR. ZALEN: As I already said, we reviewed the machine and made suggestions as to where they needed to go, where the vendor needed to go generally speaking in order to be able to come up with something that he might want to return with.

There was nothing even approximating or

approaching a certification process, neither was that intended.

MS. SUSAN GREENHALGH: So then is there any problem to use -- to specify in the regulations that any testing has to be done on a complete system in its final form without any future modifications?

EXEC. DIR. ZALEN: Well, --

MS. SUSAN GREENHALGH: Which is what we are asking for specifically as it applies to the regs which is what we are addressing here today.

EXEC. DIR. ZALEN: We will review all suggestions that we get. We are not going to make any commitments now.

MS. SUSAN GREENHALGH: So even though you're saying that you're not doing what we're concerned about, you won't make a regulation against doing it?

EXEC. DIR. ZALEN: Well, I think -- I was trying to explain what happened. I was not intending to debate with you on this matter, Ms. Greenhalgh.

MS. SUSAN GREENHALGH: I'm not -- I'm trying to understand.

EXEC. DIR. ZALEN: I explained as much as I can explain.

MS. SUSAN GREENHALGH: Thank you very much.

EXEC. DIR. KOSINSKI: Next we have Vincent Cunneely.

(No response.)

EXEC. DIR. KOSINSKI: Next we have Julie Penny from Democracy for America.

MS. JULIE PENNY: Actually, well, what I'm going to say is for them as well, but I'm actually representing the League of Women Voters for the Hamptons.

Thank you for this hearing and I hope that a lot of testimony gets posted on your website so that a lot of people can read it and because it's very valuable what transpired today, very good testimony.

For the record, my name is Julie Penny and I reside at 3662 Noyac Road in Sag Harbor, and I'm here today on behalf of the League of Women Voters of the Hamptons.

Besides the League, I belong to several civic, environmental and political organizations, one of which is Eastern Long Island's Democracy for America.

Along with this statement, I enter sixteen documents as exhibits into the record, one of which is an article I wrote "Transparency = Democracy 2" for The Sag Harbor Express where I'm a columnist.

The League of Women Voters of the Hamptons is a proponent of open source voting with paper ballots,

which reformers favor, and opposed to those closed source machines that the vendors are peddling.

I'm also a member of election reform groups and follow the work of Open Voting Consortium, Black Box Voting.org, New Yorkers for Verified Voting, Voters Unite.org and others.

I have followed, read and amassed a library of newspaper articles, reports and information regarding voting problems of all sorts with the closed source e-voting machines.

I've read the House Judiciary Minority Report "Preserving Democracy: What Went Wrong in Ohio" (Exhibit 5) on voting irregularities prior to, during and after the 2004 election, which, of course, included e-voting problems.

Alarming too is the behavior of these e-voting companies. The Judiciary Report describes a sworn eye witness account by an election official, Sherole Eaton, of how Michael Barbian, a representative of Triad GSI, had come unannounced and unsolicited to Hocking County and proceeded to modify the Hocking County, Ohio, computer vote tabulator before the announcement of the Ohio recount. He also altered tabulating software in other Ohio counties as well.

This month, on December 13, 2005, a Securities Fraud Class Action suit was brought against Diebold naming former and current executives as co-defendants. The

lawsuit alleges the company artificially inflated stock prices through misleading public information designed to conceal the true nature of Diebold's financial and legal situation. The defendants are also alleged to have attempted to disguise well-known and ongoing problems with Diebold's voting machine equipment and software.

Furthermore, on December 13, 2005, in a Florida test, in Lyon County in Florida, a Diebold computer was hacked into and the vote changed by a computer expert. The Miami Herald on the 14th of December described how it was done: "A top election official (Ion Sanchez) and computer experts say computer hackers could easily change election results, after they found numerous flaws with state-approved voting machines in Tallahassee." Mr. Sanchez has consequently dumped Diebold's machines.

One of the computer experts involved with the test, Harri Hursi, authored a damning report "The Black Box Report - Security Alert: July 4, 2005, Critical Issues with Diebold Optical Scan Design" for Block Box Voting.org. The Hursi Report outlines Diebold's many flaws and how attacks on Diebold's memory card can be accomplished. A Dr. Thompson penetrated the GEMS central tabulator corrupting vote totals.

Also, the "Financial Ties of DRE Advocates to Vendors Suggests Bias": "The Election Center (whose

Executive Director is R. Doug Lewis) which is a primary source of information for election officials and which trains election workers and advises Congress and government agencies on election issues, has taken donations from manufacturers of electronic voting machines even as it has issued strong statements supporting the security of the machines." Anybody see a conflict of interest here?

I refer you to a map of the United States on page fifteen of the indispensable "Myth Breakers: Facts About Electronic Elections - Essential Information for Those Entrusted with Making Decisions about Election Systems in the United States," which shows a partial list of incidents reported in the news during the 2004 election and pinpoints where e-voting machines either:

Added votes to the totals;

Or had votes change to the opponent;

Or scanners that failed to read ballots;

Or added 10,000 phantom votes;

Or started subtracting votes once totals reached over 32,000;

Or where pressing "enter" after a straight-Dem vote changed to Bush;

Or doubled totals in 9 of the 26 precincts;

Or lost votes;

Or registered votes incorrectly;

Or skipped pages on the ballot.

It also pinpoints malfunctioning machines, downed machines, machines with mis-feeds and printer jams.

And speaking of jams, the rolls of paper for DREs who add printers are proving a mess.

"Myth Breakers: Fact About Electronic Elections" is a must read. A look at the index shows why. Over 20,000 errors of various kinds that occurred nationwide in 2004 have been reported to the House Judiciary Committee.

Check out the chapter regarding the complexities of these e-voting machines that make government oversight a myth.

The sub-headings are:

One, Officials Cannot Oversee the Vote-Counting Process in Electronic Elections;

Two, Election Directors Rely on Vendor Technicians during Elections;

Three, Lack of Information about Malfunctions Handicap Election Officials;

Four, Illegal Use of Uncertified Software;

Five, Software is uncontrollable;

Six, Electronic Data Has No Substance That Could Resist Alteration.

Additionally -- here are a couple of tidbits:

That neglecting to keep DRE batteries charged cost Arapohoe County, Colorado over \$100,000 in battery replacements just before a recent election;

That if it takes an hour to do a logic and accuracy testing on one DRE, San Diego County would have to spend 1,275 person days before every election in order to comply with California law. I'm sure it's not so different here.

I refer you to the October 21, 2005 United States Government Accountability Office Report "Elections - Federal Effort to Improve Security and Reliability of Electronic Voting Systems are Underway, but Key Activities Need to be Completed."

The GAO Report raises concerns on:

Security and reliability;

Weak security controls;

System design flaws;

Inadequate system version control;

Inadequate security testing;

Incorrect system configuration;

Vague or incomplete voting system

standards;

Cast ballots, ballot definition files and audit logs could be modified;

Supervisor functions were protected with weak or easily-guessed passwords;

Systems had easily-picked locks and power switches that were exposed or unprotected;

Local jurisdictions misconfigured their electronic voting systems leading to election day problems;

Voting systems experienced operational failures during elections;

Vendors installed uncertified voting systems.

Furthermore, the GAO says these sorts of problems won't be rectified by 2006. It's crazy and a waste of money to proceed with machines with security problems and glitches abounding.

Despite all the nationwide problems and irregularities that have been catalogued about the privatized electronic voting, come 2006 we will be pigeonholed into using a voting system antithetical to democracy.

In the wake of the 2000 election debacle was born HAVA of 2002 which mandated the old style lever and punch-card style voting machines be scraped in favor of new electronic touchscreen machines.

The law was authorized without ensuring that the touchscreen equipment would be secure or would provide

paper receipts that could be used in a recount.

States would have until 2006 to comply.

Some states purchased these e-voting machines in 2002. Between 2002 and 2005 ten states bought and used the touchscreens and had problems causing some counties to toss out equipment for which they paid hundreds of thousands of dollars.

E-voting provided, and is providing, a bonanza for such partisan companies as Diebold, whose owner, Walden O'Dell, boasted in a fundraising letter for the Bush/Cheney campaign that he'd deliver the Ohio vote to Bush.

Although security problems were known to exist for two years because of the work of eagle-eyed computer scientists and election reformers, recent revelations by an inside whistleblower at Diebold confirmed that there were alarming security flaws within Diebold's electronic voting systems, software and hardware, that upper management, as well as top government officials, knew about prior to the 2004 election, and that they did nothing about to rectify.

Starting in 2002, the use of these touchscreen, that is, DREs, systems have been rife with malfunctions, glitches and security problems. In fact, the United States Government Accountability Office Report issued this October 2005 raises concerns about electronic voting machines'

security and reliability, saying, among other things, that votes and audit logs could be modified.

Furthermore, although every state is mandated by the Federal government to start using these machines by 2006, the GAO Report admits that all the problems inherent in these systems can't be rectified by the 2006 elections.

This is insane. Open source software and a paper ballot is what we need.

States are being forced in 2006 by the Federal government to forge ahead despite problems to use electronic voting machines whose secret proprietary software is owned by partisan companies, not the public.

Any electronic system, be it touchscreen or optical scan systems, sold by private vendors lacks transparency. Their software and hardware is under their own lock and key.

Our reliance on these vendors, coupled with this lack of transparency, constitutes the privatization of our democracy. Seeing to it that our vote counts is the bedrock of our democracy. Voting should be as simple to understand and as reliable as putting a ballot into a box and then having those ballots counted in public.

We must resist privatization though our government is forcing it on us. To have any confidence in our electoral system, the equipment and the software must be owned

by the public as well as the equipment used for tabulation.

With touchscreens the voter cannot observe the process inside the computer and must simply trust that the votes registered on the screen are correctly processed by the hardware and software of the computer.

This lack of transparency is not solved by having a printout for verification. A receipt does not rule out bugs or malicious code in the software. It does not erase the effect of having computer novices running electronic elections and the possibility of malfunctioning hardware or software.

Alan Deschert of Open Voting Consortium, OVC, a California non-profit group of software engineers and computer scientists, says: The concept of invisible ballots created with secret software is fundamentally flawed.

As an antidote, OVC built a prototype that uses off-the-shelf hardware and publicly examinable software, open source software, which means the public can examine the software code to make sure there are no bugs or digital shenanigans built in. It also produces a paper version of the ballot. These systems can be produced cheaply.

An editorial, "The Touch-Screen Holy Grail - E-Vote Prototype Has the Right Stuff" in the San Jose Mercury News praises this prototype.

The recent GAO Report issued to Congress

on the security of electronic voting systems lists OVC as a key initiative, something we and state legislators should all be watching. Government funding should have been earmarked for projects like this years ago instead of ceding development of electronic voting machinery to private companies like Diebold.

I refer you to Open Voting Consortium's website, which also has an OVC report by the GAO about OVC, "Voting System Research Funded by National Science Foundation," and "Open Voting" was highlighted in a Security Focus article.

They also have a demonstration ballot on the website that you can do yourself and print out to see how that works.

All of this begs the question why is government failing us. Why hasn't the Federal and state government expended grant money on these open source systems all along? Instead we are overrun by these private companies with proprietary software under lock and key.

New York has been waiting on the sideline to choose a system. As a result, the choice of purchasing either touchscreen or optical scan systems is now being left to each individual county.

Of the two Federal options, DREs are more costly, produce more profit - that's why they are being pushed by

touchscreen firms on New Yorkers. It also does not have a paper ballot.

It's been open season by lobbyists in Albany. These unleashed hucksters know that hundreds of millions of dollars are to be made, a fact underscored by Assemblyman Fred Thiele at a press conference on the steps of New York City's Town Hall on November 7th where he was invited to speak, along with other politicians, by the State's League of Women Voters and New Yorkers for Verified Voting.

Of the two choices, Mr. Thiele prefers to see Suffolk County purchase the optical scanners with a paper ballot where the ballots are counted at precincts, not at a central tabulator.

This September, the Public Employees Federation, a union representing 54,000 professional, scientific and technical State employees, passed a resolution to oppose privatizing public elections and choosing optical scanners instead of touchscreens and hand-marked paper ballots where the voter's original ballot can be maintained and recounted, used with a precinct-counted optical scanner, rather than the ballots being sent to a central tabulator to be counted, which presents a security problem where numbers can be fudged.

The PEF sees this as the more reliable, user friendly, cost effective and verifiable of the two options. They also

want precinct-counted optical scanning machines programmed and maintained only by public employees.

"Contracts with private firms to handle electronic voting systems should be banned in favor of using only public employees."

They also want professional-quality one hundred percent audits mandated in which all transaction capturing and transaction processing computer systems are a hundred percent audited and discrepancies are a hundred percent investigated and corrected.

And, that before electronic systems are used, including tabulators with optical scanners, that all source code on their software be posted on the website of the Board of Elections.

I end this statement with a quote: "Those who cast the votes decide nothing. Those who count the votes decide everything." That was from the Russian dictator, Joseph Stalin.

COMMISSIONER KELLNER: We got it from Tweed.

(Laughter.)

COMMISSIONER KELLNER: Thank you.

EXEC. DIR. KOSINSKI: Thank you.

Nicola Coddington.

No? Not here?

(No response.)

EXEC. DIR. KOSINSKI: Okay.

Sander Hicks?

(No response.)

EXEC. DIR. KOSINSKI: Sander Hicks?

(No response.)

EXEC. DIR. KOSINSKI: Maybe we can start
with who is here.

Sharon Shapiro?

(No response.)

EXEC. DIR. KOSINSKI: Not here either.

A VOICE: Joel Kelsey.

EXEC. DIR. KOSINSKI: Joel Kelsey. Well,
wait. I'm not quite to Joel yet. I'm trying to go through the order we
have.

Jared Goldstein?

(No response.)

EXEC. DIR. KOSINSKI: Not here either.

So you're saying the next person is Joel
Kelsey. I'm sorry. Okay. So I guess Joel Kelsey.

Can I just remind everyone we are trying to
keep these to ten minutes if you possibly can because we do have
a lot of speakers to get through today. If there is anything you can

do to try to hold to that ten minutes, we would really appreciate it.

That said, with the understanding that if you have more to present than the ten minutes, you are certainly welcome to, you know, give it to us and we'll be taking that back with us.

But anything you can do along those lines, it would be appreciated.

COMMISSIONER KELLNER: We promise we do read.

MR. JOHN MASCHER: Well, first, I'd like to mention that I am, in fact, not Joel Kelsey.

EXEC. DIR. KOSINSKI: Why did you come up?

(Laughter.)

MR. JOHN MASCHER: I'm representing him. Unfortunately, Neal Rosenstein and Rachel Leon from CCNY, and Joel Kelsey, could not be here, but I'm from the New York Public Interest Research Group.

EXEC. DIR. KOSINSKI: Who are you?

MR. JOHN MASCHER: My name is John Mascher. I'm the Chairperson of the Board of Directors of the New York Public Interest Research Group.

If it's okay, I'd like to ask Amy Ngai from Citizens Union to come up - she's next on the list - just to help

expedite things.

So thank you for the opportunity to testify.

As we all know, the road to implementing HAVA has certainly been rocky.

We are disappointed that despite taking years to come together and agree on legislation, the package of bills approved by the Legislature passed too late and it's leaving local boards with little time to do a lot of work that deserves, you know, well-considered decisions.

So we are concerned that the outlook is somewhat grim for the 2006 elections and they are drawing nearer every day.

We have a number of concerns but here are eight concerning your draft guidelines for voting systems.

Number one, the guidelines don't take measures to prevent undervoting. And by that I mean that they don't alert voters to undervoting. I think it would be extremely valuable and critical that voters should be given the opportunity to be alerted about their undervotes and have the opportunity to correct them. Number one.

Number two, there should be regulation stipulating no communication capability in electronic voting or electronic tabulating equipment, either wireless -- and I'm sure this has been discussed at great length beforehand -- but this would

include wireless, telephone communications, internet communications and possible future or cellular communications, other technologies that we have yet to think of.

Public confidence in the system is relying upon this. And people who are more familiar with technologies, and younger voters in particular I can speak to as a result of a number of surveys are, in fact, less confident of systems that have communication technologies in them. So that's another important stipulation.

Number three, the Board, I believe, may be headed towards depriving New Yorkers and other counties and other boards of a full choice of voting systems and driving up prices because of enacting and repeating the full-face ballot provision.

There has been a number of questions about the law and its intent recently that may not be the way we've come to understand full-face ballot, but that it might just require all candidates for a single office to be on one face. And if that's the case, repeating that stipulation may serve as a limitation in the future for voting machines.

Number four, the proposed guidelines, I believe, are too vague on voters with disabilities. It doesn't clearly mandate that people with visual impairments or speak other languages should be able to verify the permanent paper record.

But I believe that's a value we all hold and so that the guidelines should more clearly stipulate that.

Number five, it's widely acknowledged that vendors would prefer to market their more costly DREs than the optical scan systems. And while there are merits to both, we believe that these companies should, if they have both systems, be submitting both of those styles of machines because it's important for New Yorkers and counties to have that choice.

Sixth, the Board's guidelines should mandate a more meaningful independent review of the code of any voting system, not only State experts, but independent experts. There should be a diverse cross-section from many government entities and many civic organizations in the civic community to review the hardware, the software, the source code, the data files, equipment, any other aspect of a voting system for the sake of security and integrity.

Seventh, the guidelines are somewhat silent on protecting State language minorities. I know that -- I mean it's in the Voting Rights Act. It's currently required by law. But for the sake of, if there are future additional languages that are needed, that should be stipulated in the guidelines.

And, eighth, there should be some sense in the regulations about how to conduct a meaningful audit of the voter verified paper trail.

I was extremely pleased with this aspect of the legislation that came out of Albany, that there is a voter verified paper trail. But it left it up to the Board of Elections to stipulate how that's done.

So we know that you at the State Board have explained the reason you do not list some of our above issues, it's to comply with Executive Order #20. But we've reviewed that Order and while you don't have to be redundant, we believe you can --

COMMISSIONER KELLNER: I'm sorry.

Could you explain that?

MR. JOHN MASCHER: Sure.

I understand that some of the -- it's the GORE Order, the Executive Order #20. And if you want more data on it, I'm not our voting issue expert, and I can, if you have questions on it in particular, I can have our issues expert, Neal Rosenstein, --

COMMISSIONER KELLNER: Mr. Kosinski, do you know what he's talking about?

EXEC. DIR. KOSINSKI: Mr. Zalen does.

Apparently it's an Order that restricts us from repeating the statute in our particular regulations so what our regulations don't do is restate the statutory requirements again.

MR. JOHN MASCHER: Right. Exactly.

Again, I'm not the issue expert or a lawyer.

I'm a student. So --

But I believe that you can, without repeating the language of the legislation or the legislation itself, that you can create language if it's worded differently or more succinct, but can still address the same issues. That's my understanding.

COMMISSIONER KELLNER: Well, sometimes that creates more problems than it solves.

MR. JOHN MASCHER: Right.

COMMISSIONER KELLNER: Then you'll have two not necessarily identical language.

MR. JOHN MASCHER: Right.

COMMISSIONER KELLNER: So if it's addressed in the statute, you don't need to address it in the regulations.

Am I cutting you off?

MR. JOHN MASCHER: No, please, please.

COMMISSIONER KELLNER: Let me ask you questions.

Were you here when we were talking before about the communications?

MR. JOHN MASCHER: I was not. But I had assumed that it had come up.

COMMISSIONER KELLNER: All right.

Well, again, I'm sort of at a loss to

understand exactly what the issue is that should go into the regulations. And I really do need to understand it because my understanding is the statute already bans communication capability.

Ms. Hommel said, well, you have to be concerned about telephone communication.

MS. HOMMEL: No. It allows telecommunication.

EXEC. DIR. ZALEN: It requires that it not be -- that it be free-standing and not --

COMMISSIONER KELLNER: That's my understanding too.

You understand that you can't program the machine without some form of communication --

MS. HOMMEL: It's not --

COMMISSIONER KELLNER: -- by definition.

MS. HOMMEL: No. That --

COMMISSIONER KELLNER: You couldn't tell it -- you couldn't tell it to set up a ballot face without communication.

MS. HOMMEL: That's not communication. That's an input device, like a keyboard. There's an input device or -
-

COMMISSIONER KELLNER: See -- all right. Now we're getting into -- this is the quibbling that -- this is what the regulations have to address.

And I'm sure, Ms. Hommel, you understand that if a machine is capable of having malicious code introduced to it from an outside source, that malicious code could be introduced through the input device that programs the ballot just as easily.

So that you haven't solved the problem of the input from a malicious source simply by banning communication from the outside.

MS. HOMMEL: Point of information, sir.

An input device requires a person to be personally present, like a floppy disk. You have to be personally present in front of the machine to insert it.

COMMISSIONER KELLNER: Right.

MS. HOMMEL: Communications, the word refers to the capability of remote access.

COMMISSIONER KELLNER: No.

An input device is a form of communication.

Steve, you have the statute in front of you?

MR. STEVE RICHMAN: Yes.

Commissioner, in ERMA's subdivision - let me get the number right - in adding the new section, 702 paragraph (t), the system cannot include any device or functionality

potentially capable of externally transmitting or receiving data via the internet or via radio wave or via other wireless means.

COMMISSIONER KELLNER: Right.

MS. HOMMEL: So it allows telephone, which is wired communication.

COMMISSIONER KELLNER: Right.

But the question is how do you set up the regulations then -- all I'm trying to say is --

First of all, John, --

MR. JOHN MASCHER: Sure.

COMMISSIONER KELLNER: -- I hope we are doing this as friends and allies.

MR. JOHN MASCHER: Yes, absolutely.

COMMISSIONER KELLNER: Okay?

Because I think I've publicly committed myself as sharing virtually all of these goals, at least the general goals. You know, I might quibble about specifics.

And that's exactly what I'm doing with you and Theresa right now.

The fact is, is that if I can't get you to see the issue to help me write the regulation, it may not get written.

MS. HOMMEL: Right.

COMMISSIONER KELLNER: Okay?

And it's real easy for the staff and the State

Board of Elections to just dismiss you as outside lunatics and just ignore the whole thing.

And what I'm trying to do is to help you work with me to focus on exactly what the issue is.

So, Theresa, what I'm suggesting is that some of these devices may use telephone communications to program the setting of the ballot. The statute allows that. All right?

Now, the State Board can't go beyond the statute. What we can do is write regulations to implement the statute and to provide for testing and security.

So we can't prohibit what the statute allows, but we can layer it with additional security protocols.

And, you know, I will share with you, again, the view that I've been saying over and over again since the Legislature passed this bill, that the big issue is resolved with the voter verifiable paper trail. These are -- other issues are still real issues and I'm not dismissing them. But ultimately -- I mean I am convinced and I've been saying this for fifteen years, that you cannot have absolutely perfect security on any system.

Now, the voter verifiable paper audit trail was an expensive but workable layer of additional security. And, again, what we need to do is address with specifics in the regulations what has to be done in order to actually write real regulations that we can settle on.

All right. I'm sorry, John, for distracting you.

MR. JOHN MASCHER: No.

COMMISSIONER KELLNER: For taking so much time on that.

EXEC. DIR. KOSINSKI: I'm sorry. Let me just take a second so that nothing is left misinterpreted here.

The staff of the State Board of Elections does not take anyone in this room as some sort of wacko -- a person not to be listened to. That's the reason that we're here. The reason we're here is because we value your input and we welcome your input and we certainly will seriously consider all of your input.

So as Commissioner Kellner considers it, I assure you so will staff of the State Board.

MR. JOHN MASCHER: Well, thank you for that.

I guess, if I can, just one more word on that. As we've said a couple of times, I think including telephone communications, if at all possible to find that workable, it would be helpful.

And, secondly, I'm pleased that the statute includes the word "remote" because I think remote transmission is a key portion of that. As you know, limiting it to physical access doesn't eliminate security concerns, but I think it adds a much larger level of accountability.

So I think that's critical.

So remote transmission then also -- I would just like to add that I did mention making sure that that stipulation is also in effect for voting tabulation equipment as well as voting equipment that is on site.

COMMISSIONER KELLNER: On the language minorities, the regulations do already speak to a few language-related issues.

For example, they provide that with the voter verifiable paper audit trail that it be printed in the language that the voter used for voting.

I've been questioning whether our regulations should provide that the first question on a touchscreen machine should be what language do you wish to vote in before actually showing the ballot.

Have you -- has your organization or the coalition been discussing that issue?

MS. AMY NGAI: In terms of what question should be first?

COMMISSIONER KELLNER: Well, yes, and what should go into the regulations on language issues.

MR. JOHN MASCHER: Well, what I was specifically referring to in that -- well, in addition to what you address about language concerns, was also that the disability

groups may have difficulty accessing other languages.

But did you have something on the first question or any --

MS. AMY NGAI: Well, I was just going to say that -- my testimony also addresses that a little bit.

My last name is Ngai, N-g-a-i, and my first name is Amy.

The regulations themselves do not go and address that in this entity, does not reflect the requirements of Section 203 of the Federal Voting Rights Act.

And by having that, the language there, not necessarily word-for-word, but having that stipulation in the current standards doesn't mean that it would be redundant at all.

So that's what we were going to call for.

And also --

EXEC. DIR. KOSINSKI: I'm sorry. Can I -- you're suggesting we restate --

MS. AMY NGAI: No. I'm not stating -- I'm not saying you should restate it. I'm saying that those provisions should be there in the current standards.

EXEC. DIR. KOSINSKI: So we should restate the voting rights standards in our regulations?

MS. AMY NGAI: No.

EXEC. DIR. KOSINSKI: Okay. I'm not clear

then what you're suggesting.

MS. AMY NGAI: Well, I think --

COMMISSIONER KELLNER: What standards specifically should go into the regs?

MS. AMY NGAI: Well, the need for minority languages to be protected and other -- right now currently it's only in New York City and certain downstate regions that need such language assistance. That's not necessarily true and, depending on upcoming census and depending on the changing demographics of the State, that might change as well.

And I think that in anticipation of that it would be wise for the State Board to incorporate some of those regulations of the Federal Voting Rights Act in regard to Section 203.

MR. JOHN MASCHER: I think, for example, instead -- if, for example, four languages were required, some point down the road, ten or twenty years, a fifth language was required, the regulation should stipulate that any machine should have the capability of adding additional languages.

MS. AMY NGAI: And not limit it.

MR. JOHN MASCHER: Right. And not limit it to the current standard.

So I think future compliance --

COMMISSIONER KELLNER: John, how

many should we require?

MR. JOHN MASCHER: Well, that would be an issue left up to --

MS. AMY NGAI: And I think it's not necessary that we have to have the languages currently stated -- you know, the Sequoia, ES&S and Liberty does not have to come to you with their machines already with ten languages, the top ten. It doesn't necessarily have to be like that.

But it could be that they're flexible and able to adjust to inserting technology to include other languages, to program them, just being open to different types.

MR. JOHN MASCHER: I think it's just a consideration that should be addressed in the guidelines.

EXEC. DIR. KOSINSKI: You're not suggesting a specific number?

MR. JOHN MASCHER: No.

EXEC. DIR. KOSINSKI: You're just suggesting language that would allow for additional languages to be accommodated at a future date --

MR. JOHN MASCHER: Absolutely.

EXEC. DIR. KOSINSKI: -- if necessary.

MS. AMY NGAI: And that machine vendors are capable of doing that.

MR. JOHN MASCHER: So I think it would be

unfortunately shortsighted if we were to buy something that were capable of four languages and ten years down the road have to revisit this entire process.

EXEC. DIR. KOSINSKI: I think we can all agree on that.

MR. JOHN MASCHER: I would hope so.

EXEC. DIR. KOSINSKI: That would be very shortsighted. You are absolutely right.

MR. JOHN MASCHER: All right.

So we urge you to address these concerns in your final version of the guidelines.

We're pleased that you're having these open hearings. But in addition, I would just like to finally share some concern with the way the State Board has implemented HAVA more generally.

I think the Task Force and the Citizen Advisory Committee could have benefitted from some public input. And, you know, revamping our voting system does have to happen quickly and, you know, the State Board of Elections has had some difficulty from the very start, some unfortunate problems.

And, you know, everyone has had a hand in it so far, but we're running out of time to certify new systems. And I don't want to leave voters in being in the unacceptable position of being guinea pigs for other systems that haven't been tried yet.

So I hope this process continues in an open way and we can continue this dialogue which has been extremely helpful to me and I hope to you.

And so with that I'll just turn it over to Amy. I'd be pleased to answer any more questions you have.

MS. AMY NGAI: Hi!

I'm next on the list.

Good afternoon, Commissioners. Thank you for the opportunity to testify today on the draft Voting Systems Standards.

My name is Amy Ngai and I am the Program Associate at Citizens Union Foundation, a non-profit research, education and advocacy organization here in New York City.

Before I begin, I just want to mention just how vital these public hearings are to the process because they provide an important venue for the public to weigh in on the standards for which our future voting system will be measured and certified.

This hearing is also timely since within the year the polling sites across the State will have at least one -- I hope at least one new voting machine to satisfy the ADA requirements of HAVA.

A few months ago, Citizens Union Foundation had issued a statement of position on voting machine

standards in which we focused on the particular needs of the voters in New York City.

On some of those points, such as the need of voting systems to provide assistance in multiple languages - which we've already covered - I will not elaborate further in this testimony.

Additionally, Citizens Union is also a part of the larger New York State Citizens Coalition on HAVA Implementation, NIPIRG, and I believe Voters for a Verified Voting are also a part of. And we produced "Twenty-One Recommended Requirements of New Voting Systems." And both of these documents are attached for your convenience.

I will testify today on three main considerations Citizens Union Foundation believes the State Board of Elections should consider in the evaluation of the draft Voting System Guidelines.

We believe that the standards should:

Firstly, incorporate some provisions of the current Federal and State Law;

Include measures to ensure that machine systems are versatile and capable of adopting other voting formats; and

Lastly, require machine vendors to play a role in the public education process.

Although the draft Voting System Standards currently do address and spell out the implementation of numerous aspects of HAVA and New York State Election Law, Citizens Union Foundation urges the State Board of Elections to incorporate into the standards those provisions already established by the State's Election Reform and Modernization Act and the Federal Voting Rights Act.

And we've talked about the need to incorporate some aspects of Section 203 already. So I won't go into that again.

But in regard to drafting voting system standards, we also believe that the State Board must comply with ERMA, which allows county Boards of Elections to select and purchase either optical scan machines or DREs. In the past vendors have cited that the full-face ballot requirement - which we are very disappointed to see that it still remains in the current draft - along with other impediments will prevent them from submitting for certification an optical scan system that is indeed certifiable in New York.

In light of these challenges, the New York State Board of Elections must work with the vendors to ensure that a certified optical scan system will be an option here in New York, because such a machine system that may work well for one county may not necessarily be suitable for another.

Local Boards of Elections are best suited to assess what is needed for their voters and the voting system standards should not limit this choice.

And Citizens Union Foundation especially supports the New York City Board of Elections' recommendation to mandate in the voting system standards vendors to submit both DRE and optical scan for consideration and certification when such vendors have manufactured both machine systems.

We believe that the inclusion of both these measures, (1) to provide for both DREs and optical scans and, (2) including provisions for language assistance, will provide consistency between the law and the State rules and regulations and remove any ambiguity in the interpretation of the voting system standards as put forth by the State Board of Elections.

In regards to versatility, new voting systems should have system capability to adjust to other voting formats currently used within the U.S. This provision is especially important given the history of voting in this country and here in New York City in particular.

Here in New York we have employed other formats, such as proportional representation to elect local representatives. City Council Members were once voted into office in this manner. And, more recently, Community School Board Members were selected through choice voting, which is a form of

proportional representation, until 2002 when the school boards were abolished.

Additionally, the contentious primary election in New York City just a few months ago provides another reason why machine systems should be able to adjust to a wide range of election formats. In that election the City Board was almost forced by provisions of the State Election Law to conduct a costly, unnecessary and mostly unwanted runoff between the top two candidates in the Democratic primary, one of whom had actually conceded by then.

This scenario spurred questions on the current runoff process for citywide offices and generated discussions on instant runoff voting.

Since the format and manner of voting for municipal and county elections are governed by home rule, the State Board of Elections' voting standards should not limit counties' jurisdiction by including provisions addressing the need for machine systems to be versatile and capable of adjusting to such various voting formats.

Lastly, another area that the draft Voting System Standards should address is the role of the vendor in the public education process.

The first few years in the transition to replace current lever machines will not only be difficult for election

officials of both the State and the County, but also will be challenging for the millions of voters across this country.

It is the responsibility of the Board of Elections to facilitate and assist in the transition to new voting machines through public demonstrations and an aggressive public education campaign. The voters must feel confident that their votes will be counted accurately and effectively, efficiently as well.

Vendors should play a role in this process by providing the County Boards of Elections with relevant information, such as guides demonstrating the operation of new voting machines, and provide assistance that will help inform voters of changes in the way they are going to vote.

The role of vendors in the public education process should be stated in the Voting Systems Standards under Section 6209.8 entitled "Contracts."

Thank you for the opportunity to testify today on the draft Voting System Requirements. There is much that needs to be done in this limited timeframe, and the Citizens Union Foundation urges the State Board of Elections to consider the unique position of New York City where it must manage, facilitate and administer the election process for half of the voters in the State, and please reflect such considerations in the revision and finalization of the Voting System Standards.

Thanks.

EXEC. DIR. KOSINSKI: Thank you.

EXEC. DIR. ZALEN: I just want to mention that Citizens Union is one of the oldest and most well-respected institutions in New York.

A couple of things.

You referenced quickly - and I appreciate your speaking so quickly - but your reference to the runoff and home rule, it's possible that it was a home rule message sent to Albany, but the runoff was governed by State statutes.

MS. AMY NGAI: Well, the runoff in its current form is actually in, I believe, the State Constitution -- no, --

MR. STEVE RICHMAN: Election Law.

MS. AMY NGAI: -- State Election Law. And it is managed. And I think it was implemented in the '70s. But there could be considerations even by the State level for the City because the City, I believe, is the only jurisdiction in the State that's mandated to have a runoff in --

EXEC. DIR. ZALEN: That's correct.

MS. AMY NGAI: -- in its primaries.

So maybe that consideration will be taken.

We're not sure yet, but we think that the State Board should be flexible and allow for that change.

EXEC. DIR. ZALEN: And just one more thing about a point -- --

A VOICE: We can't hear you.

EXEC. DIR. ZALEN: Oh, I'm sorry.

-- about a point that nobody up here at least thought was an unreasonable suggestion, that is, that the machines be programmed to be able to accommodate in the future more languages.

Is that one of the suggestions as contained in your recommendations to us, Steve, for the City?

MR. STEVE RICHMAN: Yes.

EXEC. DIR. ZALEN: All right.

Thank you very much.

MS. AMY NGAI: Thank you so much.

MR. JOHN MASCHER: Thank you.

COMMISSIONER KELLNER: Ms. Ngai, just one last thing, is that the text of how you write that regulation, that the -- again, you know, I'm looking at the actual drafting of the regulation as opposed to the concept. The concept of having the machines adaptable to multiple formats, such as instant runoff voting or proportional voting, is an easy one. But how to draft it into the regulation is a little bit harder.

And I did send an e-mail to Rob Richey from the Center for Voting and Democracy on just that point.

MS. AMY NGAI: And did he have any recommendations?

COMMISSIONER KELLNER: Not yet. I didn't see it. I'm sure he'll get back to me.

MS. AMY NGAI: And I'm aware that a couple of the machine vendors out there already have this capability. So it's just a matter of putting it in writing in the standards that it should be able to adjust to such formats.

COMMISSIONER KELLNER: I don't know if there are any other speakers from the Coalition who are going to come, but --

MS. AMY NGAI: I believe that Margie Shea was supposed to be here, but she couldn't make it because of the strike.

COMMISSIONER KELLNER: Well, certainly I am willing and interested to meet on the technical side with people from the Coalition in the second week of January in terms of actually, you know, what's the state of our draft at the Board and what technical things -- you know, just like John Ravitz did with the City, and I would urge you to get a copy of his -- you know, they really spent effort, but working on the actual language as opposed to the concepts.

And I'll certainly discuss with the other Commissioners and Mr. Kosinski and Mr. Zalen on whether or not we can -- you know, to what level the staff would be willing to do that as well.

MS. AMY NGAI: I think that actually would be a wonderful idea, is there is some type of working meeting between the State Board of Elections and the good government groups across this State and try to figure out some of the issues that we are concerned with and how to address that and put that in language in the State standards.

Thank you so much.

EXEC. DIR. ZALEN: Thank you.

Steve, you have that reference within your --

MR. STEVE RICHMAN: Yes. In the new Section 6209.15 - this is on page 46 of the draft -- we have it. Maybe it needs to be fleshed out even more, that the requirement with respect to each system has to have its ballots in multiple languages, as well as we talk about the ballot rotation requirements here in New York City for primaries, as well as the identifiable paper audit trail being in the multiple languages in a readable format.

COMMISSIONER KELLNER: And did you put in there the alternative voting formats for instant runoff voting or for proportional voting?

MR. STEVE RICHMAN: No, we did not. But what we did talk about is ballot alternatives in the sense of multiple ballot formats so that if candidate A is on or off so that the machine can be adapted.

COMMISSIONER KELLNER: Right.

Did it come up in your discussions on whether to make a recommendation?

MR. STEVE RICHMAN: It came up in discussions but it did not get into the final draft that was approved by the Commissioners.

COMMISSIONER KELLNER: Okay.

EXEC. DIR. ZALEN: All right.

We passed over, assuming he wasn't here, I'm just asking, Dave Kogelman.

And I just heard that Marjorie Shea is not here, Marjorie Kelleher - Shea.

Marguerite Chandler.

Marg Acosta.

You're one of those two people?

MR. TELI CARDACI: Yes. I'm actually reading on behalf of Marguerite Chandler. She was not able to be here.

EXEC. DIR. ZALEN: Okay.

EXEC. DIR. KOSINSKI: What's your name?

MR. TELI CARDACI: I'm Teli Cardaci.

EXEC. DIR. ZALEN: And you and Ms. Chandler are affiliated with an organization?

MR. TELI CARDACI: She's affiliated with

Voter March. I'm just a friend of hers. I agree with what she is saying.

EXEC. DIR. KOSINSKI: And you made it downtown without the subways.

MR. TELI CARDACI: I was able to make it, yes.

I also wanted to on that note say that there are a lot of people that couldn't make it today because of the subway strike.

And I think in fairness they should have another hearing as well so those people could be heard who were unable to be here today.

COMMISSIONER KELLNER: I'm sure that that's something that --

EXEC. DIR. KOSINSKI: We're going to --

COMMISSIONER KELLNER: But whatever people send in will be part of the record anyway.

So whether or not there is another hearing, that shouldn't stop people from contributing to the process, as Mr. Kosinski said before.

MR. TELI CARDACI: Teli, T-e-l-i, last name C-a-r-d-a-c-i.

EXEC. DIR. ZALEN: Just on that note, while I don't think we firmed up details, we do have another one as

an add-on for the moment, not in New York City at least as of now, but somewhere in the Lower Hudson Valley. There will be another one right there. So please look for that as well.

Okay. Please.

MR. TELI CARDACI: Again, I'm reading on behalf of Marguerite Chandler.

EXEC. DIR. ZALEN: Sure.

MR. TELI CARDACI: I am a natural born U.S. citizen. Some of my ancestors fought in the Revolutionary War, some relatives on both sides of the Civil War.

The idea that our beautiful government, that was fought and died for, that is fought and died for to this day, should under the Orwellianly titled "Help America Vote Act" take away our right to have a vote which could be verified and checked, the case with the DRE machines, is an outrage and insult to our traditions as American citizens.

For what reason would machines be designed with no ability to be audited?

What possibly could be the purpose of installing a voting machine which has no paper trail and cannot be verified to have counted the correct tally?

Why should we, as citizens, be forced, by default, to assume our government to be in good faith?

Don't we know by painful historical

precedent that such blind faith is never rewarded?

Don't we know by our tradition as Americans that too much power and the temptations of that power is too much for frail human nature?

We are Americans. Our Founding Fathers warned us to zealously and jealously guard our republic.

Dwight Eisenhower famously warned us to be on guard against the military industrial complex.

As Americans, we do not entrust our vote to officials based upon, quote, good faith. Let alone do we do so to private corporations with non-transparent proprietary software, running the counting machines. Why should we?

The idea or presumption that we should do so insults us and our vote.

I beg the City Council and the State Board of Elections to remedy the insult to the citizens of New York State and New York City, the insult of even considering such defective machines by listening to our voices and requiring the installation of a procedure which is beyond reproach.

To do otherwise would violate the spirit, if not the letter of American law.

God bless our Bill of Rights.

Thank you.

EXEC. DIR. ZALEN: Marg Acosta, Long

Island Action Network.

MS. MARG ACOSTA: My name is Marg Acosta, A-c-o-s-t-a.

Good afternoon, Commissioner, Co-Directors, and fellow voters.

I will try and cut out a lot of the repetition of other speakers and sort of just to get some points in that I want to reemphasize.

I'm from Centercourt, New York and I am a member of the Long Island Citizens Action Network and I'm on the Election Reform Committee of the Long Island Progressive Coalition.

Thank you so much for the opportunity to speak before you today.

The Help America Vote Act was passed in 2002 in order to help reform our national elections. But I am deeply concerned that states are rushing to certify relatively unknown technology that is riddled with flaws in order to fulfill HAVA requirements.

In the end, after spending millions of dollars, whether it's HAVA funding, taxpayers' or both, and a great deal of effort, we, in New York, may be left with a system that, instead of ensuring the integrity of our vote, leaves us open to the possibility of vote tampering and price gouging by vendors.

Like many others, I would rather have been allowed to keep our trusted lever machines, even though they probably have their own flaws, but since that is not the case, I think it most important to look at the experience of other states and counties as well as thoroughly testing voting machines and evaluating the advantages and disadvantages of all the systems available to us.

As Councilman Perkins said, that might be at least one of the advantages of being last.

According to the Election Data Services, in the 2004 election about twenty-nine percent of voters used e-voting machines or DREs. While electronic voting machine vendors paint a Pollyana image of new wave technology with speed, reliability and security, the actual experience of states using these e-voting machines shows a very different picture.

There is an abundance of evidence demonstrating numerous problems that occurred with DREs in recent elections, so much so that the Government of Accountability Office released a report listing the many vulnerabilities of DREs and citing many instances where failures have already occurred during elections.

The bipartisan Congress that had responded agreed with the report that closer oversight by Congress of election voting systems is warranted.

People have already gone into the flaws of the computer voting systems that the GAO reports. Perhaps the findings can be incorporated into your regulations.

They have already talked about -- I think Ms. Low had talked about the need for the large examinations, the very, very rigorous and thorough examinations of all the different voting systems.

And we've also gone into the need for a hacker test. So I won't do that.

COMMISSIONER KELLNER: Thank you.

MS. MARG ACOSTA: Also the fact, of course, that -- I went in already about banning communications. So perhaps you could somehow incorporate some way of limiting the telephone communication capability.

Of course, the GAO also cited many system failures that had already occurred. I'll just go over -- mention a couple of events that I think haven't been mentioned and that are important.

One of them, of course, is in North Carolina. And the thing that's interesting about that one is because of all the failures that they have had in the electronic voting machines, that they not only wrote new stringent regulations, but they also created two new felonies for vendors, requiring them to post a bond or letter of credit to cover the cost of damages due to defects,

including the cost of a new election. That's another thing that might be incorporated.

Noteworthy that they compared the cost of -- when they decided maybe they'd better use some other machines, they looked at the cost of optical scanners, maybe about \$46 million for the State to the DREs about \$135 million.

Another thing that was interesting was the unforeseen problems that can arise, as in New Mexico, where an election race was contested in court. There the electronic ballot memory of the DREs had to be preserved during the lengthy court litigation and could not be erased in preparation for future use.

The state officials were concerned - and I don't even know what happened - that the machines might not be available for the next local election. This would not be the case with optical scanners and the paper ballots because the paper ballots are the vote and can be preserved.

So that's one of the points that I think would be advantageous for the optical scanners.

Even with the paper trails there's still controversy over whether the legal vote is on the paper trail or in the electronic memories. So that doesn't negate that problem.

I will skip some more stuff that has been said about New Mexico with the terrible undervotes and phantom votes.

Miami-Dade, the other thing that was interesting that someone mentioned also about the problems there, that the cost of purchasing -- since they're thinking now of going to optical scanners and getting rid of the DREs, the cost of purchasing, operating and maintaining the optical scanners and ballots is so much less than DREs that Acting Supervisor Sola estimated the County would still save more than \$13 million over five years with the implementation of an optical scan system.

There are numerous cases in which states have had bad experience with some of the DREs and are switching to optical scanners.

On other hand, almost all states that have been using optical scanners with paper ballots - thirty-five percent of voters have used them in the 2004 election, forty-six percent of counties, they are planing to keep them or expand their usage.

Michigan, Arizona, Oklahoma, South Dakota, North Dakota, Rhode Island and West Virginia, among others, are going one hundred percent optical scan in 2006.

New York Verified Voting has done a survey of counties. They've had about twenty responding using optical scanners. They all seem very happy with them. Even Lyon County was noted where the Diebold system, where they're throwing out the system because it didn't pass the hackers test, they still want to keep the optical scanners. They're choosing a different company.

It's not surprising since optical scanners have many important advantages.

The paper ballots used with optical scanners have the familiar format and are easily understood.

The system elicits voter confidence since it is totally self-administered. It's self-marked, self-verified and self-inserted into the scanner.

The scanner allows for corrections and protects the voter against under and overvotes.

And it also has a write-in option.

The same ballot is used for absentees and for handicap accessible machines such as the AutoMark. Therefore, the optical scanner can process all the ballots and they are then preserved for audits and recounts.

This system eliminates conflicts between electronic ballots and paper ballots and voters can continue to vote in the event of equipment failure, another big advantage.

Another significant benefit is that, according to states using optical scanners, poll workers, many of whom are elderly, are easily trained. That survey is very interesting. It talks about practically no lines. It talks about how quickly people will put the ballots through the optical scanners and so forth.

Since optical scanners are a relatively simple technology, they are less prone to tampering, they're more

easily tested and don't require vendor technicians to run our elections.

For instance, we could have one set of say a hundred ballots that are filled out by observers, observers are watching, and that same set of ballots can then be used over and over again through many machines. And so it goes faster and allows for more testing.

While they also can be hacked, at least we still have the ballots for audits, recounts and random checks.

In addition to all these advantages, as many states have demonstrated, the cost of purchasing, operating and maintaining the optical scanners is much less expensive than DREs.

Handicap accessible machines, like the highly praised AutoMark, work in conjunction with the optical scanner to fulfill HAVA's requirements for the disabled.

Certainly, the PBOS system seems like the best choice to replace our lever machines.

However, I'm more concerned about the time constraints placed on us to implement HAVA regulations. ERMA, the Election Reform and Modernization Act of 2005, states that New York must have all lever machines replaced by the 2007 elections, and HAVA says that, if we are to keep the funds given for election reform, we must have the new machines in place by

2006. And, of course, they also talk about the Department of Justice taking action.

While four years may have seemed like a long time to implement these regulations, and New York may have dragged its feet in initiating the process, this is too important a matter to rush into certifying voting systems that won't preserve the integrity of our vote.

We must not be pressured into ignoring our own testing guidelines in order to meet an arbitrary date.

Nothing is more precious in a democracy than the integrity of our vote. Without it we have lost our freedom.

Many states that have rushed to embrace new voting technology without proper testing and evaluation are paying the price financially and, more importantly, with the disenfranchisement and distrust of their voters.

In light of the findings of the Government Accountability Office and the fact that the Election Assistance Commission - I have will not even finalize its recommendations until 2007, I just found out that they have finalized them but they have not published them, but they're still not supposed to be implemented until 2007 -- it seems unreasonable to demand that more states rush to accept voting systems that themselves are not fully compliant and deserving of our trust.

Representatives from several states -

Virginia, Pennsylvania, Wisconsin and Texas - have introduced legislation, HR 3163, to extend the HAVA deadline for four years. Now, four years might seem like a long time, but that could be changed.

I respectfully request that you, the New York Board of Elections, as well as the State Legislature, ask our Federal representatives to either co-sponsor this legislation or introduce similar legislation to extend the deadline.

Maintaining the integrity of our vote has always been the right and responsibility of states. Certainly we should use all the means in our power to preserve this right, the backbone of our democracy.

Thank you.

EXEC. DIR. KOSINSKI: I just have a couple of comments.

First of all, I think -- you know, I just want to say that I think we share, you know, the concern that you raised at the end of your presentation about the timeframes here.

But at the same time as State officers, I think we feel some obligation to function under the laws that have been passed, both Federal and State level, that do set up these timeframes.

And while we do share this concern about having to move forward with all due deliberate speed to try to get

this program implemented in New York, and we certainly are cognizant of the need to make sure that whatever system is put into place is secure, accurate, reliable and has the confidence of the voters who are also having, you know, this counteractive sort of pressure that, you know, need to move this process along.

So I don't want you to feel or I don't want anyone here to feel that we, as State employees, aren't concerned, you know, at our level that we ensure that the voting systems that are introduced into this State under this program don't meet those requirements, the major requirements of security and reliability and of voter confidence.

But that we are trying to do that with all deliberate speed, recognizing that we do have a Federal and State statutory obligation to get to try and get this program up and running.

This is something that I just wanted to say.

MS. MARG ACOSTA: I realize that, but I do think the fact that we don't even have machines that are compliant certainly gives us the opportunity to say, wait a second, you know, we need more time.

And states are doing it. When I called the Election Assistance Commission, I think it was Peggy Simms there that said at least seventeen states still will not be compliant just in the registration rolls and everything by 2006.

EXEC. DIR. KOSINSKI: Well, that's a date that's moving very, very quickly. You know, New York is one of those.

MS. MARG ACOSTA: Right. I know that.

EXEC. DIR. KOSINSKI: January 1st is the date that registration rolls have to be up.

MS. MARG ACOSTA: Right.

EXEC. DIR. KOSINSKI: Many states are not meeting that date.

MS. MARG ACOSTA: Right.

EXEC. DIR. KOSINSKI: But that said, I think, you know, we are all aware of these timeframes and we do have sort of those competing pressures at our level and I hope people appreciate that, that we're not ignoring these needs that we also share about making sure these systems work properly.

So we do have a very high recognition of that.

That said, I just had a question for you.

The optical scan machines, which you, I believe -- and tell me if I'm wrong -- you seem to endorse those.

MS. MARG ACOSTA: Yes. More so.

EXEC. DIR. KOSINSKI: Do you see any disadvantages, --

MS. MARG ACOSTA: Well, --

EXEC. DIR. KOSINSKI: -- comparatively speaking? I'm talking about the comparison between the DRE and the optical scan machine because it appears in New York that those are two options that we are hopefully going to present to our counties.

As I said earlier, I have every intent of, you know, doing everything we can to make sure that that happens.

Do you see any disadvantages? You enumerated the advantages --

MS. MARG ACOSTA: Right.

EXEC. DIR. KOSINSKI: -- you see of the optical scanners. Do you see any advantage of the DRE to the optical scan at all or just none at all?

MS. MARG ACOSTA: Well, I think both of them, unfortunately, are able to be hacked or programmed to do the wrong thing, or -- whether it's a mistake or whether it's fraudulent. And I do think that the optical scanners do have that disadvantage.

But the fact -- I mean I have been teaching. Every student for the last I don't know how many years has been using Scantron machines, which are very similar. They fill out the ballots just as well as the Lotto and everything else.

And so it's a type of machine that I think most voters would trust. As you said, these -- I've been teaching a

long time. And many of them are certainly at voting age, have been at voting age for at least fifteen or more years. And so they are used to this. And I think that they do have more confidence in it.

I do think the computers are more -- because they're secretive, because they're not transparent, they are not as trustworthy to most voters. That's what I would think.

The fact that the voter verified paper doesn't fit the same as the ballot, whereas the ballots that you use with the optical scanners are exactly what is going in there. That's what you see, that's what you get.

EXEC. DIR. KOSINSKI: Right.

MS. MARG ACOSTA: You know what I mean?

Trying to verify a paper trail that is not typed up from what I understand the same way as the touchscreen is.

Something that from what I also understand, and I have a bad back, that you have to lean over like this (indicating) to see in many machines, and also being older too, needing glasses, and not being able to see print even with the glasses that small.

I just see that -- the only thing that I can think of is that many people have this idea that, well, computers are new wave technology. Unfortunately, you know, newer is not always better.

And so I don't see that many advantages of the DREs over optical scanners.

EXEC. DIR. KOSINSKI: I don't think you mentioned one.

MS. MARG ACOSTA: Just the fact that it's new and innovative and kids might, you know, younger people. Certainly not older people too, by the way, like the poll workers and seniors.

But, anyway, I think laws are made to be changed and maybe to adjust them to fit the needs. And certainly this is too important an issue just to have -- because HAVA came out with this to help. They have to see -- especially since the fact that, as I said, the Election Systems Commission is just now coming out with its recommendations. How can they expect us to incorporate them in 2006?

So I am calling my Congressman, but I think you have a lot more influence than I do.

Thank you very much.

EXEC. DIR. KOSINSKI: I'd like to think that but I'm not so sure that's true.

(Laughter.)

EXEC. DIR. KOSINSKI: Next we have Arnold Gore.

(No response.)

EXEC. DIR. KOSINSKI: Denise Hain.

MS. DENISE HAIN: Yes, sir.

EXEC. DIR. KOSINSKI: Denise Hain is here.

MS. DENISE HAIN: I'm here speaking for myself. And if I heard everything that I heard today, my writing would be different probably, but I'm just going to read what I wrote. So it's the same as what you get typed up.

Okay.

In the panic that followed the September 11 attacks, numerous changes were made in a rush and forced on the American people, like the creation of the New Homeland Security with the disastrous dismantling of FEMA resulting in the fiasco of New Orleans.

Bringing in electronic voting is part of this frenzy.

Nothing was wrong with voting machines it seemed before the 2000 elections.

The problem with machines in the election of 2000 in Florida was not the old system but the new. Electronics were used to cheat people in several ways.

Incredibly, some of the technology that caused so many problems already is being forced on New York State through what I call bribery.

I'm sorry. I should say something now but I don't have it here.

The Federal government is also using the money that New York taxpayers give it to force us to buy what is against our common good and common sense.

I urge New York State to use logic and to reject electronic voting with appropriate force.

Electronic voting, as presented to us today, by a dishonestly elected Federal Administration, is an abomination against democracy.

If anything is wrong with our present voting machines, let us go back to paper ballots and sealed slotted boxes. Let us never ever accept a voting system that does not have a paper trail.

If Federal funds are withdrawn from us for refusing these electronic machines from friends of the Administration, we must consider this a blackmail against the people of the State of New York and we must act accordingly.

Thirty-seven states have accepted electronic voting in 2004. Cheating has occurred, proven by discrepancy between votes counted and polls taken, both pre-election and exit polls. The extent of it is hard to evaluate exactly, but not small according to polls. Cheating occurs and is possible because a small number of people in a secret office but connected

to the computers and armed with its secret codes, are able to access the system and can enter or remove votes at will.

The best way to safeguard our democracy is to make every vote public and return to the simple, easy to calculate paper ballots.

In Florida, in 2000, beside having introduced some new electronic voting machines, which were easy to cheat, similar to the ones that are being pushed on us now, friends of Bush paid the Choice Point Corporation, a data processing corporation, then called by a different name, \$2 million to prevent Black Democrat voters from voting.

A person whose name vaguely resembled that of a felon somewhere else in the United States saw the word "felon" written next to his name on the voting list. The so-called felons were not permitted to vote. No one apologized for a mistake because it was not a mistake.

People wrongly accused of crimes, which they had never committed, needed to beg for forgiveness from Governor Jed Bush. This must have been a very humiliating, complicated, length and costly legal battle that no one should ever have to undertake in a democracy.

Poor people in particular have less time, money and resources to defend themselves. People with enough time and money to undertake these efforts found that, yes, they

won their case after almost four years of efforts, but were not permitted to vote in the 2004 elections. Therefore, the cheating continued also that year.

This was a very cruel trick, but Bush was proud and victorious.

Now, the US has experienced five disastrous years and future generations will pay a heavy price.

Elections are important and can't be left to the whims of a few rich individuals or large corporations.

This brings us back to New York State. We are victims of a plan to diminish voters' rights and to further enrich the much too rich already.

Our taxpayers' money was allocated for this new extravagance, the purchase of machines from our President's friends, the Diebold Corporation, the AIS, and the ES&S, all friends.

I am against the new machines for the following reasons:

One, they are easy to cheat and it can be done in several ways.

Two, they are unnecessarily costly;

Three, old people have trouble reading the screens;

Four, they leave no paper trail and give no

receipts to voters.

Five, we are being made fools of by those who have already lied us so many times and in so many ways. How can they be trusted again on this voting issue?

Preventing cheating must be one of the main purposes in an election. There are much better and much easier solutions to the voting problem.

Here are three inexpensive and easily instituted changes and solutions.

Number one, let's go back to paper ballots.

Solution two, make all votes public. Our senators vote publicly so why not us?

Solution three, do both.

Solution two is a new idea. This is how it can be done.

Post all votes. This way everyone can add up everybody else's votes. No cheating can occur that way. Then everyone can verify that their own vote was counted and not changed.

Post them on the internet on the government's website, in courts of law, post offices, libraries, public schools and colleges.

Must be posted by address, the name of the person, and if you don't want to be public, you put a number and

then the votes.

Each voter must get a stamped receipt of his or her vote in a special indelible ink in order to contest any discrepancy.

Transparency on all levels will defend our democracy from those who are intent on destroying it.

We need no machines, no envelopes, just paper ballots placed in a sealed slotted box.

How long does it take for two or three people to count two hundred votes? Not long. This is how many votes on average poll workers process on an election day. Counting two hundred ballots shouldn't take long, but if it does, let us just do this correctly and honestly without unnecessary rush. Rushing adds nothing to the trust and the truth.

Let's free New York State. Our votes must be made transparent, not less transparent.

If we want our democracy back, we must make everything transparent. We must make voting non-secret. Our Senators vote publicly, why not us?

This can be done simply and inexpensively and I know how it could be arranged easily.

Thank you for the opportunity to speak.

At the bottom of the page I give some websites with more information on voting that people have to send

their ideas to.

In here I have three parts of an article from a newspaper called Shadow that I picked up just two days ago by accident. There was a very good article about electronic voting. And I'm not going to read everything except this one part, the first part in here.

And it says: Strange Digital Behavior. The first major deployment of Diebold instrumentation and software was during the 2000 presidential election, notably in the State of Florida where Diebold's machines exhibited some interesting behavior. When Diebold's software uploaded the votes from Precinct 216 in Volusia County, where there were only 600 voters, 16,022 were suddenly subtracted from Al Gore's Florida total and 4000 votes were added to the tally of George W. Bush. And this comes from The Washington Post of November 12, 2000.

EXEC. DIR. KOSINSKI: Thank you very much.

Thank you for coming.

Next we have Richard Wagner.

Not here?

(No response.)

EXEC. DIR. KOSINSKI: Robert Witko?

A VOICE: He just stepped away.

EXEC. DIR. KOSINSKI: He just stepped

away. Well, he lost his place. We'll get back to him.

Michael Godino?

A VOICE: No.

EXEC. DIR. KOSINSKI: Not here?

(No response.)

EXEC. DIR. KOSINSKI: Next is
Councilmember Gale Brewer. Is Councilmember here?

(No response.)

EXEC. DIR. KOSINSKI: Not here either.

Next is Julie McQuain.

MS. JULIE McQUAIN: It's Julie McQuain,
M-c-Q-u-a-i-n.

I have a question. Is the New York State
Board of Elections a full complement at this point?

EXEC. DIR. KOSINSKI: In what sense? You
mean the Commissioners?

MS. JULIE McQUAIN: The Commissioners.

EXEC. DIR. KOSINSKI: Yes. We have four
and we are entitled to four.

MS. JULIE McQUAIN: Okay.

EXEC. DIR. KOSINSKI: So I guess the
answer is yes.

MS. JULIE McQUAIN: Okay.

When was it made a full complement?

EXEC. DIR. KOSINSKI: Just about two weeks ago.

MS. JULIE McQUAIN: That's why I'm asking the question.

EXEC. DIR. KOSINSKI: Actually, Mr. Kellner was the fourth Commissioner added on.

MS. JULIE McQUAIN: Okay.
So in all this period of time we've been without a Commissioner --

EXEC. DIR. KOSINSKI: Well, all this period of time, we've been down a Commissioner since June.

MS. JULIE McQUAIN: June.
I'm here as an individual voter, but I'm also the president of a civic organization in the Hudson Valley. We've not taken a position on a particular kind of machine because we don't feel we have enough information to do that. And I'm not going to either.

But I know you are impatient with hearing conceptual and heartfelt protestations from voters, but you need to understand that a lot of voters have not awakened to this issue.

EXEC. DIR. KOSINSKI: Well, I don't want you to misinterpret what we said. I don't think we're impatient with it. I just wanted to make clear to people here in the room today that the real purpose of this particular hearing is to comment on the

rules and regulations as we put them out for public comment.

We certainly welcome people's input on, you know, the generalized concept, as we understand it, about voting systems in the State.

MS. JULIE McQUAIN: Well, based on what I've heard and my glancing at the New York City reaction to the regulations, I just want to underscore, before I read you my testimony, several things.

I was going to propose that you require any company that wishes to sell "a" voting machine to New York State to submit all their products, their voting machine products for testing and certification.

If it's a problem that you don't think that you can require them to pay for certification, then for heaven's sake throw out the fee for certification. It is peanuts compared to how important it is that New Yorkers have adequate choices in these voting machines.

I'm concerned that we appear to be poised to move from the statewide uniformity of voting here in New York to a hodgepodge of voting techniques across the State open to mischief and lobbying at a local level. I'm very concerned about that.

And I see that as in reaction, our being forced to react to things that happened in other states that did not

happen in New York State, but nonetheless we are being required to change things that maybe didn't need changing.

You must not let the choice --

EXEC. DIR. KOSINSKI: I don't mean to keep interrupting, but I just have a question there.

MS. JULIE McQUAIN: Sure.

EXEC. DIR. KOSINSKI: What is your concern about having different counties potentially using different voting systems, assuming, of course, any voting machine - and this not, assuming this is true - any voting system that would be used in New York must be certified as being compliant with New York State law?

What is the --

MS. JULIE McQUAIN: I am concerned.

EXEC. DIR. KOSINSKI: -- the concern?

MS. JULIE McQUAIN: I'm concerned.

EXEC. DIR. KOSINSKI: Well, what is the concern?

MS. JULIE McQUAIN: I'll try to put it into specifics for you. I'll try.

EXEC. DIR. KOSINSKI: Okay.

MS. JULIE McQUAIN: But maybe it's just a generalized concern that we have a uniform system statewide that's working pretty well right now and we saw that a hodgepodge

of systems, between butterfly ballots, punch cards, optical scans and other methods, did not work very well in Florida at all.

So I'm concerned, having seen that, that non-uniformity may not work very well.

If I could proceed.

I don't think it's reasonable, and you must not let the choices of machine manufacturers trump the needs of New York's voters. If you have to require them to submit their machines if they want to sell anything in New York, then do so. This is not some sort of capitalist necessity, that we say that the machine manufacturers get to limit our choices because they would rather sell a particular kind of machine to New York.

Lastly, please require the local County Boards of Elections to hold public hearings prior to their exercising their choices because as it stands right now, and I'm going to object to the process of these hearings because nobody knows about these hearings.

The hearing in Albany was conducted during a snowstorm. The hearing down here is being conducted during a transit strike. This is not your fault, but nonetheless this is the third of three hearings.

Your duty is to protect --

EXEC. DIR. ZALEN: There will be a fourth at least, by the way, in the Lower Hudson.

MS. JULIE McQUAIN: I heard that and that's wonderful. Thank you.

Your duty is to protect the people's right to fair and transparent elections. You're probably aware that many voters are quite concerned about your choice of our new voting machines and the regulations that you are putting in place.

I'm shocked that you've initiated a public comment period of only forty-five days taking place over Christmas and New Year's holidays, during which apparently you've already begun testing or testing for certification some machines.

This displays -- and it's being received as an arrogant disregard for the comments you are receiving during this public comment period.

Coupled with the three practically secret public hearings, the message is clearly being received by voters, whether it's the message you are intending to send or not, that you don't care what we think about this process.

I urge you to extend the public comment period, add more hearings around the State as you've already done with one I hear, and advertise them so that the public can comment to you.

Some requirements of the HAVA law seem designed to have the worst possible effect: unverifiable election

results, more courts deciding elections, lower voter participation, and escalating public distrust of the entire election system.

If we must have new voting machines, even in New York, where our uniform machines seemed to work fairly well in this most recent election where I was a poll watcher, then they should be the simplest possible design, least susceptible to manipulation, with the most basic paper trail.

This appears to me to be a straightforward paper ballot that can be read, if necessary, by an optical scanner, verified and corrected, if necessary, by the voter, a paper ballot that remains readily available for a hand recount, performed and observed by human beings, the results not delivered by unverifiable, proprietary software.

The very idea that our voting machines can have proprietary code is ludicrous to me. I've heard that even Las Vegas casinos do not allow proprietary code in gambling machines.

I have another question.

COMMISSIONER KELLNER: They may allow it in their voting machines.

MS. JULIE McQUAIN: Odd indeed. Odd indeed.

If Oregon's paper ballots by mail comply with HAVA, then how is it that our mechanical lever machines do not?

And this suggests to my civic organization an equal protection argument for at a minimum extending the deadlines for selecting new machines if we must have them.

But the most basic question, more basic than this, is not even being asked. What is the rush? Whose interests are served by immediate, instant election results?

We've all been sidetracked into a discussion of high technology that assumes the need for instant election returns. But who actually needs that? Voters are primarily interested in an honest process and a transparent and verifiable count. It's the news media and campaign professionals and voting machine lobbyists who demand this instant result.

But the election doesn't belong to them.

Elections belong to voters, not to politicians, campaign professionals, election workers or the news media. If you please back up a step to keep the interest of the voter paramount, you will not be distracted by arcane discussions of technical features nor swayed by manufacturer lobbying.

So much about elections is out of the voters' control, from the length of the cycle to campaign financing. At least keep the count as clean as possible, obvious and transparent.

The controlling interest must be the voter's. Forget everyone else, including election workers' convenience. Efficiency is not the most important virtue in an election.

Having seen the entire testimony of Johns Hopkins' Avi Rubin and other computer scientists during a Congressional hearing two years ago, I have no trust at all in the touchscreen DRE machines. Dr. Rubin's research pointed out their myriad security flaws and was validated by the National Science Foundation which is funding a Center for Correct, Usable, Reliable, Auditable and Transparent Elections, or ACCURATE, with Dr. Rubin as the principal investigator.

And I would like to underscore the speaker who asked earlier that you insert in the regulations that Dr. Rubin be invited to attempt to hack any machines that you are going to certify.

Paper ballots. And if they must be counted electronically, okay, but keep the ballot for recounting and make sure the voter gets to verify before her vote is final. The League of Women Voters agrees: paper ballots and second-chance voting.

Take the voters' side in this basic democracy issue and protect the public trust in elections.

And one last question.

Who would you recommend that voters in New York, who are very exercised about this, direct their anger to? You don't want it. You're trying to hold hearings. Our local Board of Election, we begged them to hold a public hearing on this and help educate us so we could respond intelligently to your draft

regulations. They've yet to give us a date.

The public comment period is evaporating. The State Legislature punted to the County Boards and the County Boards -- one election commissioner told me the fix is in and the County Boards are not even going to have -- they are going to have a choice of no choice, so that they have the appearance of a choice, but no choice at all.

Who would you suggest that concerned voters now direct their anger at?

EXEC. DIR. KOSINSKI: I could say we're good candidates for that.

COMMISSIONER KELLNER: Congress put HAVA in place. So Congress controls HAVA.

The State Legislature was acting mainly in compliance with the Federal law. So I don't think -- and now they've done what they are going to do.

We're next. The State Board of Elections right now is the roadblock because until we do our regulations and we certify machines, the County Boards can't do anything.

What county are you in?

MS. JULIE McQUAIN: I live here in New York, but I also have a place in upstate in Ulster County and that's where I voted in this last election where in my precinct there were -- precinct is a funny word for it -- there were 195 voters in my

district.

And our machine worked fine.

EXEC. DIR. KOSINSKI: Thank you, Ms.

McQuain.

Robert Witko.

Is Howard Stanislevic here?

(No response.)

EXEC. DIR. KOSINSKI: That's our last
scheduled speaker.

Is there --

A VOICE: No. I had signed one of the
papers when I came in today.

EXEC. DIR. KOSINSKI: You want to
speak?

A VOICE: Sure.

EXEC. DIR. KOSINSKI: Is there anyone
else here that wants to speak that hasn't been called on?

MR. ROBERT WITKO: Good afternoon,
Commissioners.

My name is Robert Witko, W-i-t-k-o. I'm
President of Liberty Election Systems.

I come here before you this afternoon
without a written testimony but rather a statement after some
observations in Albany and also in Monroe County.

I'd like to speak a little bit about what our system has gone through at a Federal level and some of the testing that has transpired at very rigorous levels at both Wiley and SysTest Laboratories.

There seems to be a lot of misinformation in this process leading to New York at the Federal level. For any voting system to be used or contemplated for procurement in New York State, it must be presented to the State Board of Elections having met the most recent Federal certification standards.

Currently, the FBS 2002 standards are what are in play as we speak as the VVSG standards are to hopefully be in place very soon.

Through the testing of our system under these very rigorous criteria the device goes through hardware and firmware testing at Wiley Laboratories, software testing at SysTest with a complete integration testing between the hardware and software occurring at both facilities.

Line-by-line source code review, sand-and-dust testing, electroconductivity are all various levels of rigorous testing that the system goes through.

It has taken our system over nine months to meet the 2002 Federal Voting System Standard Guidelines. Within this testing criteria, ADA functionalities, Voting Rights Act of 1965 functions, are all part of the prerequisite for us to meet our

certification level.

What I'd like to go on record by saying I feel that if we can stick to a little closer in spirit and in letter to the Federal standards, it would take out a lot of the subjectivity and I think concern from our public and our community.

You know, these are professionals dealing at a Federal level and it's very, very rigorous for any device, whether it be a paper ballot system or electronic DRE or anything of the like to go through these criteria.

So I would urge everyone to keep an open mind and some commitment to the process, not just here but also at a Federal level. These are professionals doing their jobs and they are doing them in the most professional, concise, logical and accurate manner as possible.

There is nothing perfect. We don't live in a perfect world, but we have to have trust in this process.

There's nobody in this room, including myself, who would want to have a voting system that does not represent democracy in our people.

And as President of this company, I'm here to make a statement today that the Liberty Vote is a viable solution for New York State as it provides an accurate and secure method of voting.

Thank you.

COMMISSIONER KELLNER: David, don't go -- Robert, I'm sorry, Mr. Witko.

I first wanted to, you know, compliment you in front of everyone else, because it's my recollection that Liberty was the --

(There was a brief recess in the proceedings.)

EXEC. DIR. KOSINSKI: We owe this reporter a round of applause as well.

(Applause.)

COMMISSIONER KELLNER: But it is my recollection that Liberty was the first vendor in New York to demonstrate a touchscreen machine with a voter verifiable paper audit trail.

MR. ROBERT WITKO: Yes.

COMMISSIONER KELLNER: And I want you to get credit for that because a lot of the people in the community who criticize that don't realize the tremendous significance that Liberty's development did by actually being able to show other commissioners and the legislators what it looked like.

I think that that was a significant factor in moving the legislation along and indeed breaking the deadlock because there were many people who said that they would never

vote for the legislation without a verifiable paper audit trail.

And when Liberty showed what it looked like and what could be done, I think they deserve credit for that.

The second thing I wanted to do though is sort of tease you, because I go around giving speeches all the time where I say that the word "trust" should be barred from the vocabulary of election administration.

That what we do -- and I understand, you know, the spirit of what you were saying, but what we do can never rely on trust because the whole system requires that it be fully transparent.

MR. ROBERT WITKO: True.

COMMISSIONER KELLNER: So that trust is not an element.

And I think that that's a key component of democracy.

And, in fact, I think what Liberty has been doing has been consistent with just that spirit, that the process has been transparent. And the fact that Liberty brought in its machine early - and that was before I joined the Board of Elections so I had nothing to do with that - to give people a headstart I think is something that you should have gotten credit for.

And that's why I'm doing this now in front of my friends in the voter verifiable community, that they realize that

Liberty was the first here and may have gotten some unfair and cheap shots in all of this.

The last thing is, do you know offhand just how many lines of source code there are in, or the actual mechanics of the coding of your machine?

MR. ROBERT WITKO: I can't answer exactly, Commissioner, as to how many lines of code our system uses.

I can tell you though, again, that through our certification process at SysTest Laboratory that they do go through every single line of code.

COMMISSIONER KELLNER: Every single line? I can't imagine it.

As I said, the Sequoia machines had -- the Sequoia machines had several hundred thousand lines of code, and at least -- this is ten years ago --

MR. ROBERT WITKO: Sure.

COMMISSIONER KELLNER: -- I doubt that the technology has changed that much for source code, --

MR. ROBERT WITKO: Sure.

COMMISSIONER KELLNER: -- but SRI said that, even given nine months and a \$750,000 budget, they had only looked at ten percent of the source code.

So I'm just skeptical. That's all.

MR. ROBERT WITKO: I'll find out for you and respond to you.

COMMISSIONER KELLNER: All right. Thanks a lot.

MR. ROBERT WITKO: Thank you very much.

EXEC. DIR. KOSINSKI: I just wanted to say too just for a minute that I'm happy you came today as well.

You know, we deal with several voting machine vendors in the State on a regular basis including your system which you did bring to the State Board just a couple of weeks ago and we were happy to be able to talk to you and look at it.

We encouraged certainly all of our potential vendors to come to these hearings as well to speak and to hear what people's concerns are because I think it's important for them to hear, as well as to share with the public and with people that are interested in this project, you know, their perspective and the process that they've gone through over the years in getting certified at the Federal level like you have done.

We think that's very important for people to hear that firsthand frankly from system either owners or representatives, to come forward and do this.

And I think that helps, you know, create the

transparency that we do think is the point of this process.

And I'm frankly somewhat disappointed that other vendors didn't see fit to come here today. But we certainly are happy that you did, or I am, and I thank you for doing that.

MR. ROBERT WITKO: Sure. Thank you much.

EXEC. DIR. ZALEN: One question, Robert.

MR. ROBERT WITKO: Yes, sir.

EXEC. DIR. ZALEN: It won't be a dialogue - - I'm sorry -- this won't be a dialogue between parties. You can speak outside if you wish to do that.

Are you going to give us an analysis of our rules and regulations?

MR. ROBERT WITKO: Yes. We are currently -- we're going to do that as well. We are reviewing them. I can tell you, as a baseline, we are in our GAAP analysis of the rules, if you will, we are trying to stick to the Federal standards as closely as possible on that.

That is part of the process that we are going through right now as we speak.

EXEC. DIR. ZALEN: So you will be --

MR. ROBERT WITKO: Absolutely.

EXEC. DIR. ZALEN: Okay.

Thank you. Thank you for coming.

There is one last speaker, a woman whose name she will give when she comes up.

MR. ROBERT WITKO: Thank you very much.

MS. SYLVIA DITKOWSKY: My name is Sylvia Ditkowsky, D-i-t-k-o-w-s-k-y.

I'm from Commack, New York.

And since just about everything I had here has been covered, I'm not going to keep you long.

I just wanted to say that people in Suffolk County are very concerned that the disenfranchised voter syndrome is going to go on for some time.

And there are many who really wish to address you today, but because of the cold weather and the transit strike were unable to get here. And, in fact, it was only a couple of days ago that some of us had heard about the meeting and were very surprised that -- well, maybe not so surprised, that none of the newspapers or news programs even mentioned it.

It was just an organization that I belong to that had advised us of it, which is the Long Island Citizens Action Network.

And the last election, eighty percent of which was tallied by Diebold, whose CEO was a staunch supporter of the winning nominee, really divided this country. And the fact that

states had been ordered to buy voting machines really makes us a little more nervous.

And since we know and have been told by many computer experts that there is no computer or software that can't be hacked into, I wonder why, since different states and counties are looking at different machine, what is really the purpose of changing what we're happy with?

EXEC. DIR. KOSINSKI: Is that a question?

MS. SYLVIA DITKOWSKY: Yes, that is a question.

EXEC. DIR. KOSINSKI: Well, I can tell you what I know about what happened.

MS. SYLVIA DITKOWSKY: Yes.

EXEC. DIR. KOSINSKI: And I'll -- I don't want to keep everybody. But I'll wade through a brief little history. Congress wanted to introduce something to address the concerns people had about what happened in Florida. And so they passed the Help America Vote Act.

But, you know, during the debate of what Congress wanted to do, I think what happened was in large part the disabled community started -- became very strenuous in their assertion that throughout history they had not been able to vote like other people can vote in this country.

And so ultimately the Help America Vote Act

was written with a mind towards ensuring not so much that Florida didn't happen again, but that disabled voters in this country be allowed to vote in the same way that everybody did. And what I mean by that is in confidence -- confidentially I should say by themselves.

And so they looked at the voting systems in the country and said what voting systems will allow disabled people to vote in the same way as other people, and they identified the Direct Recording Electronic voting machines as well as any other system.

So what really became the driving force behind HAVA and what we are dealing with in this State, as are all the other states, is to make sure that any voting equipment that we offer people in this State accommodate their needs.

Lever machines simply do not accommodate disabled voters. There is simply no way to equip a lever machine with, for example, a hearing device that would allow a blind person to come in and vote all by themselves.

And so lever voting machines, in essence, were out as far as -- there's only a couple of states that use them anyway. But they were out as far as they could be used in this country because they do not accommodate disabled voters.

MS. SYLVIA DITKOWSKY: But don't they still have to see the screen?

EXEC. DIR. KOSINSKI: No, no. You can walk through a disabled voter on a hearing device. They've demonstrated that you walk them through and there are prompts -- for example, they will read through the ballot for you and then they will prompt you to when you hear the candidate's name you want to vote for, you are able to vote for that candidate.

That type of voting is simply not available on a lever voting machine like we have in New York.

MS. SYLVIA DITKOWSKY: I really want to thank you for expressing it to me because I was wondering how you people felt about these machines and why because we were really hoping, if we have to have computerized voting, we really want something with a paper trail, something that can be looked into, something that can be honestly recounted.

And wherever we go, we do get receipts when we pay for things.

EXEC. DIR. KOSINSKI: Well, you're going to get a system that does have a paper receipt one way or the other in New York because the New York State Legislature, although this was not a part of HAVA, the Federal, the State Legislature did adopt legislation requiring any new voting system to have a paper trail as part of that system.

So I can assure you that any system we adopt will have a paper trail as a component to it.

MS. SYLVIA DITKOWSKY: But are we going to know that the machine is accepting what we put into it without having anything changed?

EXEC. DIR. KOSINSKI: That's the whole point of a paper trail.

MS. SYLVIA DITKOWSKY: Exactly.

EXEC. DIR. KOSINSKI: Right.

MS. SYLVIA DITKOWSKY: Exactly.

And this was my point of why.

EXEC. DIR. KOSINSKI: That's the whole reason behind the paper trail.

MS. SYLVIA DITKOWSKY: I just wanted to express my concern and the concern of many friends and family who, as I said, couldn't be here and were hoping that there would be more scheduled meetings that they could attend.

EXEC. DIR. KOSINSKI: Well, we are going to look into that obviously under the circumstances.

Thank you for coming today.

MS. SYLVIA DITKOWSKY: I thank you for your time.

EXEC. DIR. ZALEN: Thank you all for coming.

(At 3:10 o'clock p.m. the proceedings were concluded.)

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