

NEW YORK STATE
BOARD OF ELECTIONS

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Public Hearing: :

Voting Systems Regulations :

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Putnam County TOPS Building
Donald B. Smith County
Government Campus
110 Old Route 6
Carmel, New York

January 12, 2006
10:40 a.m.

Before:

STANLEY ZALEN

PETER S. KOSINSKI

Co-Executive Directors

MICHAEL JOHNSON

JOHN PERRY

PHIL JORCZAK

Staff

CANDYCO TRANSCRIPTION SERVICE, INC.

(518) 371-8910

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PROCEEDINGS

EXEC. DIR. ZALEN: If we could be seated and we will start now.

In a short while I'm hoping that Co-Executive Director Peter Kosinski will be here. He's unfortunately and apparently stuck in traffic.

This is the New York State Board of Elections' public hearing concerning the rules and regulations proposed for voting machines.

And, again, I'm Stan Zalen, Co-Executive Director with Mr. Kosinski of the Board.

With me is:

Michael Johnson, who is our enforcement counsel;

John Perry, voting machine technician for us; and

Phil Jorczak, also voting machine technician for us.

I would very much like to thank our host, the Putnam County Board of Elections, for their hospitality and for giving us this beautiful facility.

With such a good turnout I would like to thank all of you for coming as well.

And I particularly would like to thank Bob Bennett, Commissioner of the Putnam County Board of Elections, sitting right here. Bob, if you would like to just raise your hand or stand up.

And standing right back there, Anthony Scannapieco, also Putnam County Commissioner of the Board of Elections. And he's standing there.

Standing with Tony are the two Deputy Commissioners, both Nancy Quis and Dorothy Gilman, and as well the ladies outside who have been so helpful. So we would like to thank all of them.

We would like to point out that we have -- our first speaker is an Assemblyperson, but also here, although not speaking, to my knowledge, is Assemblyman Willard Stephens, and we appreciate the fact that you are here as well.

Just a word about speaking. We do have a list of speakers. If you do want to be added to that list, please let the women taking names outside know that and they will give us an updated list when they have it.

Those of you on the list, I would ask that you limit yourself to ten minutes if at all possible. Those of you who have been added on, five minutes would be the maximum.

There will be no exchange of dialogue. We are here to listen. If there is something that you feel that you wish to

say, we would be glad to hear it, but please add yourself to the list to do so.

And we also ask that all speakers give us a copy of their written material. You can bring it right up to us and then have a seat right here.

And with that, the first speaker is another Assemblyperson, Assemblywoman Sandy Galef.

Assemblyperson Galef, please come up.

Our very fine court reporter has reminded me that before you give us at the table our copies, give him a copy.

ASSEMBLYWOMAN GALEF: Thank you.

Is the microphone working?

THE COURT REPORTER: Yes.

EXEC. DIR. ZALEN: I hear you.

ASSEMBLYWOMAN GALEF: Thank you for holding an additional public hearing to hear comments on the recently published Draft Voting Machine Regulations reflecting changes in our State law to comply with HAVA.

And I'm very appreciative that you are holding this hearing since my district encompasses parts of Putnam and Westchester Counties and many of my constituents are very concerned about our future voting systems and machines.

My remarks will focus on the voting machine technology.

Close to a year ago, in 2005, many constituents approached me with concerns about New York State's compliance with HAVA. They were particularly concerned with the new voting machines that would replace the current lever machines.

I knew that our State Legislature was working on legislation to implement HAVA through the Joint Senate/Assembly HAVA Committee. I also knew that the nature and types of machines would be determined by the State legislation crafted by the HAVA Committee.

As you are all aware, the final legislation left the voting machine selection to the County Boards of Elections' Commissioners from a list of voting machines that will be certified by the State Board of Elections.

This is why I and my constituents and fellow elected officials are here today. We want to make sure that our Putnam and Westchester County election commissioners have the right information and the right voting machines from which to select.

I want to make sure that the New York State Board of Elections certifies at least one optical scan machine to be used in conjunction with the voting system that accommodates voters with special needs. These optical scan machines must be owned and operated by our government, not the private vendors.

Over the last fourteen years I have been very involved with the statewide legislative history on election law reform. I've been on the Election Law Committee for that period of time. And as a matter of fact, one recent passage goes into effect on January 15th making sure that the filing of campaign financial information from our local elections will now be on the computer.

And I also had an opportunity to have a firsthand experience with a paper ballot optical scan and ballot marking device at a demonstration in Albany last year. And, frankly, before we had that demonstration, I thought the only direction that the State of New York was going was electronic equipment because that's all I had seen in every other demonstration.

But at that demonstration last February I got the first inkling that the voting machine lobby interest was not with the optical scan machine because they pulled the demonstration from the Concourse of the Legislative Office Building because they said that New York State was not an optical scan state, New York had already decided it was going to be a DRE state.

So that obviously peaked my attention to what was going on in this industry.

And during the process I met and was impressed with a lot of people that are just plain old citizens that are working on the voting issues, like Bo Lipari, founder of New

Yorkers for Verified Voting, local citizen groups like Philipstown for Democracy and Citizens for Voting Integrity, all groups, and some have representatives here today.

And working with other groups like the New York State League of Women Voters and the Westchester County League of Women Voters and the Sierra Club, and finding out what they have learned about the experiences in other states with both electronic voting and optical scan was most important.

I spoke to individuals with disabilities and computer experts, like the chief technology officer of Westchester County, and became convinced that electronic voting posed dangers to the public voting.

And after exhaustive research, including surveys of other states, I was convinced that paper ballot optical scan was the optimum voting solution.

And so in March of last year I introduced legislation actually calling for only paper ballot optical scan in New York State and not having DREs. The legislation did not pass but we did pass HAVA legislation that said that there are two choices in the State of New York: DREs or optical scan.

In June of 2005, we completed through the Assembly and the Senate that legislation that required you to have these, I guess to have these hearings, to have the Committee to look at the different kinds of approaches to the types of machines

that we have.

And I want to say that in the last several months I've travelled throughout my district. I've culled my district. My district in responses to my newsletters two-thirds of them favor paper ballot optical voting. I have not had one constituent come up to me and say they wanted electronic voting equipment in the future for voting.

And I think that really says a great deal about what we are here to hear today.

And I believe that in our democracy it depends on good voting systems. And to that end we had a public hearing which I held with Vinny Tamagna not too many weeks ago in a bipartisan way to speak about the whole issue of paper ballot optical scan. And we heard again from the public about how supportive they were.

And while electronic voting sounds exciting and seems like the technological answer, it really is not. Citizens must feel confident that their vote counts and the votes can be accurately counted. And this can only be accomplished through a paper ballot optical scan system with a ballot marking device for those with special needs.

Now we need to produce -- we all know that with paper ballot optical scan systems they are transparent and they have an accurate paper trail because the paper trail is the

vote that the people have used. Election workers will be trained so that they can help the voters complete the paper ballot correctly. I think it's very easy to train workers in this system. It's filling in a blank. That's not a hard training process to learn.

There have been concerns regarding the additional markings on paper ballots, particularly absentee ballots, that I know our election people have talked about before, and they feel that they can't always decide the intent.

But I have completed paper ballots myself. I've spoken to voters in other states like Massachusetts and conferred with election specialists. I'm confident that this is not a disadvantage to the paper ballot system.

The optical scan machines can be programmed and set to deal with extraneous markings. The absentee ballot process, however, will not change because the voter is not there with the absentee ballot to be able to reject that ballot. So the absentee ballot will always be the same. It will be like it is today if we are using paper ballots, but not when you go to the polling place with optical scan machines.

And, in fact, with the problems encountered with electronic voting through the country, this is just a minor problem and at least people's votes are there. And in some of our states we realize that votes have disappeared, votes have been overcounted, and even the election commissioners have not been

in charge of the system in place. It has been the companies that have been in charge of that.

We want to have ease of voting for the voter. And voting is a hallmark, of course, of our American democracy. Citizens want to vote easily, not wait on long lines. Citizens want to understand how to vote, not make mistakes in casting their vote.

Election workers must be trained so that they can take the voter through the voting process in a comprehensible and thorough manner.

Paper ballot optical scan systems meet these criteria and electronic voting does not.

Voters can complete their paper ballot in a privacy setting taking all the time that they want. And I know when I spoke to somebody in Massachusetts who left New York with a lever machine, went to Massachusetts, they have optical scan, said it was absolutely the greatest thing in the world. You could take your time, many tables there. Nobody was rushed.

And I can just see with these DREs the lineups of people behind. I think that's why Florida has to have the early voting because they can't get everybody through the machines in time.

The system results in high voter satisfaction with optical scan since you don't have to wait on long lines and you can ask for help or replace the paper ballot and complete a new

one before you cast your vote. And that's not possible with electronic voting.

The paper ballot optical scan system is one that can be easily understood by election workers, and many election workers, as we know, are senior citizens who have expressed a real fear of learning an electronic voting technology.

And that I've also polled in my newsletters. Older people are more fearful of the whole issue of electronic voting.

Safety and security of the voting system; there have been instances of computer hacking intentionally and unintentionally. It is critical for our democracy that our government is in charge of our voting, not a private company or a corporation. Computer codes' ownership and proprietorship must lie with our State and local election commissioners, not companies like Diebold, Sequoia or ES&S.

Our cost and maintenance; the cost of the proposed voting systems have been documented and it is obvious that electronic voting will cost significantly more to our taxpayers than the paper ballot optical scan voting.

While some electronic voting machine vendors have claimed that there are exorbitant costs for paper ballots, the research has proven this not to be the case. We've called states that have optical scan. And I think about a third of our

precincts around the country have optical scan.

Electronic voting will cost millions more dollars and the need to update the machines periodically will increase costs even more.

In conclusion, I would just like to reiterate that the New York State Board of Elections must certify optical scan voting machines so that county boards of elections' commissioners have the option to choose the paper ballot optical scan voting machine.

Thank you very much.

EXEC. DIR. ZALEN: Thank you, Assemblywoman Galef very much. I appreciate your remarks.

Next we have Dutchess County Legislator Joel Tyner.

Legislator Tyner.

LEGISLATOR TYNER: Thank you for holding this and for allowing me to speak.

This is -- and I'm just a little tiny legislator representing two towns in northern Dutchess County, but anybody who has been reading the Poughkeepsie Journal and the other newspapers in Dutchess County for the last year or so is probably well aware that this is an issue of tremendous concern to a lot of people in Rhinebeck and Clinton in Dutchess County.

I want to salute Vincent Tamagna who is

here today and the unanimous resolution that was passed in the Putnam County Legislature as well as the resolutions passed in Schoharie and Schyler and Tompkins Counties for paper ballot optical scan voting machines, and the towns of Greenburgh, Hastings and Lebanon as well.

I wanted to echo very strongly the words of Assemblywoman Galef and the work of the League of Women Voters, the Sierra Club, the Public Employees Federation, Citizen Action of New York, editorials that have been written, strong ones, by The New York Times, The Daily News, The Syracuse Post Standard, The Elmira Star Gazette, New Yorkers for Verified Voting, of course. They've all come out very strongly for paper ballot optical scan voting machines.

I would think at least the election commissioners in Dutchess County and across the State would be allowed the option to chose them and that you would, you know, certify at least one or two machines so that the election commissioners on the county level would have that option across the State.

Paper ballot optical scan voting machines are extremely easy to use. Anybody who has ever filled out a Lotto ticket or taken a standardized test is familiar with the technology: just fill in the little bubbles.

I learned last fall, thanks to the great Vicky

Perry just behind me, that the Dutchess County Board of Elections actually has a paper ballot optical scan voting machine. NCS Pearson OpScan 6 counted more than 8,000 affidavit, absentee and emergency paper optical scan votes during the last presidential election in Dutchess County.

It works just fine. People say, you know, don't use Version 1.0 or 2.0 of the technology. This technology has been around for twenty years. I think that's what we should go with.

The truth is that touchscreen DRE, Direct Recording Electronic, voting machines have a horrible track record, a horrible track record in California, in Florida, in Georgia, Hawaii, Indiana, in Maryland, in North Carolina, in Pennsylvania and in Texas. And I'll briefly try to cite fourteen of those examples. I'm sure that that's the tip of the iceberg.

The touchscreen machines are especially inaccurate compared to the paper ballot optical scan machines that almost half of the counties across the country use right now, that have been around for twenty years.

As Assemblywoman Galef pointed out, they are about twice as expensive as a paper ballot optical scan machine, take up much more space, and are quite prone to hacking. And anybody who has done a little research into this is probably well aware that high school and college students across the country have hacked into touchscreen machines.

I also wanted to cite -- there was a recent Government - I think it changed names - Government Accountability Office or the GAO Report that came out late last year citing tremendous problems with touchscreen machines across the country.

People may not be aware of this but recently in Boone County, Indiana, there's only 19,000 people registered to vote in Boone County. It's kind of curious how 144,000 votes were cast. That didn't happen on a paper ballot optical scan machine. That happened on a touchscreen.

The Supervisor of Elections in Miami-Dade County has recommended scrapping \$24.5 million worth of tax dollars that were spent on touchscreen machines, the iVotronic touchscreen machines. They were installed four years ago and last year, again, the Supervisor of Elections recommended scrapping them. They are citing chronic glitches, system failures, operational cost overruns with DRE machines resulting in thousands of lost and uncounted votes.

Alameda County, California, I believe that may be the largest county in the country; 173 encoders used to activate touchscreen machines. Out of those 173 encoders, 158 of them failed. That was not on a paper ballot optical scan machine. That was on the touchscreen machines.

In California, in Maryland, in Georgia and

Hawaii, voters received the wrong ballot type or an incomplete ballot on touchscreen machines but did not find out that this had happened until after they started voting. In some of these cases voters have been partially disenfranchised as they have been denied the opportunity to vote on races for which they were entitled to vote.

And, again, if somebody can point out to us, you know, that these same problems have occurred with paper ballot optical scan machines, that's fine. But there is no -- as Assemblywoman Sandy Galef pointed out, there is no great citizens movement calling for touchscreen machines. There is a great citizens movement burgeoning more and more calling for the same solution of the paper ballot optical scan machines.

In Orange County, California, 7,000 people were given bad ballots on touchscreen machines. In twenty-one precincts where the problem was most acute, there were more ballots cast than registered voters. An estimated 1500 people cast the wrong ballots and more than 5000 people had their ballots tabulated for the wrong precincts on touchscreen machines, not on paper ballot optical scan.

In San Diego County, California, in March of 2004, out of more than a thousand polling places, a little over half, 573 of 1038 polling places failed to open on time. Why? Because the Diebold touchscreen machines malfunctioned in March of

2004. Not paper ballot optical scan, but touchscreens.

In Mercer County, Pennsylvania, there was an undercount of 7.8 percent for the presidential election in 2004 on touchscreen machines - that's four times higher than 2000 when they used the lever machines - 51 presidential votes for 289 voters. If there is 289 voters in the county, I would like to see 289 votes cast, not just 51 votes cast. Machines in thirteen of those precincts erased some of the voters' choices on touchscreen machines, not on paper ballot optical scan machines.

In Hawaii, 4000 voters were undercounted in the September 2004 primary on touchscreen machines. Machines mistakenly allowed voters on Oahu and the Big Islands to select Green Party ballots even though there were no Green Party candidates.

I'm a Democrat. I voted for Ralph Nader, but if I don't want to vote for Ralph Nader, I don't want my vote to go to somebody that it shouldn't go to. Not on paper ballot optical scan, that all happened on touchscreen machines.

In Burke County, North Carolina, over ten percent of the voters were recorded as not making a choice in the presidential race on touchscreen machines. There was an undervote rate four to five times as high as nearly all the other counties in the state. Not on paper ballot, that was on the touchscreens.

In Carteret County, North Carolina, 7000 people's votes completely wiped out on the touchscreen machines.

In Franklin County, Indiana, 600 straight-ticket Democratic votes on touchscreen machines went to Libertarian candidates instead.

Kind of curious.

In Gahanna, Ohio, President Bush was temporarily awarded more than 3800 votes, more votes on touchscreen machines than he received in a precinct with only 638 voters casting ballots. It doesn't seem to make sense to me.

In Mahoning County, Ohio, twenty to thirty voting machines switched votes to the opponent on the touchscreen machines.

And in Maryland, three counties did not have a Senate race on the ballot on the touchscreen machines.

If anybody has provided a list of the same amount of problems with the paper ballot optical scan machines, I haven't seen it, and Vicky Perry and other people have done their mightiest to educate me on this issue.

So, again, I would ask at the very least to allow the elections commissioners in Putnam and Westchester and Rockland and Dutchess and all over the State to at least have the choice to choose paper ballot optical scan machines.

I'll also just add a couple of brief things.

I don't know if you're aware of this, but I believe there is a company named Automark that has recently introduced a voting machine in New York State that is compliant with the full-face ballot requirement and with a ballot-marking device. That's a paper ballot optical scan machine. And I'm asking that you please certify that machine or another paper ballot optical scan machine.

I will say this. With all due respect, please don't take this the wrong way, but I, along with the League of Women Voters and Common Cause and NYPIRG and other groups, New Yorkers for Verified Voting, are very highly disturbed to learn about a month ago that, even though Republicans and Democrats had agreed that there should be a verified voter paper trail for every single vote cast, apparently the New York State Board of Elections started testing a Liberty DRE machine that did not even have a voter verified paper ballot.

And so a lot of us in Dutchess County and across the State are kind of scratching our heads because I thought we had kind of leaped this hurdle about a year ago where at least the Assembly and the Senate agreed that there would be a voter verified paper trail, and then we read - and it was kind of buried unfortunately in some of the media - but we read that the New York State Board of Elections has started testing a machine that doesn't even have a voter verified paper ballot. Highly

disconcerting.

I would just add a couple other comments, that this company that submitted that machine that apparently you folks started testing, the Liberty company, over in Ireland there's tens of millions of dollars worth of those same machines sitting in mothballs apparently because Ireland scrapped that.

I think Assemblywoman Galef referred to the tremendous amount of savings potentially to taxpayers across the State and on the county level on this. And I would hope that we don't see the headlines in Dutchess County and New York State that we've seen all across the country about what happens when we waste too much money on the touchscreen machines.

I would just, in conclusion, add that I'm just a little county legislator, but you have no idea how livid people are in Rhinebeck and Clinton. You have an amazing amount of concern on this issue for me, just a little county legislator, to lobby you folks on this.

I just wrote down five adverbs here - extremely, gravely, seriously, unbelievably and incredibly - the magnitude or preponderance of concern. I'm trying to make light of it, but you just have no clue.

There's a woman who lives in Rhinebeck who literally shut down the Dutchess County Legislature because she's so upset on this issue.

So I just ask you at the very least to certify a paper ballot optical scan machine and at least allow the elections commissioners across the State the choice to choose the right machine.

I would prefer the paper ballot optical scanners across the State obviously, but at least certify that machine, please, or a machine, a paper ballot optical scan, and give us a choice.

Thank you for your patience.

EXEC. DIR. ZALEN: Thank you, Legislator Tyner.

I would ask that --

(Applause.)

EXEC. DIR. ZALEN: I would ask that, if at all possible, speakers keep their remarks to ten minutes if on the agenda.

I have noted that -- by the way, Legislator Tyner, at least three or four times you said you're just a little legislator. But I think you're taller than me.

(Laughter.)

EXEC. DIR. ZALEN: I did notice in the audience an elections commissioner for Rockland County, Ann Marie Kelly. If you would like to stand or raise your hand.

And I'd ask that if there are.

MS. ANN MARIE KELLY: My counterpart, Joan Silvestri, is also here.

EXEC. DIR. ZALEN: Is Joan --

MS. ANN MARIE KELLY: Yes.

EXEC. DIR. ZALEN: Joan, you're there.

And Joan Silvestri, as Ann Marie said, a Rockland County Commissioner.

Are there any other commissioners or election officials from other counties that I might have missed in the audience?

(No response.)

EXEC. DIR. ZALEN: Let me make just a mention of something that was alluded to by Legislator Tynen, our alleged testing of a machine without a paper trail.

We've actually addressed this in each of our public hearings so far as well as in an Assembly hearing in trying to clear this up.

Nothing has been tested. Nothing will be tested until we receive machines asking to be certified, and only then will we test.

We have ever intention of insisting that the law be followed. The Legislator mentioned in particular a paper trail in order to be certified. Obviously, any machine will have a paper trail.

It is our hope to certify all machines that comply with the statute. That certainly is our hope. We will see when we get the first machines to be certified.

Now, Putnam County Legislator Vincent Tamagna.

Legislator Tamagna.

LEGISLATOR VINCENT TAMAGNA: Again, welcome to Putnam County.

And thank you very much for holding the hearing here.

I want to thank Assemblywoman Galef especially for the amount of information that she has provided to our community on this issue.

And I entered it around the time that Alaska and New York State were the last two to act on HAVA and knew at the time we were behind the eight ball.

So let me start out by saying it is to me an anomaly that we sit here and we ask for a choice when it comes to voting. We are asking you to allow us to make the choice within our counties as to whether we want to have an optical scan or a DRE machine.

My background comes from technology. I work in rollout of software, both software development and actually putting software on desktops for Smith Barney through a consulting

firm and worked through the Governor's Task Force on Y2K.

I am a little nervous over going with a DRE. First of all, safety and security is first and foremost. When I take a look at all of the possibilities and all of the things that might happen in any case - and I'm sure you've heard them all, I won't go into each - but it's a concern.

The one thing that every voter in this country should be allowed is the opportunity for a secure vote and knowing that our vote counts.

When we take a look at the verifiable ballot issue, there is basically once you vote on a DRE, unless you in your wisdom find a way to allow once you walk away from the machine some kind of a source where it can be recounted, I think that that makes people uncomfortable.

The age of technology is upon us and has been for some time. Please, remember, that we do have an aging population that is not used to it, people who become very nervous, very tense, people who might decide not to vote over the stress of the situation.

Many of our babyboomers are in that situation. We didn't grow up with GameBoy. We didn't grow up with the technology that's there. We were given a No. 2 pencil and we were told us to go at it and that was technology when we took a standardized test. That's what people are used to.

And I'm afraid that, absent optical scan, we are going to be losing votes. We are going to be losing those people who might not be comfortable with getting out.

And also with the uncomfortableness, even today - and I have been involved in write-in campaigns and have successfully won that. By taking a pencil into a booth it's something new for people even though it's old and writing your name in on the ballot created a lot of stress and long lines.

Again, the optical scan has a built-in solution to that. People can at their leisure look at a ballot, they can read a referendum, they can do what they need to do at their time, at their pace, and feel comfortable about it.

And so, you know, we bring ourselves to, again, please allow us to have the choice.

The other thing that I did - and this, again, going back to my personal experience with DRE, there is almost a built-in planned obsolescence. Very often the age of computers, by the time you get through beta and you have your version out, it becomes obsolete within three years.

The Federal government has given a one-time shot, each of the counties, and has given us money to go out to buy machines and to do what we need to do within our counties.

In three or four years the taxpayers of New

York State, certainly the nation, are certainly not going to be able to afford multi-millions of dollars in order to go out and buy the next new version or the new and improved DRE.

And I am also gravely concerned for the cost. I ask you to consider that.

I also ask you to consider one thing that has not been brought up. And while we are all concerned for each of our individual counties and that we are allowed the choice, I ask you as well to look for a standardization across New York State. I don't know why we are allowing counties to make a decision. I would say the best option would be optical scan probably across the entire State.

Very often people will move from New York City to Westchester County and from Westchester County to Dutchess, Rockland, Columbia, Greene Counties, and each time we move it's a new way of voting for the voter. We're one union, we're one state. And why don't we have one machine and one way of voting? That's a question.

I, again, think that you're probably best making the decision rather than allowing the decision to be made. No offense to our election commissioners because certainly, again, I want to say they have taken the heat and the brunt of what you see and what we hear from a public view.

And they are, again - and I've visited with

them many times on this issue - waiting and waiting for what your decisions are before they can even make a move.

Again, for us to have a safe, secure, accountable, verifiable system for voting is essential for the voters of New York State. And I plead with you to please allow optical scan as a choice so that when we go, that we can choose something that we can be comfortable with in Putnam County.

Thank you.

EXEC. DIR. ZALEN: Thank you, Legislator Tamagna.

At this time I would like to introduce my counterpart, Executive Director Peter Kosinski.

EXEC. DIR. KOSINSKI: And who would like to apologize for being late. I'm sorry. I was involved in an accident situation. I didn't, but -- anyway. I apologize. But I am here and thank you.

EXEC. DIR. ZALEN: At this time we have four council people from the Town of Philipstown, two that are listed on the schedule and two that are not.

Do the four of you wish to come up individually or separately? And I'll let you make that choice. If I see one up here, that one would be David Brower. If I see four of you, I'll know you came up together.

Councilman Brower.

COUNCILMAN DAVID BROWER:

Individually.

A VOICE: And separately.

EXEC. DIR. ZALEN: Well, in that case,
David Brower, Councilman.

COUNCILMAN DAVID BROWER: I believe
there's only three of us here.

EXEC. DIR. ZALEN: Three of you. Okay.

COUNCILMAN DAVID BROWER: Good
morning.

EXEC. DIR. KOSINSKI: Good morning.

COUNCILMAN DAVID BROWER: In order
to move the proceedings along, I would just like to read this
statement that I am entering into the record.

I've had the privilege of voting in New York
State for the past thirty-eight years. During this time I have always
used the level type voting machine. When I was eighteen, these
machines were state-of-the-art. Now, like myself, the machines are
aging, and I believe there is a need for the modernization of our
system.

In December of 2005, there was a public
forum held in Philipstown. People from local communities came to
hear about the new types of voting machines that were being
considered for selection by your Board.

We were told that there were two machines that are being manufactured for use in voting. One is a DRE and the other is an optical scanner.

After a lengthy discussion of the pros and cons of the two machines, the majority of the people felt that the optical scanner machine was the best choice of the two.

This brings me to the role that you, the New York State Board of Elections, have in this process. You can certify either one or both of the machines that are being made available.

As an elected official, I implore you to find and certify any and all machines that meet the requirements of New York State law. If a company manufactures more than one type of machine, have them present both for certification, or don't do business with them.

It is up to you to see that the people of New York State are given the legitimate choices that we are entitled to.

Thank you.

EXEC. DIR. ZALEN: Thank you,
Councilman Brower.

EXEC. DIR. KOSINSKI: Thank you.

EXEC. DIR. ZALEN: Councilwoman Betty
Budney, Town of Philipstown.

COUNCILWOMAN BETTY BUDNEY: Dear
Chairs, Commissioners, Directors and officials of the State Board

of Elections:

People do not like change, especially when our lever way of voting has been a success. Under the Federal Help America Vote Act, there is a mandate to change our system so we must now choose another way to vote.

Many citizens in our community, Philipstown in Putnam County, feel that the paper ballot/optical scanner is by far the best choice. They have been used successfully in other states for a number of years.

We, the voters, would be marking a paper ballot which is then scanned by optical scanners. If there is ever a question about the election or the need for a recount, you would have the paper ballot backup that the voters themselves have marked.

Serving as Councilwoman in the Town of Philipstown for the last seventeen years has given me the opportunity to listen to our residents and get a sense of how they feel about this issue. I believe that the paper ballot optical scanner is the choice of a majority of our concerned voters.

Please take these comments into consideration when making your decision.

And thank you for holding the hearing here in Putnam County today.

EXEC. DIR. ZALEN: Well, you are certainly

welcome. Thank you for speaking.

Councilman Richard Shea.

COUNCILMAN RICHARD SHEA: I'm
Richard Shea. I'm a Councilman for the Town of Philipstown.

I'm also a patriot and I love my country.
That's why I want to thank our elected officials, county election
commissioners, and the State Election Board Members, for giving
me this opportunity to speak regarding this most important issue.

Your diligence and efforts in ensuring the
right to vote and have that vote be counted are commendable.

The right to vote is fundamental to the
democratic process. It's guaranteed by the Fifteenth Amendment
to the Constitution.

Unfortunately, the right to have that vote
counted has not been guaranteed. We place our faith and
confidence in the people we elect and when we vote, we are
presented with a selection of candidates. You're given a choice.

But now the people who have chosen
representatives are not being offered a choice in the selection of a
new voting machine for the people of the State of New York. One
choice is no choice at all.

The people of this State deserve better than
this. And to that end the Town Board of the Town of Philipstown has
unanimously passed the following resolution.

Resolution Advocating Certification of
HAVA-Compliant Voting Machines and Related Election Law
Improvements.

WHEREAS, free and fair elections provide
the backbone of our democracy; and

WHEREAS, public confidence in the
election system is crucial; and

WHEREAS, in October 2002, in response to
the election debacle in Florida, Congress passed the Help
America Vote Act to help states improve the voting process and
make voting accessible to people with disabilities; and

WHEREAS, New York State is in the
process of adopting the provisions of HAVA; and

WHEREAS, as it considers voting issues
related to HAVA, the State Legislature should use the opportunity
to preserve and protect our democracy; and

WHEREAS, existing lever machines,
properly maintained, and paper ballots counted by hand or on
precinct-counter optical scanners are reliable, user-friendly and
cost-effective voting systems, which can be supplemented with
adaptive ballot marking devices that render these systems usable
by people with disabilities;

NOW, THEREFORE, BE IT RESOLVED:

That the Town Board of the Town of

Philipstown urges the New York State Assembly, Senate and Governor to certify precinct-counted optical scanning machines with full-face paper ballots as the HAVA-compliant machine of choice for New York State.

RESOLVED FURTHER:

That the Town of Philipstown Town Board urges the New York State Assembly, Senate and Governor to incorporate the following in any legislation enacted by the State:

Give County Boards of Elections the choice of voting systems, including:

Lever machines and accessible ballot-marking machines for voters with disabilities;

Paper ballots and accessible ballot-marking machines and precinct-based optical scanners; and

E-voting systems with voter verified paper ballots and one hundred percent professional quality audits with one hundred percent accuracy required.

Ban all communication capability in electronic voting or vote tabulating equipment.

Ban privatization of elections, even if e-voting is used, and require funding and training for Board of Elections' staff.

Require all source code of software used for any electronic voting systems, including tabulators used with

optical scanners, be posted on the website of the State Board of Elections.

Require multi-partisan observation of all ballots after they are cast and of all vote counting.

Establish legal standards for accuracy of vote tallies.

Require public posting of all reports of election voting machine failures.

Require full disclosure to the public of initial and continuing costs of voting systems adopted, including vendor contracts for all services after purchase, training and salaries for elections staff, and estimated cost of audits, climate-controlled storage, et cetera.

Include computer experts as well as financial auditors, CPAs, or computer auditors on a Citizens Voting Machine Selection Advisory Committee.

Require election district level tabulation and public posting of each election district's results at each polling place when these pools are closed.

RESOLVED FURTHER:

That our election process be further improved by having the five percent cost not covered by Federal HAVA funds be paid by New York State rather than its individual counties so as not to create a hardship on counties with fewer local

resources and because the source of funds at the State level is more broad-based.

RESOLVED FURTHER:

That this Town Board requests that New York State's HAVA implementation plan be amended in accordance with the above-bulleted list in a timely manner so that New York State will have sufficient time to receive Federal monies and purchase appropriate equipment.

RESOLVED FURTHER:

That a copy of this resolution be sent to the President of the United States, George W. Bush, Senators Shumer and Clinton, Congresswoman Sue Kelly, Governor George Pataki, Senators Bruno, Flanagan and Leibell, State Assembly Members Silver, Wright and Galef, and Deputy Executive Director of New York State Board of Elections, Peter Kosinski.

The resolution was unanimously passed by the Town Board of the Town of Philipstown - Supervisor Massuca, Councilman Shea, Councilman Budney, Councilman Hosmer and Councilman Brower - and certified by our Town Clerk, Tina M. Merando.

I thank you for this opportunity to speak this morning.

EXEC. DIR. ZALEN: Thank you.

EXEC. DIR. KOSINSKI: Councilman, I

wonder if I could just spend a minute.

I guess - and I apologize that I wasn't here earlier and I'm not sure what exactly was said here earlier about the purpose of this particular hearing. But I guess I just want to clarify, you know, for myself and maybe for others. I don't know if you want to do this.

But, you know, in looking at the resolution that your Town Board adopted, I just want you to understand where we are in this process here for implementing new voting systems in New York State.

The State Legislature has already adopted legislation which they did this past summer, last year.

COUNCILMAN RICHARD SHEA: Right. This resolution was passed some time ago.

EXEC. DIR. KOSINSKI: Oh, I see. Okay. Well, I just wanted to make clear to everybody that, you know, that portion of New York State's implementation has already occurred in the sense that the State Legislature did adopt legislation last summer to implement HAVA in New York.

We are now in the process, as a State agency, of carrying out the directives of the State Legislature.

COUNCILMAN RICHARD SHEA: Right. Again, this resolution was probably passed a year ago.

EXEC. DIR. KOSINSKI: Okay. Well, I just wanted to make clear that a lot of these issues I think are, you know, from a past time.

COUNCILMAN RICHARD SHEA: Right.

EXEC. DIR. KOSINSKI: And that really today's hearing is an attempt to make sure that the certification process that our Board undertakes in order to implement the legislation has a full public hearing and has an opportunity for public input.

As we go through this process, we will be certifying for use in New York State specific voting machines. And the Legislature has directed that New York really has adopted two potential systems, one being the DRE electronic system and the other being the optical scan system.

And we at the State Board are prepared to certify both of those systems and then make them available to our county boards for their decision as to which one of those two systems they would adopt for the specific county.

And so, you know, while I understand some of the issues you've raised here, I just want people to understand, you know, what we are here for today. It is to get input, any specific input, on the particular regulations that we've issued as a Board for draft and public comment so that at the end of this month we can adopt final regulations and then ultimately certify the machines so

that they can be put in use in the State.

COUNCILMAN RICHARD SHEA: I

understand that.

But we would also like to add that when you hear comments from your elected officials that they've been told that New York State is a DRE state, that brings certain feelings to rise up, feeling like this decision is a foregone conclusion.

EXEC. DIR. KOSINSKI: I don't know what -- I mean you're saying public officials made statements to that effect?

COUNCILMAN RICHARD SHEA: Well, our Assemblywoman in the Assembly Chamber, as I understand it - you can correct me if I'm wrong, Sandy - that she was told by I don't know if it was a proponent or a salesman of a DRE machine that New York State is going to be a DRE state.

EXEC. DIR. KOSINSKI: I see. That was a salesman of a vendor -- is that what you are saying? -- that made that kind of a statement?

ASSEMBLYWOMAN GALEF: Just for clarification -- I spoke before.

EXEC. DIR. KOSINSKI: Yes. I'm sorry, Sandy. I missed it.

ASSEMBLYWOMAN GALEF: We had had a demonstration in Albany in the well with a company that showed

us optical scanners because we had never seen it. And by the end of the second day the lobbyists had come through and told them that they had to get rid of the machine, that they're not selling them here in New York State.

I called the vendor in whatever state it was. The vendor, the president of the company, said to me we have been told that New York State is not an optical scan state, it's a DRE state.

And I said to the vendor, the president, I said: We have not taken a position on anything in New York State - this was back in February - and how could you ever determine that unless somebody has told you that.

So I think this vendor now is hopefully in the mix and I'm very, quite pleased to hear you say that you are going to make sure that every county has both equipment to be able to choose from.

And I think that's a great statement to make to the public and hopefully it is true.

But I think you may have to do a little pushing of vendors because every time I saw an exhibit, the vendor with the optical scan, some of them would say, well, you don't want this, you don't want this, you want this, and that's the DRE.

So I think you are going to have to put a little bit of pressure on them to make sure if a company sells both, that

that company should come through with both machines to be certified by your Board so that we have the choice.

EXEC. DIR. KOSINSKI: Well, certainly you can imagine that it's our goal at the State Board to make sure that we certify as many machines as we can in order to make as many options available as we can to our county commissioners because we think that's the direction that the State Legislature would like us to take.

You know, notwithstanding statements that may or may not be made by machine vendors and/or their representatives, I certainly don't want it left that there are state officials who in any way have made any decisions or have made even representations that New York State is a particular kind of machine state.

Our job at the State Board, as we've discussed here, and I include myself, is not to decide frankly which machine is going to be used in a particular jurisdiction.

And while others may disagree with that decision, that was a decision made by the State Legislature and we respect that decision.

But we certainly see our job as making as many options available to our county officials and to our county boards of elections so that they have an opportunity to choose from those different types of machines that are out there.

And we certainly understand that there was a discussion that occurred in the State Legislature about the kinds of systems that should be available in New York and that the State Legislature indicated that they had hoped and wanted to see both DREs and optical scans available in New York.

And it's our goal, I think -- in fact, I know it's our goal to try to ensure that that option, that those options and that opportunity are made available to our counties.

So I just don't want it left that somehow decisions have been made or that, you know, public officials have shut the door on any particular system. That is not the case. We believe that we are in a position, and that our rules and regulations reflect this, to certify both types of machines in this State and to ensure that those kinds of options are available.

COUNCILMAN RICHARD SHEA: I don't think that at any point I said that any decisions have been made. And to hear you say that both machines will ultimately be certified, that certainly raises my comfort level and probably the comfort level of my constituents.

So thank you.

EXEC. DIR. KOSINSKI: Thank you for coming.

EXEC. DIR. ZALEN: Certainly, as Peter

said, and we all agree we want every machine to be certified. But it's not wholly up to us. The machines have to be certifiable as to the optical scan systems when they come in. And we'll work as well as we can to ensure that they are certified, but we have to have compliance with the appropriate law in order to certify.

And with that we will try to certify everything we possibly can that comes through the door.

Next is Nicola Coddington, Citizens for Voting Integrity.

MS. NICOLA CODDINGTON: I'm a very little trustee of the Village of Irvington.

Thank you for giving the public the opportunity to comment on your draft Voting Systems Standards. I would like to comment both on the standards and your process in developing them.

My name is Nicola Coddington. I am a member for Citizens for Voting Integrity, which I helped found after my experience as a poll watcher in the November 2004 election in Palm Beach County, Florida, where I went as a volunteer with the Election Protection Coalition.

The glitches with the Sequoia touchscreen machines that voters reported to us there led me on my return to research electronic voting machines in general. Nothing -- I repeat, nothing I have learned in the year since has calmed my fears that

there are deep, perhaps insurmountable, problems with these voting systems.

Computer scientists from top universities, such as Stanford and Johns Hopkins, have repeatedly warned about the security vulnerability they have found in electronic voting systems. In the past year increasing numbers of leading organizations have reported on the vulnerabilities and security flaws of electronic voting systems and documented hundreds of examples of their failures as well as proven examples of outright lies by the vendors.

For example, I hope you are familiar with the report that the General Accounting Office issued in October 2005. The GAO documented specific problems with electronic voting systems including flaws in system security controls, flaws in access controls, flaws in physical hardware controls and, quote, weak security management practices by voting machine vendors, unquote, emphasis mine.

It found, quote, multiple examples of actual operational failures in real elections, unquote.

In the words of Professor David Dill, Professor of Computer Science, at Stanford University, quote, the debate about electronic voting should not be about whether election fraud has occurred, is occurring or even will occur. It should be about the transparency of our elections. By transparency

I mean the ability to do independent checks on the conduct and results of the election. Ultimately, this debate is about public confidence in our democratic system, end quote.

To date, your Board has not demonstrated to me that you fully grasp or believe in the risks of electronic voting systems and their lack of transparency. This makes those of us, concerned members of the public who are paying attention, fear that you are not taking adequate steps to protect the security of our vote.

It is as though we hear scores of smoke alarms going off and hear you say: fire? what fire? We've got everything under control. Just trust us.

In order for the public to have confidence - I'm leaving out a paragraph that I had on the previously mentioned Liberty preliminary testing which you have addressed.

In order for the public to have confidence in the voting systems that are certified as a result of your actions, we need to see evidence that you fully appreciate the dangers and take them seriously.

We also need to observe that your decisionmaking process is transparent.

So my suggestions and requests regarding your process and these draft standards are:

One, take a step back. Distance yourselves

from the vendors and give evidence that you are paying serious attention to the ever-growing body of documented failures, vulnerabilities and instances of proven hacking of DREs and their implications for your decisionmaking.

Two, get the independent, non-partisan help you need from computer professionals who are not, I repeat, not affiliated with vendors or have hopes of being so or benefitting from the adoption of DREs.

I am not a computer professional and neither are most of you I believe. Some of you have acknowledged in public meetings that, in fact, that you know very little about computers. So how could you be expected to fully appreciate their risks and produce standards that guarantee their security?

Take advantage of the work that has already been done by non-partisan organizations and computer professionals who have been adding to the body of knowledge about these issues.

One resource I recommend to you is an independent organization known as ACCURATE, A Center for Correct, Usable, Reliable, Auditable and Transparent Elections. Since your new Commissioner, Mr. Kellner, is on their advisory board, I hope that the rest of you will soon be familiar with them.

Founded in part by a grant from the National Science Foundation, ACCURATE is a collaboration of leading

computer scientists from six institutions investigating design and technology issues for secure, trustworthy voting systems, as well as how public policy can better safeguard voting.

Their document, Public Comment on the 2005 Voluntary Voting System Guidelines, submitted to the United States Election Assistance Commission, September 30, 2005, is at fifty pages too long to include my testimony. But I have included a link to it in my references.

Although it was written to address the Federal standards, I suggest this document may be very useful to you if you apply its principles to your own draft Voting System Standards.

Perhaps this organization could assist you in your current task. Theirs is precisely the kind of independent, unbiased technical expertise that would add greatly to the public's confidence in your decisionmaking.

As I said, I am not a computer professional. I can't tell you how to ensure the security of the voting system we end up using. But I would feel a whole lot more confident in your results if I knew you were listening to the best brains in the business instead of to the smoothest salesman.

Three, you must write the standards and design the certification process with a built-in assumption that there will be vulnerabilities and flaws in voting systems being

submitted, and also that the vendor may not give complete and truthful information.

Blind faith is not an option here. You must build in rigorous safeguards for all voting systems.

Your current draft shows an alarming absence of safeguards for DREs and even includes shocking loopholes, such as Section 6209.6(b) to allow the vendor to waive part of the requirements if they submit their own test data.

Your standards also make no mention of the need to prohibit all communication capability in voting and tabulating equipment.

That said, there are many computer professionals who argue that in their current state-of-the-art electronic voting machines cannot be made completely secure no matter what the standards in testing.

Four, with every decision you make, remember that transparency of our elections is fundamental to public confidence in them. This means improve the transparency of your process in creating and approving the standards. Provide information. Who wrote them? Who was helping you? Will the public have the opportunity for further review or input? Involve the Citizens Advisory Committee.

In your revision of the standards improve the transparency of certification and testing of the voting systems by

specifying the involvement of the public.

Five, make sure that our elections remain in the hands of the people and their representatives, not the vendors. Don't let vendors dictate any part of the standards or testing process. The voting systems you certify should allow administration of elections and equipment by ordinary election officials and volunteer poll workers and not require vendor specialists.

Our elections must not be privatized.

The information contained in your communications gives the impression that you are listening only to vendors. When you are entrusted to protect the public's right to vote, this is like asking the fox for advice when designing a fence around the henhouse.

Six, do everything in your power to encourage, facilitate, even demand the certification of paper-based voting systems. While no system is perfect, there are many good reasons that almost every organization and individual activist has been calling for precinct-based optical scan systems.

They are less vulnerable to errors and hacking than DREs, and if a question arises, you always have the voter-completed paper ballots to count manually.

There are other benefits as well which other testimony has well documented. But my focus here is on security,

accuracy and transparency.

Your current draft Standards appear to handicap optical scan systems, require more of them than you do of DREs. This must change.

You also have the power to communicate to vendors who make both systems that you strongly desire them to submit both for certification.

I'm winding up here.

As a computer professional, Robert J. Fleisher of Groten, Massachusetts summed it up in his statement to the Joint Committee of Election Laws of the Massachusetts General Court, quote, our voting systems must be simple enough so that non-technical observers can see what is going on. They must be transparent and open enough so that, once the vote is cast in secret, the rest of the process is observable by the public and all intermediate results are open to checking by all. Our election systems must be designed so that the secret actions of a few cannot have an effect without raising suspicion.

Paper systems can be made to meet these criteria easily. Computer-based systems cannot, end quote.

In conclusion, this might be the most important task you ever do in your entire life because if we in New York State lose the right to have our vote count as cast and if the public loses confidence in our entire system of elections, nothing

else matters. We no longer have a democracy.

P.S. I am aware that as of January 10th the U.S. Department of Justice has sent a letter to New York indicating their intent to file a lawsuit against New York State due to our non-compliance with HAVA.

I suggest that one way to fast forward New York State compliance is to certify precinct-based optical scan machines, which are less vulnerable to errors and hacking than DREs and which have been used satisfactorily in a great many precincts in the United States for years.

And I've attached references to what I've referred to.

Thank you very much.

EXEC. DIR. KOSINSKI: I just have a couple of comments.

I would like to -- first, I would like to, I guess, address this perception that appears out there that the vendors were somehow involved in the drafting of the rules and regulations that our Board put out.

I'll mention to you that the two gentlemen sitting at the end of the table, who are employees of our Board, were the primary drafters of that particular document.

You know, vendors do not have input or are at the table or anything of that nature regarding, you know, the

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rules and regulations that our agency is putting out.

I mean the issue of transparency, I think we've tried very, very hard to solicit and elicit public comment. I mean this is evidence of that, that we are very interested in what the public's comments are, concerns are, issues are, regarding these rules and regulations.

And this is the fourth of our hearings that we've conducted around the State where we have solicited public comment.

In addition, these rules and regs have been up on our website since they were first drafted last month.

We have solicited comments through our e-mail, through the mail, through the telephone, whatever, you know, source or form people want to use in order to comment on these regulations.

All those comments are being carefully considered by our Board as we go through the final process, the final draft of these regulations.

I don't think it's necessarily fair to couch this process as not open and not transparent. I think it has been that. And as I say, today's hearing is evidence of that.

This comment period goes through January 23rd. We certainly welcome all those comments that come through that date.

You know, we realize that there are some time elements, however, that we do have to adhere to. I mean we can't leave the process open forever. We do have to at some point make decisions vis-a-vis these regulations and ultimately regarding the machines. But we are carefully considering these.

As it relates to the Advisory Committee, there was an Advisory Committee that was set up by the State Legislature. Those members have all been appointed. Those members have all met. Those members have all been, again, solicited. But really that's by their choice. I mean let me just say that. And we offered this to them at the time. If any member of that Committee wished to have a meeting, we would have a meeting. We have no problem with that.

Their primary role is to come in, look at voting machines as they come in for certification, provide us with specific comments on those voting machines themselves, which I think they are prepared to do at the time machines arrive at our Board for certification.

The Committee has been solicited for their comments on the rules and regulations as well.

But we did certainly and we continue to hold that offer open, that if that committee wishes to meet, we are more than willing to meet with that. We have had discussions with them individually. I know Stanley has too. You know, individual members

have called us with comments or things that they wanted to offer, which it's perfectly fine to do it that way, as well as in the context of a meeting.

So we have involved the Advisory Committee in this process and we will continue to involve the Advisory Committee in this process.

So I just wanted to address that I don't think that it's really fair to portray this agency as not being open, as not being interested.

Our Board meetings, for example, of our Commissioners are all open to the public and we have public attending.

MS. NICOLA CODDINGTON: I've been there.

EXEC. DIR. KOSINSKI: And we will welcome public attendance. We welcome public comment. And we've had that. And, again, that's a transparent system where our Commissioners meet, are available for the public, to talk to the public and hear the public's comments.

So, again, I just want to try to address some of these issues that I've heard. And, frankly, you're the only one who has articulated some of those concerns that this hasn't been an open process.

I think the evidence belies that. I think we

have been open and we will continue to be open, will continue to welcome comments. And I don't want people to feel that their comments are not being seriously taken. They are. And we welcome them.

And I totally expect that there will be changes to our rules and regulations following the comments that the public has given us. And I think you'll see some changes that reflect, you know, the comments that have been made throughout this process.

But we do welcome you and we're happy that you were able to come today.

MS. NICOLA CODDINGTON: Thank you.

EXEC. DIR. ZALEN: Thank you, Trustee Coddington.

Peter alluded to welcoming comments specifically on the rules and regulations. And our next speaker, who I recognize as having spoken to us previously in a different public hearing, is one of the relative handful who actually do that or did last time.

So with that kind of introduction, Vicky Perry, come on up.

Is this the same or different than the last time?

MS. VICKY PERRY: Different.

I had more time to peruse the document.

Just to make a quick note, that my printed remarks are a little bit longer than my verbal remarks because I won't have enough time.

EXEC. DIR. ZALEN: Well, we will read it.

MS. VICKY PERRY: Yes.

I'm Vicky Perry of Red Hook, New York, Dutchess County. I maintain an online blog at Midhudsonalliance.com, devoted to providing timely information on voting issues.

Those of us who oppose DRE voting do so because it is an inappropriate use of technology. Many of us have computer science degrees. I have a Master's degree in computer science from NYU. We are well aware of the power of technology to advance human endeavor.

But we are not naive. We connect the dots between higher profit and assurances from trade groups like the ITAA's Election Technology Council.

Technology gets in the way of accuracy by adding steps. Each additional step means more errors.

The errors from DRE voting are of a special nature. They are not uniformly distributed. DRE errors will not cancel each other out; rather, you have to assume that any error will skew the results significantly and affect the result of the

election.

A review of the draft regulations for voting machine certification reveal that:

One, standards for the verification of intent by the voter are absent;

Two, these regulations will further privatization of voting, they will give vendors inordinate power over the voter; and

Three, these regulations exhibit a clear bias against paper-based or PBOS technology.

First, the draft does not ensure verification of the voter's choice prior to recording.

With a paper ballot system the voter verifies their intent with the very act of marking the ballot. The paper ballot is a transparent record of the voter's movements to express their intention.

The DRE system is different. The final count and even a printout are not a transparent record of the voter's intentions or the voter's actions. Therefore, a DRE system must add a step, verification of printout by the voter.

A survey by Lombardo Consulting Group asked Las Vegas voters about vote verification. The exit poll surveyed 362 voters. Just fifty-nine percent of the voters used the paper ballot printout to check their votes. A dismal thirty-one

percent of the voters actually compared the entire paper ballot to the machine ballot.

Given this evidence, a new section should be added to the State regulations called "Standards for Paper Trail Verification." Therein the Board would state a reasonable standard for verification of the voter's intent. The standard would apply to every voting system that seeks certification.

This would include:

A requirement from the vendor for documentation of how a voter compared their intended vote with the paper trail;

A requirement from the testing authority for a survey of verification accomplishment either in laboratory setting or from field exit data; this survey would gather data for how many ballot positions were reviewed and for what amount of time;

An actual minimal percentage amount of voter intent verification that is within an acceptable range.

This is absolutely crucial and completely ignored in the draft. As I have testified previously, it is all well and good for a vendor to say, look, we have paper. But if few voters seriously and successfully scrutinize the print to compare it to the screen, verification is simply a pipedream.

EXEC. DIR. KOSINSKI: Vicky, can I interrupt for just a minute --

MS. VICKY PERRY: Yes.

EXEC. DIR. KOSINSKI: -- just on that issue.

Can I get it clear in my mind as to what you are suggesting? You are suggesting then, and this way I understand it, you're talking about a DRE machine here specifically.

MS. VICKY PERRY: Yes.

EXEC. DIR. KOSINSKI: And you're troubled that after I cast my vote and the printed piece of paper is created, --

MS. VICKY PERRY: Right.

EXEC. DIR. KOSINSKI: -- that the voter will not compare their votes to the piece of paper before they exit the voting machine?

MS. VICKY PERRY: That's correct.

EXEC. DIR. KOSINSKI: Okay.

So you're suggesting in your first bullet a requirement from the vendor - I'll just read it because I'm trying to understand it -- "a requirement from the vendor for documentation of how a voter compares their intended vote with the paper trail."

I'm just trying to understand.

MS. VICKY PERRY: That's right. In other words, the documentation from the vendor would say here is the

screen, here is the printout, the voter will have to scan backwards and forwards.

EXEC. DIR. KOSINSKI: How do you document that?

MS. VICKY PERRY: Perhaps there would be a diagram. Perhaps there would be a set of steps.

EXEC. DIR. KOSINSKI: I mean you're suggesting that we ensure that the voter does the actual comparison before they leave the voting booth. I'm trying --

MS. VICKY PERRY: I'm suggesting --

EXEC. DIR. KOSINSKI: -- to understand how we can or how a vendor or how the State Board --

MS. VICKY PERRY: Right.

EXEC. DIR. KOSINSKI: -- can create a machine that will ensure that that kind of human action takes place.

MS. VICKY PERRY: Your regulations are supposed to set standards for acceptability.

Now, if a vendor brings forward a machine and let's say their printout is way the heck down here - okay? - and it's in really small print, another vendor may, in fact, have the printout up here in large print where it's fairly visible.

You may have one DRE, the first case, which will not be certified by New York State because it's just too hard to do, whereas the second scenario, if the test data, if the survey

shows that voters do, in fact, perform a significant amount of verification, that machine would be acceptable.

But if you got a situation where there's a piece of paper down there and people aren't even bothering to look at it, you don't have verification.

EXEC. DIR. KOSINSKI: And you're -- I mean you're suggesting that that be accomplished by some sort of trial by some sort of --

MS. VICKY PERRY: Yes.

EXEC. DIR. KOSINSKI: -- I don't know, experiment where --

MS. VICKY PERRY: Right.

EXEC. DIR. KOSINSKI: -- you actually bring voters in, you would have them vote, you would watch how they react inside the voting booth itself, you watch to see are they verifying or aren't they.

MS. VICKY PERRY: That's right. That's right. There needs to be some kind of mathematical analysis done to prove that the system is being utilized.

When I talked to election workers and talked about, you know, having this printout, these election workers will say, well, you know, people aren't going to -- they're not going to read it. They're not going to read it.

EXEC. DIR. KOSINSKI: Yes.

MS. VICKY PERRY: People who run elections now know this.

EXEC. DIR. KOSINSKI: Well, I -- I'm just trying to understand, --

MS. VICKY PERRY: Right.

EXEC. DIR. KOSINSKI: -- you know, how you accomplish that. I mean is the alternative way to say if you provide me with a piece of paper printout on a machine that's of X size, it has 12 point print minimum, it is located at least so many degrees above the, you know, face of the ballot, that that type of -- if they met those standards, that that would satisfy us to say, well, that's enough?

We don't have to necessarily do a demonstration, but we will set standards that say as long as your print type is of such -- because you were concerned about the print type, which I think is a legitimate concern I might add. I mean if you print these out in such small type I can't read it, it's useless. So clearly I think you have to have some sort of minimum print type so that the voter can actually read it. And I think you need to set a standard of 12 point or 14 point, whatever point you come up with.

And then maybe you need to say you have to locate it in a place that's accessible to the voter. So you can't put it way down here where the voter just doesn't see it because it's way out of the way. You got to put it in a place where, yes, the voter will

see it.

If I met those kinds of standards, would that be satisfactory, or do you have to then go through this -- I mean I'm concerned maybe about this potential process where I have to go through a test, which is kind of arbitrary maybe in a sense, that I've decided that enough voters have I think verified it. I mean I don't know that for sure, but I'm going to base my decision on what I think the voter did compared to maybe what they really did, as opposed to a more objective standard.

MS. VICKY PERRY: Well, I mean actually I think a laboratory setting and a survey of people using the device that is to be certified is actually more objective and less arbitrary than just saying we want 12 point or we want it at X height because, in fact, in a survey we would be seeing the real usage of the device rather than saying, well, this type size and this height I'm pretty sure people are going to use it. To me that's less objective.

And I don't feel it's an unfair burden on our testing authorities or our vendors to ask them to go through this. We really want the votes verified. And I don't believe it's a burden to ask that or that it's a burden to ask that the regulations should establish a minimum percentage of people that will go through the step of looking at the printout.

Because otherwise we are not -- we are not getting verification and --

EXEC. DIR. KOSINSKI: Okay. I'm sorry. I didn't mean to -- I just had a question.

MS. VICKY PERRY: I think it's crucial enough that, you know, that the State should take that on as something -- a standard to set.

EXEC. DIR. KOSINSKI: I'm sorry. I don't want that to count against Vicky's time. You go ahead.

MS. VICKY PERRY: Now that you've totally thrown me off.

(Laughter.)

MS. VICKY PERRY: What was I saying?

EXEC. DIR. KOSINSKI: You had finished, I think, the first.

MS. VICKY PERRY: Okay. I'm on page three.

The second major point is the draft shows the dependance on the vendor or outside experts.

The regulations refer to "Board or its designee." This lets us know that no one within the State or County Board of Elections will be able to understand the technical aspects of the equipment.

Reality check: we are not building rockets. We are simply counting votes while maintaining voter anonymity.

There are many problems reported

regarding these supposed "independent" testing authorities who would be the designee. The recent GAO Report lists problems with ITAs. I'm quoting: Security experts and some election officials have expressed concerns that tests currently performed by ITAs and state and local election officials do not adequately assess electronic voting systems' security and reliability. These concerns are amplified by what some perceive as a lack of transparency in the testing process.

And VoteTrustUSA sent over 15,000 e-mails to the EAC along with 1800 letters demanding that the ITAs be made to do their job.

The most telling and disturbing indication that our vote will be privatized is found in the very key Section 6209.6 Examination Criteria. Examination Criteria are or should be the meat and potatoes of the regulations, outlining what tests the voting equipment has to pass in order to be certified.

This is the bulk of the regulations, nine full pages.

The structure is: three pages for test criteria, seven pages for documentation. So it looks like we are long on vendor literature and short on any standards to protect the voter.

What this boils down to is the Board is making darn sure that the vendor hands over a lot of

documentation creating a veritable fortress of text. But security tests that should be fencing out well-known errors and malfeasances are not to be found. Security is as weak as its weakest point. And the weak point is Examination Criteria.

Part one of Examination Criteria is Software and Hardware Qualification Tests, which starts off with this: "Qualification of voting system software and hardware shall consist of a series of tests, code analyses, and inspection tests performed at the federal level."

This suggests that the state is looking to the federal level for some sense of how to ensure security. Who specifically are we referring to at the federal level? Does this mean the federal Election Assistance Commission?

The state doesn't have the technical expertise to run election voting so let's hope the EAC has the expertise. But wait. Didn't the GAO Report just urge improvements at the EAC such as working with appropriate technical experts to improve voting system standards? So the EAC needs to find some technical experts so that New York can get up to speed on what the DRE vendors want to sell.

I'll say it again: inappropriate use of technology.

Under A. Functional Configuration Audit, we read: "Vendor test data may be used in partial fulfillment of"

qualification tests. Why should we ever want to do this? Vendor-supplied data must be prohibited from use in certification. We should not, as the draft states "validate, on a sampling basis, the vendor's test data reports."

The regulations should stipulate a set of New York State tests, not vendor tests. The point is still that the draft shows a dependence on outside experts leading to more privatizing of the vote.

The draft goes on: "the State Board or its designee shall perform or supervise the performance of additional tests, or order additional laboratory testing, to verify nominal system performance in all operating modes and to validate, on a sampling basis, the vendor's test data reports."

Again, state tests should not be in addition to vendor tests. State tests should be the only specific standards in the regulations. The state tests need to be comprehensive and detailed in these regulations.

New York voting machines much pass the hacker test. This is the most crucial yet weakest part of the draft. This text needs to be expanded ten-fold.

We should find here standards for:

Security testing of the code; and

Volume testing of the entire system.

Under B. Physical Configuration Audit, I

object to the State's unwillingness to require open source code. Disclosure of source code is crucial. It allows any interested party to examine the software and find bugs, which can then be corrected and improve security.

Disclosure increases public confidence in the voting process. We would be certain that fairness is built into the code. Secrecy has nothing to do with security.

In Carteret County, North Carolina, more than 4500 electronic votes were lost in a DRE election. North Carolina since passed a law requiring e-voting machine vendors to make their source code available for scrutiny by officials and experts.

The Qualification Tests section ends with an inexcusably short section, Functional Tests, where we read -- where we would expect to see written testing procedures. Here we read: "functional tests should consist of validation of equipment functional performance by means of procedures under Laboratory Environmental Test Procedures for Hardware and Software."

I could not find "Laboratory Environmental Test Procedures for Hardware and Software" explained in the draft. It is only referenced, never defined.

The large remainder of Examination Criteria is the seven pages titled Software, Hardware, Operating and Support Documentation, meaning vendor documentation.

It is largely comprised of Software Specification, which runs four pages, and several shorter subsections. Here we find the vendor defining the entire testing arena: "The vendor shall provide a specification for verification and validation of overall software performance, ..., exceptional handling and security. The specification shall identify specific procedures by means of which the general suitability of the software for elections use can be assessed and demonstrated."

I'm still quoting: "The vendor's specification and procedure shall be used to establish the detailed requirements of the tests described in 'Laboratory Environmental Test Procedures for Hardware and Software' of this Standard."

Let me point out again, I did not find "Laboratory Environmental Test Procedures for Hardware and Software" defined, only referenced. But, clearly, the vendor's documentation is regarded in this section as the starting point to define testing.

I cannot describe my shock on realizing that the only mention of security is found in the vendor Documentation section. The draft says the vendor will supply the state with, quote, a detailed description of the penetration analysis performed to preclude intrusion by unauthorized persons and fraudulent manipulation, unquote.

Can there be any more clear indication that

the State Board is overwhelmed by the task of trying to make a DRE hack-free?

I'll just go on because I'm running out of time here.

The third major point, the draft shows the bias against paper-based solutions.

Section Polling Place Voting System Requirements should present general, all-inclusive requirements. But it is two full pages of bias against PBOS.

Either one section should address requirements for both PBOS and DRE or two sections should treat the technologies with equal rigor. This section was written to refer solely to DRE systems.

For example, this phrase, "Provide a device which produces and retains a voter-verifiable permanent paper record," surely cannot relate to paper ballot voter. With paper ballots, the device, which produces the paper record, is the human voter.

Similarly, this text, "provide a device or means by which the votes cast on the machine can be printed or recorded or visually reviewed after the polls are closed" can only refer to DREs. Why would we want to print a copy of the paper ballot hand-marked by the voter?

Section 6209.3 Paper-based Voting

Systems is longer than the previous Polling Place Voting System Requirements.

The PBOS section details numerous criteria that should apply to all systems. In here we find this tortuously-worded subsection: "G. The system shall provide a means by which the software may be positively verified to insure that it corresponds to the format of the ballot face." This requirement for paper systems is not required for DREs.

The same complaint can be made for subsections H and I. Most significantly, the paper-based section has this requirement: "The system shall provide an audit trail of all ballots cast, making possible the reconstruction of the election, starting with the individual votes of all eligible voters, in the case of a recount."

Well, this is great and laudable. Let this be a requirement of all the systems.

Finally, a Routine Maintenance Test reveals a huge disparity between the rigors that PBOS must achieve as opposed to those for DREs.

A DRE periodic test, quote, shall be entered upon the maintenance log for each such piece of equipment. This log is certified by the county board and the State reviews the log.

Then, quote, The State Board may, upon review of the maintenance logs, require further testing of any such

piece of equipment or may, for sufficient cause, remove a piece of equipment from use in an election until further examination and testing has been completed, unquote.

Now, compare this level of testing with what is spelled out for PBOS: Not more than twenty days before the election, the county board runs test decks and, quote, if the system does not accurately count the test deck, the cause for the error or errors shall be ascertained and corrected and an errorless count shall be made before the system is approved for use in the count of actual ballots, unquote.

So, PBOS, errorless; DRE, make a note of it. This is not very even-handed.

I'm almost done.

The rush to implement HAVA has become a rush to privatize voting.

The Department of Justice has decided to take action against the State of New York for non-compliance to the Help America Vote Act. What is the rush to implement a law that has largely caused havoc and created a major loss of confidence in voting? Should not the federal lawmakers, like Congressman Bob Ney, be looking at the serious flaws in HAVA and implementing reforms put forth by Congressman Rush Holt?

While some decry the delay to change New York voting machines, I point out that we have spared ourselves

some pain and expense. In other states, voters are facing their third balloting system in five years. In order to comply with the HAVA requirements, Boulder, Colorado will pursue the option of renting qualifying equipment in time for the 2006 primary and general elections.

So New York may find itself in the enviable position of avoiding others' mistakes. But I urge New York lawmakers to take note and avoid the biggest mistake made by other states: ignoring the public.

These regulations need to be reworked. A close reading of the draft shows that the public, once again, is on the sidelines.

The word "vendor" appears eighty-five times in these regulations. The word "voter" appears only fifteen times.

I thank you for your time and attention during these hearings.

(Applause.)

MS. VICKY PERRY: I would also like to present this Freedom of Information Request for any material that the Board has gotten, testimony or submittal, that has been from a private citizen in favor of DRE, Electronic Voting.

EXEC. DIR. KOSINSKI: We are going to take five minutes. Our reporter would like a few minutes and maybe everybody would.

We will reconvene in five minutes.

(At 12:20 o'clock p.m. there was a recess in the proceedings.)

(At 12:35 o'clock p.m. the proceedings were resumed.)

EXEC. DIR. ZALEN: Could we reconvene, please. It's a very long five minutes.

EXEC. DIR. KOSINSKI: Our next speaker is Phil Heffernan from the Village of Cold Spring.

Can I just remind everybody, just again, I was asked to remind you, can we try to keep the comments to ten minutes. We have quite a few speakers today and we are trying to move forward. And it was my fault that we went on with the last speaker. It was not her fault, it was my fault.

But at the same time we do have a lot. So if we could keep to ten minutes, that would be very helpful.

MR. PHIL HEFFERNAN: My name is Phil Heffernan, Trustee of the Village of Cold Spring.

I'm not here in an official capacity. However, we will be passing a resolution on this issue and submit it by the 23rd.

My comments really are based on the fact that I am pretty mystified over the fact that my perception is that DREs are frontrunning candidates for electronic voting here in the

State of New York.

Unfortunately, the 800 pound gorilla in the room is that no one believes that computers are secure. No one believes computer vendors when they say that computers are secure.

This is a widespread perception throughout the United States and the world as we see examples of invasive practices among computers again and again and again and again.

We are in a situation where we are taking a major tact in the democratic process in the United States. To my way of thinking the simplest solution quite often is the most correct. And staying way behind the bleeding edge of computer technology seems to be the proper course for us to take.

I also encourage consideration of Mr. Tamagna's comments regarding a universal voting system here in the State of New York for a number of reasons, not the least of which is we are always constantly moving around, many of us are, and to make the relearning of voting procedures from one county to another very problematic.

So, once again, I would like to emphasize that I do not think that DREs should even be certified. If one can make the allegation that you could create a secure computer-based vote recording device, you would be the first people to have done so.

And the widespread perception that this cannot be done would weaken the democratic process here in New York State.

So I would like to go on record myself personally as encouraging only certification of optical scan recorders so that we may maintain a lower tech approach to this major change in democratic procedure.

Thank you very much.

EXEC. DIR. KOSINSKI: Thank you.

I just wanted to make a couple of quick comments and I don't mean to take up too much time here.

But let me just -- I just want to address a couple of issues.

MR. PHIL HEFFERNAN: Sure.

EXEC. DIR. KOSINSKI: Primarily about the computer issue, I guess.

You should understand that, and we're aware certainly, that there is this concern out there about the security of computerized voting systems. I mean obviously we've heard it. It's not just based in New York State. This is not a, you know, New York only. This is a nationwide issue. This issue has risen in a big way since the adoption of HAVA three years ago.

MR. PHIL HEFFERNAN: Right.

EXEC. DIR. KOSINSKI: And I think it has

taken, you know, a lot of discussion about HAVA. It certainly absorbed a lot of discussion about HAVA and appropriately so.

You should understand that this issue was a big issue I think when the State Legislature adopted their legislation last year for voting systems in New York.

And that the systems we're looking at, and I think people should understand that both the optical scan and the DREs frankly are computerized voting systems. They're both computerized.

So whatever voting system we get into, once we get passed the level machines, is going to be a computerized system.

Now the issue then is security and verifiability and people feeling comfortable that their votes are being counted. And we're concerned about that too. Obviously, people's perception that the voting system is secure is very, very important. And we know we need to satisfy that.

And that's why I was asking the question of the previous speaker about the verifiable receipt, because I think the way the law envisions it working in New York is that whatever system goes into play, whatever system is chosen by a county in New York State will have a paper backup. There will not be a system in this state that, for example, votes will only be executed on the computerized system.

Whether you pick a DRE computerized system or you pick an optical scan computerized system, either one or both of those will have a paper backup.

Now, the optical scan offers a piece of paper that you mark and insert into that computer for it to be read and then there is a paper backup of that particular ballot.

The DRE produces a paper, piece of paper, for backup so that once you've finished voting, that piece of paper is printed out as we discussed earlier.

So I mean the concern I had, which was raised earlier, was to be sure that in the DRE situation the voter had the verifiable component as a real component so that as the piece of paper is printed out, that the voter does, in fact, verify that because ultimately it may come to a point where those pieces of paper become the final ballot.

And I think there is an anticipation that if there are challenges being mounted in court in this state to an election, that ultimately that may be the way the election is resolved.

And so the way that the State has chosen really to address the security issue beyond the testing of the machine, which is clearly the first element of security that needs to be dealt with, and we need to do that as part of our testing process, but ultimately there will be a piece of paper created,

whichever system is chosen.

I think people need to understand that, that it's not just the one system that produces paper. It's both systems.

MR. PHIL HEFFERNAN: No, I'm aware of that.

And that is very true and they are both computer-based systems.

However, the actual voting, the recording of a vote, with the optical scan is done by me, and the actual paper trail is, in fact, that marked computer card. There is no opportunity for software to be an intermediary and create something that I, in fact, did not do myself.

I think that's rather crucial in the whole affair.

Also, I would like to point out that we all have experiences with computer-based systems. We all have found out in our own personal lives that computers are extremely expensive to maintain as such. However, my optical scanner I have been using for almost twenty years, the same one I purchased twenty years ago.

I can't say that for my computers. They're replaced every five years.

So this, the DRE situation, the computer maintenance required, the technical assistance being in the hands of vendors are all big red flags as far as the community is

concerned in my conversations with my community.

And a major underpinning of the democratic process is trust and we have got to convey to the public that this is a change that we are making and it can be trusted.

And the further beyond actual physical objects that we use, I've always loved the little lever machine because it prevents me from voting twice, it's easy to understand, and it's a shame to see it go. It really is. Anybody can fix it.

Now we are moving into a very high tech arena that is wrought with danger, quite honestly. And so, as I say, the opinion of all of the people that I have spoken with in my community express shock that a computer-based - I shouldn't say computer-based - that a computer recording of your vote is the underpinning of it, namely, the DREs. They find this astounding.

And so, once again, I go back to my original point. I'll close by saying I don't think we should certify them at all and we should certify the optical-based scanning for voting in America and in New York State.

EXEC. DIR. KOSINSKI: Thank you very much.

(Applause.)

EXEC. DIR. KOSINSKI: Our next speaker is Margaret Yonco-Haines.

MS. MARGARET YONCO-HAINES: Good

afternoon, Commissioners and Staff of the New York State Board of Elections.

My name is Margaret Yonco-Haines. I live in Garrison, New York and I am a member and one of the original organizers of a citizens action group in Western Putnam County called Philipstown for Democracy.

Our group was formed over two years ago over a concern that we, as citizens, needed to get more involved in the political process. We realized that without active participation we would continue to see an erosion in our democracy.

One of the reasons that we in Philipstown for Democracy became active on a variety of issues affecting us and our community is that we realized that, quote, just voting, close quote, was no longer sufficient to safeguard our democracy.

Ironically, about a year ago, when we learned that electronic voting or DRE was supposedly inevitable in New York State, we also discovered that even just voting might be lost to all of us unless we became active and involved in the process.

We learned more and more about the security issues and other problems with DREs and how perilously close the people of New York were to losing any confidence that our votes would be counted and counted accurately. Our concern applies to the votes of all our fellow citizens of whatever political

viewpoint. Because if your vote isn't counted accurately, you are not voting. You are only having a voting experience.

(Laughter.)

MS. MARGARET YONCO-HAINES: And at this time I'm going to step from my prepared remarks and remind the Commissioners that when we talk about voters, we are also talking about you. You vote, your mother votes, your Aunt Sadie votes. Think about those voters when you think about these regulations.

EXEC. DIR. ZALEN: How did you know I had an Aunt Sadie?

MS. MARGARET YONCO-HAINES: I did research.

Therefore, we are very concerned that the Draft Voting Systems Standards, which I will refer to as the draft regulations, be vastly improved before putting them in final form.

I come before you a citizen representative of a larger group of concerned citizens, some of which are in the audience today, not as a voting machine or computer expert.

And if you wonder why someone with a full-time job and more than full-time responsibilities and absolutely no financial iron in this particular fire would use up a precious vacation day to come speak to the Board of Elections on this subject, then you need to do a lot of thinking about what our

democracy means and what citizenship in this democracy means.

The members of Philipstown for Democracy have spent a great deal of time on this subject because, frankly, unless our State and County elections officials understand the gravity and importance of this matter, we will not see fair and meaningful regulations nor will we see rigorous enforcement of the election law, and we might as well just all give up and go home.

The current technology for DREs, as pointed out in the GAO study that's been referenced by prior speakers, is not capable of being secure and tamper proof. However, to the extent computerized voting is an option that we must potentially face, the regulations must provide every requirement for security in order to be certified.

The very limitations of these systems require that the regulations be significantly more rigorous for DREs than for optical scanners, although the regulations for scanners, of course, need to be rigorous as well.

Because optical scanners perform one simple but important task, counting the votes, while DREs perform the entire voting function - from recording the vote to counting the vote - optical scanners provide a safer alternative on a comparative basis to DREs.

With regard specifically to the draft regulations, I will leave -- and you've already gotten

comprehensive technical comments from those with greater expertise. But I will describe generally the goals that the regulations should intend to achieve and give a few specific examples.

The two main goals that I see that the regulations in their final form must address are:

Number one, every vote accurately counted and recorded; and

Keep elections public. Don't privatize a democratic process that belongs fully to the people.

The reason for the first goal, every vote accurately counted and recorded, is self-evident, or at least it should be. Yet strangely it does not seem to be a priority in the draft regulations as issued. There are innumerable examples where the regulations fail to even attempt to achieve that goal.

The purpose of the regulations is supposed to be to establish standards for certification of any voting machine in order to protect the integrity of our vote.

The draft regulations do not accomplish that. It is conventional wisdom among computer scientists and other computer professionals, which wisdom has been ratified by the Government Accountability Office in its report on DREs issued in October 2005, that the computerized voting systems available today are not designed to be secure systems.

The draft voting regulations do not even address the safeguards required to ensure the highest degree of protection possible from these known security weaknesses. As it has been previously pointed out, the flaws that have been identified by the GAO are in the system controls, the access controls, the physical hardware controls, and the weak security management practices employed by voting machine vendors.

Next, the paper ballot-based systems are held in these regulations to a higher standard than electronic voting systems, even though the paper ballot systems have been shown in practice to be significantly more secure. Both systems should be held to high standards appropriate to the technology involved in each system.

In the regulations, Section 6209.6 - and I'm going to focus on this section because it's very important and serves a microcosm for the problems throughout the draft regs - the vendor is permitted to, in effect, test itself and give itself a passing grade. The vendors are permitted to submit their test reports on their own and the State Board of Elections is allowed to waive any part of the requirements. This not only makes no sense, it entirely guts the testing process.

The functional configuration audit does not describe a method by which it can be proven that the machines are trustworthy. There are many technical reasons for this that are

beyond my ability to comment on, but what is striking to me is that the process itself relies on vendor-supplied information rather than on independent and truly independent investigation of the voting system.

Next, so-called Independent Testing Authorities, ITAs, which was discussed previously, used by the vendors have been shown to be not independent, are not qualified for the job, and have been found not to use proper testing techniques. The State Board of Elections and only the State Board should be responsible for ensuring that every requirement of testing is met. This responsibility cannot be outsourced.

Another example from Reg 6209.6, the physical configuration audit standards provide that the vendor can make changes in functionality and documentation as long as the changes don't, quote, degrade the functional characteristics, close quote. But since the vendor is certifying this and it is not independently verified by the State, we are required to trust the vendor. The terminology used throughout this section, by the way, is undefined and unclear and as a general comment must be made more clear and precise.

The reason for my second goal, which was to keep our elections public, is that, as between the public and the private sector, it is only the public that has a vested interest in the accuracy and security of our elections.

This is because there is not a single citizen, including your Aunt Sadie, no matter which political party or inclination, who does not want to feel confident that his or her vote on Election Day will not only be counted, but will be counted for the candidate that he or she votes for. As citizens, the experience of voting is not sufficient. We actually want, demand and deserve our votes to mean something.

On the other hand, privatizing our elections, i.e., choosing DREs with propriety code and complex systems that only a trained computer expert, employee of the vendor, can maintain, puts us at the mercy of vendors who are at the end of the day only supplying a machine.

As long as the private vendor can supply a system that is not capable of being accurately audited or is not likely to be adequately audited by the State or county election officials, that private vendor has no vested interest in the accuracy and security of the election.

It is not necessary to impugn the integrity of the vendor to recognize that the vendor, by definition, is in it for the money, not for the purity of the election process. If the public is kept out of the process and the process is not one hundred percent visible to the public at every stage, then we have a broken system and we will lose public confidence and we will lose our democratic process.

The draft regulations are deficient in this regard, in part, because:

It is absolutely essential that the vendor not be able to define code as proprietary to the manufacturer. Independent public review is not provided for in the draft regulations. Independent public analysis of the documentation is not provided for. These controls are essential.

Next, the draft regulations don't provide full access to and independent review of the vendor source code.

And, finally, there is no provision that the certification tests will be open and transparent. The final regulations must require that the tests be performed in public with the results made available to the public.

In closing, I thank the New York State Board of Elections for scheduling this hearing in Putnam County. But holding the hearing is not enough.

I have followed the other hearings that have been held in Rochester, Albany and New York City. You have been provided the information you need, both through testimony and written comments, to make an informed decision about amending the draft regulations to make them work for the people of New York State.

You are receiving more input today and no doubt will receive further written comments.

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Don't just -- I heard you mention that you were hearing things. Don't just hear this evidence. Listen to this evidence and make the right decisions.

We, the citizens of New York State, will be loud in our appreciation if you do the right thing. But don't make the mistake of thinking we will be silent if you ignore the clear and hard evidence and fail to issue fair and appropriate regulations, or otherwise fail to implement the law.

Thank you.

EXEC. DIR. KOSINSKI: Thank you.

EXEC. DIR. ZALEN: Thank you.

(Applause.)

EXEC. DIR. ZALEN: Allegra Dengler, Citizens for Voting Integrity.

MS. ALLEGRA DENGLER: Yes. Hello!

Allegra Dengler. I'm also a former Trustee from the Village of Dobbs Ferry. I've been very active with -- as a Democratic District Leader, I've been involved in many elections.

So -- recounts, we've had controversial recounts down in that part of the State, the Coussins recount in Irvington, mayoral recount. So we realize how -- we've been on the ground seeing what happens on Election Day in actual elections. And we are very concerned about this -- the changes to the State law.

There is no doubt that you, as the Board of Elections, have been put in a very difficult position. The Federal HAVA regulations require that you abandon the lever machines which have worked for New York for decades.

New York State regulations require you to buy a full-faced ballot machine which the DRE manufacturers do not manufacture.

The public is screaming that they don't want to vote on touchscreen DRE machines because they don't trust them.

And the lobbyists for the touchscreen vendors are sweet-talking you that their touchscreen DREs are the sexiest, most up-to-date way for people to vote, the very iPod of voting systems.

So who are you going to listen to? What information can you trust? What do you need to do to make sure that our votes are secure?

If you look at the experience of election officials - not elected officials, but election officials around the country, you'll know that you can't rely on the vendors. They'll promise you anything, they have misled election officials around the country, and have given you misinformation.

There are five very recent examples of the problems election officials have had with vendors and there are

many more. I'm just going to go through very quickly five recent examples.

Connecticut, plug pulled on electronic voting. Connecticut electors this year will return, one more time, to the level machine. The chief election official in Connecticut, Bysiewicz said Danaher misled her office when it claimed to have Federal approval, before admitting during a crucial December 21st negotiation session that it did not. They were on the verge of signing a contract to buy these machines for Connecticut, had to cancel because Danaher lied to them.

New Mexico, there was an agreement reached on a voting machine purchase freeze.

That was January 5th. This is January 5th also.

New Mexico Secretary of State Rebecca Vigil-Giron announced on January 3rd that she will not, for now, proceed with purchase of million of dollars worth of Sequoia AVC Edge touchscreen voting machines.

She changed her plans when she was served with a motion for emergency injunctive relief.

The Edge machines fail to accommodate the disabled or meet HAVA requirements. They lacked printers to produce voter verifiable and auditable paper ballots which were required in New Mexico, do not accurately record and count votes

as required in the New Mexico Constitution.

To the contrary, the Sequoia Edge voting system has a record of losing thousands of votes, switching votes, and failing to record votes cast in Spanish.

California, this was December 23rd: errors lead California officials to warn voting machine company.

California election officials have told one of the country's largest manufacturers of voting machines to repair its software after problems with vote counts and verification surfaced during California's November special election.

The Secretary of State is deeply concerned about problems experienced by counties utilizing ES&S voting equipment and software.

Software problems included incorrect counting of turnout figures, a malfunction, et cetera, et cetera. I have it in here. Clark's letter said that on November 8th a state monitoring team experienced an alarming error on the iVotronic system in Merced County, where a voter chose one candidate but the vote was recorded for another candidate. This error is documented on videotape and demonstrates that it was not an operator error, but was rather an error in the system.

Florida, this is December 16th, "Election Officials: Some Voting Machines Could Be Hacked."

Ion Sancho, Leon County's Supervisor of

Elections, tested the Diebold system and allowed experts to manipulate the card electronically. They changed the outcome of a mock election without leaving any kind of a trail. In other words, someone could fix an election and no one would know.

"The expert that we used simply programmed it on his laptop in his hotel room," Sancho said.

Westchester, New York, here's my own experience. I testified at the Westchester County Board of Legislators. There was a hearing there. The representative from Danaher Controls demonstrated the ELECTronic 1242. He said there was, quote, no Windows, no touchscreen" and it was "electromechanical-not a computer." He gave the impression that it was much like a lever machine, counting votes mechanically, without a computer.

That is not true. Here is how Danaher describes it on their website: A total system solution. In setup and ballot preparation, a single Windows 9x/NT database produces all of your election materials, programs machines and prints ballots.

So, in conclusion, this is Danaher, this is Sequoia, this is ES&S, this is Diebold. This is in state after state. These manufacturers have failed to deliver a secure, reliable touchscreen system.

The key to moving New York to a voting system that is secure, that is reliable, that counts every vote as it is

cast is an open process which you are involved in with these hearings. But more needs to be done. The citizens have to be more involved in this process.

Forget about the DREs. Other people have said it. You feel compelled by the legislation to accept them, but they are an unproven technology. They are not ready for prime time. None are ready for New York and its full-face ballot requirement.

There is not time for the DRE manufacturers to manufacture the full-face touchscreen machines.

There's not time for you to plan, not time for you to implement training for local boards of elections, not time to train the poll workers. There's not time to educate the public.

If you feel compelled to rush a system into use for November 6, 2006, as a practical matter -- September 2006, you really only have one choice, paper ballot optical scanners. They've been used for twenty years. They're available. It doesn't take a rocket scientist to use them.

Certify the scanners. Forget about the DREs.

I thank you for your hard work to protect the sanctity of our vote which is key to a functioning democracy.

And I just have, you know, some folders here with other, as Nicky referred to it, an ever-growing body of the

experiences of other states, what happened with various voting machines, and, in particular, the General Accounting Office highlights which points out that the EAC, the Elections Assistance Commission in Washington, D.C. has not provided you, the local election officials, with adequate support, which puts an extra burden on you to protect us in New York.

Thank you.

EXEC. DIR. ZALEN: Thank you.

(Applause.)

EXEC. DIR. KOSINSKI: Our next speaker is John Hall.

(No response.)

EXEC. DIR. KOSINSKI: John's not here?

(No response.)

EXEC. DIR. KOSINSKI: Then George Klein.

MR. GEORGE KLEIN: Honorable

Commissioners and Staff:

I thank you for your patience and I thank you for serving on the Board.

And I'm very glad to hear your comments, your assurances that you gave us, Mr. Kosinski.

I apologize for any redundancy and please be aware that this was written before the hearing and I've learned a

lot at this hearing. But it ain't over, of course, until it's over.

The Sierra Club, which I'm representing, is a country-wide organization founded in 1892 and comprises over three-quarters of a million members. It is America's oldest and, I believe, most effective environmental organization.

My name is George Klein and I am the Chairman of the Sierra Club's Lower Hudson Group, covering Putnam, Westchester and Rockland Counties. I live in Westchester.

There are eleven local Sierra Club groups like the Lower Hudson Group in New York State and I am speaking on behalf of the over 40,000 Sierra Club members in the State.

In our democracy, for any group to be effective on any issues, it must have the power of the public behind it. The Sierra Club, working to protect the environment on behalf of all our families and our children, is no different. A year ago, the Sierra Club recognized the importance of making citizens' votes count and passed a formal resolution in opposition to DREs and in support of paper ballots, either hand-counted or optically-scanned by precinct.

We want citizens to be involved in public issues, to vote, and to have confidence in the voting process.

We urge you to require vendors who make both DRE and optical scanning systems to submit both types for

certification.

PBOS systems have been used in elections in the U.S. for about twenty years. So a lot of experience has been accumulated. A minimum of one-third of our nation's election districts already use PBOS and there is a lot of evidence that both election workers and voters find it much simpler to learn PBOS rather than DRE.

PBOS requires fewer machines to be purchased, which means that it is far more likely that they will be delivered in time than if we were to order DREs. It also may take longer to vote on a DRE than on a lever machine, so more DREs would be required than originally estimated.

If our State commits for PBOS, we could at least get at least the ballot assistive devices in place by September 2006 meeting the ERMA requirement, even if some scanners are delivered later and we have to use the lever machines through one more cycle.

Delaying HAVA would only give some manufacturers of DREs more time to finally develop voter verification and accessibility features on their machines. Since other companies have met the deadline for compliance, it is patently unfair to delay the whole process.

For example, to my knowledge, LibertyVote, a vendor, has made no effort to develop and exhibit a voter verified

paper trail on its DRE. And again, to my knowledge, Sequoia has no DREs waiting for Federal certification.

We ask the State Board of Elections to incorporate the many good recommendations for revision of the draft regulations that you have already received. And we ask you to communicate to county commissioners and to the public that it is time to move forward and get a reliable, transparent, secure, verifiable and accessible voting system in place before more citizens lose confidence in our electoral process.

I applaud the comments of Phil Heffernan from Cold Spring. And I just want to make a little analogy here.

Let's say at the end of the day I want to go home and I want to kiss my daughter and tell her I love her. Should I invent a whole Rube Goldberg machine to do that? That's what DREs feel like to me. Why don't I just go home and kiss my daughter and tell her I love her?

Thank you for taking the time to listen to the Sierra Club's position and for doing a good job in public service.

EXEC. DIR. KOSINSKI: Thank you.

(Applause.)

EXEC. DIR. ZALEN: We have now, just to give you an idea, all of you. We've had eight add-ons who wish to speak today still to go.

And the first of those is Paul Loewenwarter.

MR. PAUL LOEWENWARTER: My name is Paul Loewenwarter. I'm a private citizen from Croton-on-Hudson, New York in Westchester County.

Thank you very much for listening to all of us.

There are two things about voting machines that worry us all. The first is that they may not work right when we need them, and the second is that they can be made to work just fine for some election thief who wants to steal our votes.

I'd like to deal with the first problem first, that the machines may not work.

I am here today because I attended an earlier hearing about voting machine technology and came away confused and worried. Mostly what I heard that night in Garrison was a lot of hostility toward the election powers-that-be because New York State has done virtually nothing to reorganize voting in the face of the well-documented weaknesses and, yes, scandals in the voting procedures around the country.

Congress has passed a law requiring new electronic voting systems nationwide and has set a deadline of this year to have them all in place. But our legislature acts as though the Federal law and the deadline don't exist. The result is that we go into this election year not knowing which machines the legislature will pick and whether any winning machines will be deliverable on time. It's a mess.

And you see that in the pages of The New York Times this morning reporting the letter that's been referred to before here, that the Federal Justice Department has told New York State that it may go to court and sue them in order to bring us to our knees I assume. And it says along the way, in quotes, it is clear that New York is not closer to approaching full HAVA compliance and in our view, the Federal's government view, is further behind in that regard than any other state in the country.

So here we are. And I'll let you spread the blame where you wish.

One election official in another state told me that New York is the laughing stock among election officials around the country because of the way our legislature has fumbled the ball.

At that Garrison hearing, the voting machine makers never showed up to demonstrate their wares. So several experts offered their assessments of the different kinds of machines. The consensus was clearly in that audience that night that the only way to go, the only reliable kinds of machines, are the ones that use optical scanning to record the vote.

Those optical scanners ask every voter to use a pencil to mark every one of his choices on a paper ballot, much as we mark our choices on our State Lottery tickets or answer multiple-choice questions on a SAT exam.

The marked ballot is scanned into the voting

machine which records all of those choices and then the voter's ballot is whisked away into a vault in the machine and stored in case it's ever needed for a recount.

I was persuaded. The optical scanners looked to be the best, particularly when I learned that they are cheaper than the alternative technology.

But a little exploration brings out that optical scanners are not so clearly the best choice -- and this may be a minority view to you here today -- as they seemed to be that night in Garrison.

First, people, being people, do not always mark ballots properly. Their pencil marks could be too large or too small or too light or too dark.

The scanner tries to figure out whether a mark on a ballot is a voter's true choice or just an accidental smudge. Is it a mark the scanner will detect every time, only some of the time? Is it a positive mark, a false positive mark, a marginal mark? Can the scanners sort out the differences? How often do the scanning machines make mistakes?

Those are real questions to put to supporters of the optical scanners.

Some answers lie in this report which I got from the State of Virginia. Virginia leaves it up to individual counties and municipalities to choose their voting machines.

Some use the old lever machines, like ours, which are being phased out. Some Virginia districts use optical scanners and some use the newer touchscreen machines, the principal alternative to the scanners.

The touchscreens are much like some ATM or ticket-dispensing machines. The voter touches the screen at the right spot to make choices about candidates or issues.

A few Virginia districts still use paper ballots.

So with all those different technologies in use, it is an ideal state in which to measure one voting system against the others. The report is called, "Does Every Vote Count? An Analysis of Voting Systems and Rejected Votes in the 2000 Virginia Presidential Election." It was done, led by Stephen Medvitch (phonetic), Department of Political Science and Geography at Old Dominion University.

Virginia is a good indicator for New York. Like New York, it has large metropolitan areas, suburbs, rural areas.

In this study the researchers at Old Dominion examined how each kind of voting machine method worked in poorer neighborhoods and wealthy ones, where education levels were high and low, mostly white and African-American.

The objective was to learn whether those factors influenced whether one system or another worked well or not in a certain slice of society. The answer was, in short - and it's very well-documented in the report - that it made no difference where those machines were used. In virtually every kind of area the touchscreen machines had fewer failings than any of the others.

A failing, for a machine, was defined as the percentage of votes cast which were rejected by the machine for whatever reason. The study showed that the best performing system, I'm quoting, the best performing system was the touchscreen system which had an average rejection rate of .9 percent. That is slightly less than one ballot rejected by the touchscreen system out of every 100 votes cast.

Well, we all know that a lot of elections have been won and lost by less than one percent of voters with their voter choices.

The worst performing system was the optical scan system, which had an average failure rate of 3.2 percent, just over three ballots out of every one hundred which were rejected as faulty by the scanners.

One caveat here. These tests were made on voting machines used in the 2000 election. It is conceivable that some manufacturers have improved their machines since then.

Let me add a personal thought about the

touchscreen systems. A lot of people are upset that none of them have screens large enough to show all the candidates and issues at once, the so-called full-face machines. Instead, the voter must scroll down from race to race and issue to issue.

I understand that's one of the facts of life that is stymieing the voting machine issue in Albany. Legislators seem unwilling to endorse a system which far surpasses the old technology in every way but one.

My view is that - and I'm taking some technophoebia into account here - is that those of us who are fond of that one big-panel, full-face advantage of the old machines had better drop our objections and opt for a new system that is going to offer us a faster, easier and safer way to cast our ballots. We'll get used to scrolling.

This is the conclusion of the Virginia Report: "Optical systems should be avoided...and punch card systems should also be avoided. Instead," the authors of the report said, Virginia localities "should begin to adopt electronic (touch-screen) voting systems."

The report says, and it should be true in New York too: "Citizens...have a right to have their votes counted on an equal basis with one another. In order to preserve that right, and to avoid potential litigation on equal protection grounds, Virginia's voting system ought to be effective and uniform throughout the

state. Anything short of that jeopardizes one of the most sacred acts of democracy."

Strengthening that act of democracy is no easy job. A lot of effort and brainpower has to be applied here in order to make the proper decision.

Now, about the security of the voting systems.

You and I are learning every day the truth that whatever man devises, man can also turn to evil. So it is with every voting system. Nothing is foolproof and no system is safe when skill and corruption are allowed to work side by side. I accept this as true for voting systems as for virtually every other system.

So the security issue for me is how many layers of protection are built into any vote-collection method.

That led me to a well-respected keeper of the ballots in Fairfax City, Virginia, and the city's registrar, John Holland. His district uses and he endorses completely a touchscreen system. His, Fairfax's, is made by Advance Voting Solutions and is called the "Winvote." I have no interest in that or any other one of these systems. He agrees with the findings of the state-wide study that I mentioned.

Well, what happens if the power goes out? John Holland answered that every action of every voter is recorded in three separate places in the touchscreen computer. If the power

goes out -- that is to say, his, the one that they are using -- if the power goes out, the data is still there. Just reboot and you're back to normal. At any time the machine can print out all the data about every election contest.

Fine, I asked, but if you can design a computer voting program, can't somebody else crack the system to alter the votes?

Yes, in theory, and in practice, if you don't take precautions. So Mr. Holland is the sole possessor of the security card, like a credit card, that allows him to enter the computer system. He knows the codes. That card is locked in a vault in his office and all the election officials know where it is and that they can't touch it. No outsider knows how to get into the system. Not, in any case, without lots of smarts.

But couldn't a smart vote-thief figure out that all the votes on, say, line one, are for the Democratic candidate? Then he could put a bug in the system that would shift X percent of those votes to the Republicans.

Yes, said John Holland, but only he, John Holland, knows which party is going to be listed first, and which one second, and he isn't telling. And he doesn't decide the order of party names or candidates, their names on the video screen, and in the program, until just a couple of weeks before the voting. So the would-be vote thief, if he can crack into the system, stands a

good chance of channeling votes away from his own candidate and toward his opponent. Simple stuff.

Fairfax also runs what it calls "scripted" elections within days of the real election. That means that hundreds of mock votes are fed into every machine to learn whether each machine is miscounting. If yes, the machines are re-programmed to eliminate the errors.

All of which is to say that a wise manager of an election district knows that there is always a potential manipulator lurking in the shadows. The ultimate protection lies in safeguarding data, in double and triple backups, and in great secrecy about vote-counting programs. And, as in so many things in life, there must be constant monitoring of every individual who has anything to do with the collection and storage of every voter's ballot.

This is necessary but tedious work, your work, as is the job of choosing the right vote-collecting system.

I'm reminded of one writer's story of an aged and learned man he called the "mathemagician." After a long and tedious discussion with a large group of cantankerous people, the mathemagician nodded knowingly to them all and stroked his chin several times. "You'll find," he said, " that the only thing you can do easily is be wrong, and that's hardly worth the effort."

I hope you will expend a lot of effort and, with

a touch of luck, be right. We will be much in your debt.

EXEC. DIR. KOSINSKI: Thank you.

I would just like to make a couple of comments. Again, I don't want to elongate this, but I just want to mention. You referenced the Justice Department letter which came to our agency, which I assume was talked about earlier before I got here.

EXEC. DIR. ZALEN: It was mentioned in passing by speakers, not up here.

EXEC. DIR. KOSINSKI: Okay.

Well, there is a newspaper article in The Times today I'm aware of and in the local paper, the fact that the Justice Department has, you know, written us a letter indicating that we have gone slowly and because of that they are threatening a potential lawsuit to bring New York State into compliance.

I just want to say a couple of things.

You know, first of all, one of the benefits had with going slowly is that we have been able to learn from other states what's worked and what hasn't worked. And there's clearly a benefit to that in this process because this is a new process that all the states are going through. So there's got to be benefit from this.

I will say that our main concern, while we certainly recognize Justice's obligation here to ensure that the Federal law is followed, our obligation, we believe, is to make sure

that voting works in New York and that our first obligation is to ensure the integrity of our voting process.

So, you know, while there are some time issues here, there's a bigger issue at play we think, which is that.

I'll mention that you may be, and as you've indicated, you may be the only person that's spoken in one of our public hearings that maybe talked positively about DREs.

And I'll just mention that I think one of the issues you raise about optical scan I think is an issue that the elections community recognizes, which is that, you know, much like the punch card ballots that we saw in Florida where there was an opportunity for a voter to cast a vote and then have that vote not recorded by a machine, and then have it determined in some way by the election officials, that same sort of scenario arises in the context of optical scan voting where a voter, you know, marks the ballot in some way, it's fed into the machine and does not read it for whatever reason, and then there is this issue about trying to divine the intent of the voter and trying to divine whether or not that is, in fact, a valid voting mark. So there are issues like that which I think you mentioned in your testimony.

MR. PAUL LOEWENWARTER: Please accept me as an inquiring perhaps nosey individual who just was trying to learn, as you are.

EXEC. DIR. KOSINSKI: Right.

MR. PAUL LOEWENWARTER: I don't come to you as an expert.

But I am impressed by some of the features of the onscreen machines which ask you when you finish casting your vote: "Is that all you want to do? You left out the vote for dogcatcher. Did you really want to skip that?"

Oh, no sorry. I'll go back and I'll fix that and I can as a voter.

So that there are checks and balances that are provided by the screens that you don't get in some of the other programs and you got to figure out which ones -- how to weigh it all.

EXEC. DIR. ZALEN: I also noted that you're in this case the only speaker taking this position. And that was evidenced by the fact that I didn't hear any clapping. Come on, guys. Be fair-minded.

EXEC. DIR. KOSINSKI: Let's hear it.
(Scattered applause.)

EXEC. DIR. ZALEN: There was a hand raised and I don't know if it's for a question or an argument. But we're not going to accept questions from the audience to speakers.

I have a question about the Virginia situation which you made reference to. Did those machines have auditable,

verifiable paper trails?

MR. PAUL LOEWENWARTER: Yes. Well, they do not have a piece of paper in the machine.

EXEC. DIR. ZALEN: They don't.

MR. PAUL LOEWENWARTER: But like my computer at home, if I push a button, it goes to the printer and it turns out a paper trace on anything you want.

One thing I learned from all of this, and I guess I should have known it all along, because in the lever machines you, as an election official, have no way of knowing what my vote was. All you know is that I was voter numbered 173 and the machine, when I walk out of the booth, should now say 173 votes have been cast. But you can't assign any of those. You would have to get all of us back and ask us to relook in order to do it.

So -- but they can produce a paper trail at any point and they can always go back into the machine and reconstruct it.

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

MR. PAUL LOEWENWARTER: Thank you.

EXEC. DIR. KOSINSKI: Our next speaker is Rosemary MacLaughlin.

MS. ROSEMARY MacLAUGHLIN: You'll be happy to hear that I have a very little statement to make.

Before I begin my remarks, I just want to reply to the previous speaker.

Op scan ballots, if they are not marked in the proper place, will be rejected and the voter will have the opportunity to either correct it or to go and get another ballot. They can void the ballot they did first and get another ballot and revote. So there's not the problem that the gentleman was explaining, in my view.

Anyway, my name is Rosemary MacLaughlin. I am a member of the League of Women Voters of Westchester County.

I thank the New York State Board of Elections for providing this opportunity for citizens to comment on the Draft Voting Regulations.

Many of us are concerned about the complexity of the changes in the voting process which are required to be implemented in 2006. There is very little time to choose new machines, order them, have them delivered, site them in polling places and train election inspectors as well as the voters. It seems like an impossible task to accomplish in time for the September primary elections.

We are aware that the State of Connecticut has delayed plans to buy the Danaher machines because the company has not sought proper certification to meet state and

federal requirements. As a result, Connecticut voters will use the old mechanical lever machines for elections in September and November. Will this happen in New York too?

The League of Women Voters continues to be in favor of precinct-based paper-ballot optical scan voting equipment. This is a proven system which has been used in many states for the past twenty years. It will be easy for election inspectors and voters to adapt to this system because the ballots the voters fill out are similar to the forms used for SAT exams and lottery tickets. The machines rarely break down, but if they do, voting can continue with ballots being dropped into a secure box.

This system will be less expensive than direct recording electronic machines, DREs, which we have seen only as prototypes. They have not been proven to be accurate and reliable and, importantly, will have to be upgraded every few years as the technology changes.

We know that banks had many problems when automated teller machines were introduced and they spent millions of dollars to get it right.

Can we afford the time and expense that would be needed to test these machines?

We urge the New York State Board of Elections to take time to carefully evaluate and test complete voting systems. We need comprehensive standards which will

apply to all types of equipment and will guarantee security, accuracy, reliability and accessibility for all voters.

We sincerely hope that the coming elections will not present problems on the scale that occurred in Florida and elsewhere in the year 2000. If serious problems should occur, responsibility will rest with those who certified and purchased machines.

Thank you very much.

EXEC. DIR. KOSINSKI: Thank you.

(Applause.)

EXEC. DIR. ZALEN: You realize that your clapping is merely a political statement and not a testament to the quality of the words you heard.

Joyce Blum.

MS. JOYCE BLUM: I only have one copy.

First of all, I would like to say of how thankful we all are in Putnam County that this hearing is being held today and how concerned many of us are on this issue.

I have many friends -- I'm from Garrison. I have many friends on all sides of the political spectrum - conservatives, Republicans, Democrats, whathaveyou - who are equally as concerned on this issue. We all are. We just all are. It's just very important for all of us voters to know that our votes are being counted the way we want them, to be counted the way we

voted. It's just "the" most important issue I feel at this time.

So having said that, I just wanted to say a couple of things just off-the-cuff.

Going slowly is not a bad thing. If New York State requires more time to make the right decision for us voters, so be it. I think the Federal government would be very misinformed to sue states that need more time to make the right decision for their voters.

And as far as the gentleman in Fairfax, Virginia, Mr. Holland, I'm wondering if the election process there will depend on Mr. Holland if there's a problem. What if Mr. Holland is ill? And another question: who appointed Mr. Holland to determine all of these things about how the elections are being run there? It's a concern of mine.

I don't understand the whole issue in Virginia, but that struck me as being very odd.

On Vicky's point about the testing of machines, I'm just curious as to why there isn't more testing of the machines that are being presented to you. It seems -- and that the public might want to look at some of these machines.

I have to tell you, I have a problem when I ride MetroNorth in purchasing my own ticket from the ticket machines on the platforms, that those are machines where you have to punch in your requested ticket. Very often those machines

don't work.

And I wonder if the machine where I'm buying my ticket to Manhattan from Garrison doesn't work, what's the voting machine going to do when I vote on it if it's that kind of machine. Just sort of an aside comment.

I just came with two letters that I would like to read. One is a letter that I wrote. One is a letter from someone in Garrison who couldn't attend today. The gentleman's name is Lawrence Fleischer. I don't know if that's relevant. You have a copy of his letter.

It says:

Dear Commissioners:

The fundamental issue concerning New York's new voting machines is not what technology should be specified, but how any technology should be implemented.

Neither technology - optical scan or touchscreen - is inherently superior. How they are implemented will determine how secure, how accurate and ultimately how trustworthy they are.

Accordingly, either technology must be implemented in the following manner as far as I'm concerned.

Number one, the new voting machines must provide voters with a positive, easy-to-understand review of their choices before they are officially cast. This will prevent a repeat of

the fiasco in Florida in 2000 where voters mistakenly cast their ballots for Pat Buchanan instead of Al Gore.

Number two, the new voting machines must provide a paper report of every vote cast. This record would be used in the event of a recount.

Number three, finally and most importantly, the new voting machines must not be networked. This would guarantee that the results could not be manipulated on a massive scale. No network is totally secure and this is the only way to prevent widespread fraud.

Thank you.

Sincerely, Lawrence Fleischer.

And my letter was a letter to the editor of several newspapers in Putnam County. This was all the same. It was also co-signed by a neighbor of mine, Catherine Portman-Beau. I have to state we are on completely different ends of the political spectrum, but we agree on this issue.

Dear Editor:

This is an open letter to our two Putnam County Board of Election Commissioners.

We understand that you are both going to attend our public forum sponsored by Assemblywoman Sandy Galef and County Legislator Vinny Tamagna taking place on Tuesday, December 13th, from 7:00 to 9:00 p.m. and so forth.

And I have to state - I'll just interrupt for a moment - that over a hundred people came to that meeting on a freezing cold weekday night. And it was really quite an incredible meeting.

We are so glad you will be attending this meeting so that the public can finally hear your views - we thought they would speak, they did not - concerning your selection of voting machines that will be used in our future elections in Putnam County.

As New York State will be spending more than a million dollars -- \$200,000,000, sorry, to purchase new voting machines, we want you both to understand how concerned your constituents are, be we Republicans, Democrats, Conservatives, working families, greens, et cetera.

We voters all must have confidence that no election can ever be compromised by not having voter verifiable paper ballots. We call on you both to clearly define your criteria for machine selection.

The decision you will be making shortly concerning the voting machines must focus on the best method that accurately records and counts our votes.

Again, thank you for giving us this opportunity to hear your opinions on this important issue, so forth and so on.

Again, thank you very much.

EXEC. DIR. KOSINSKI: Thank you.

MS. JOYCE BLUM: We appreciate this. We really do. And we hope you make the right decision.

EXEC. DIR. KOSINSKI: We hope we do too.

I just want to, if I could, go back for just a second to Mr. Fleischer's letter.

I think those three points that he raises, I think you can assure Mr. Fleischer that all three of those issues are going to be dealt with.

There will be a paper trail, as I indicated earlier, on whatever machine is certified in the State. That is pursuant to State law. And regardless of whether it's a, you know, DRE or any optical scan system, there will be a paper trail.

The systems will not be networked in the State. Regardless of whether we have an optical scan or a DRE system, they will not be networked so that they cannot be hacked into or in any way dealt with on a systemic basis.

So I think you can on those issues that he raises in his particular letter, if you're speaking with him, assure him that those issues are being addressed at the State.

MS. JOYCE BLUM: Okay. I will do that.
Thank you.

EXEC. DIR. KOSINSKI: Thank you.

(Applause.)

MS. SUSAN LEIFER: Hi!

I've listened to everybody and I won't go over the same things over and over again.

But one of the things that happened in Westchester County was we had a recount. And it was decided by eighteen votes. So I think we are very clear that wanting to know exactly how you vote makes a big difference.

If there has to be a recount, I would much prefer you recount my ballot that I wrote than you count something that has been put on a machine. When you have a scanner, you separate the jobs of voting, recording and counting. And I think the computers do not do it.

And unlike what Paul says, I have had my computer hacked to bits. And it's a very uncomfortable feeling not being able to retrieve it.

With paper ballots you will always be able to retrieve it. And I know that that's my paper ballot. You have not put it on your machine and printed it. It's the ballot that I wrote. And because of that I feel very strongly about it.

So thank you for your time and for your interest and for being so open.

EXEC. DIR. KOSINSKI: Thank you for

coming.

(Applause.)

EXEC. DIR. KOSINSKI: John Fisher. Is that Citizens for a National America?

MR. JOHN FISHER: Citizens for a Rational America. My name is John Fisher.

And I'll be very brief.

First of all, I really appreciate the exchanges. I didn't expect you would interact with speakers. And I've found it quite reassuring because you ultimately want to trust the people that are carrying the ball for you. And I particularly appreciate it, your willingness to bring some further information to us that we might not otherwise have had.

The reason that I found Citizens for a Rational America was the search for a name, an organization, that would be transparently bipartisan - it doesn't speak to one side of the political spectrum or the other - and yet I remind you, although you probably don't really need to be reminded, that we are operating in an environment that most of us, certainly the older people, have not experienced in our lifetime in which the electoral process has become increasingly politicized.

And the voice I want to bring to you is the voice of my two children who have watched the evolution of the climate in Washington, most visible in Washington, and who are --

they are opting out of the political system. They're abandoning their fundamental right to vote because of the gathering sense of mistrust of the public process.

So I'm only here speaking in a heartfelt way to say you owe us the most transparency you can bring. And it will serve your relationship and the credibility of what you do with the New York State electorate if you work overtime to unveil, unmask and project the processes you're engaged in.

It isn't written into your contract, it isn't written into your mission, but I'm here to tell you as somebody who does a lot of advocacy, that part of your advocacy should be to work to increase your credibility. If you believe in the processes you are going through -- and you've had some wonderful input today that asked for more transparency, and I'm sure you are going to go back and revisit the language of your guidelines -- make a point when you change things of letting the public know that you're listening and let us know why you are making those changes and how you think it will improve the process.

Don't just do it and then publish an end result and not speak in human terms to the electorate.

And I think we will appreciate that.

EXEC. DIR. KOSINSKI: We appreciate your comments.

(Applause.)

EXEC. DIR. KOSINSKI: Darren Rigger.

MR. DARREN RIGGER: Good afternoon,
now.

First of all, I thank you for coming here and
welcome to one of the most beautiful counties in the State of New
York, beautiful Putnam County.

EXEC. DIR. ZALEN: Nice auditorium.

MR. DARREN RIGGER: It's great, isn't it?

EXEC. DIR. KOSINSKI: Does this note I
have that you're a candidate for Congress, --

MR. DARREN RIGGER: Yes.

EXEC. DIR. KOSINSKI: -- is that true?

MR. DARREN RIGGER: Absolutely.

My name is Darren Rigger. I'm a candidate
for Congress right here in the 19th Congressional District.

So I am here for absolutely and purely
selfish reasons. The upcoming election, my election, would be the
very first Federal elections where we would be implementing this
new voting system. So it's in my absolutely best benefit that every
vote counts. That's really how I plan on winning.

In 2000, I was sent down to Florida by the
Democratic National Committee to be an observer of the
presidential recount. And I saw firsthand exactly how fragile our
democracy really is.

I didn't bring a prepared statement today, but what I wanted to say to you is to remind you that, especially in this district, the 19th Congressional District, we have a growing Hispanic community. While many of these people have English as their second language, they are, in fact, hard-working, taxpaying American citizens that deserve full participation in these elections.

So as you're going forward in implementing a new voting system, I only ask and encourage you to be sure that it stays in compliance with the Voters Right Act, but also know that when we are going to be training workers who are going to be working the polls in the elections that day, this year more so than ever in the past they are going to have to interact with a lot of these voters that come in, in teaching them and showing them how to use the new machines.

Because of the language barriers and because of other barriers, I think that we need to have a strong training of the election workers and also special attention, sensitivity, to the needs of these special citizens.

Because of that, I want to come here today and strongly endorse the optical scan ballot machines which I think would be easier to teach people, especially on the fly as they come in to participate in the elections.

I think that the goal in implementing a new system should be to encourage and to facilitate greater

participation in our elections with a goal, of course, of having a fuller, more complete democracy.

Thank you.

EXEC. DIR. KOSINSKI: Thank you for coming.

(Applause.)

EXEC. DIR. ZALEN: We only show one more speaker. After we call that person, if you think you are supposed to speak, please tell the women in the back about that.

So our last speaker, to our knowledge, is Ann Harveson.

MS. ANN HARVESON: Thank you.

EXEC. DIR. KOSINSKI: Ann, you have the honor of summing up today's public hearing.

(Laughter.)

MS. ANN HARVESON: And I did not come with prepared comments. I am a computer consultant and a voter in Croton-on-Hudson. But I'm responding to something that I think I'm hearing here today that troubles me.

You said quite clearly that the Legislature has tasked you to certify both DRE and optical scan. But I think I heard Mr. Zalen say twice we will rule on the systems that come through the door.

If you wait for vendors to offer what they want

to offer, then you will see no optical scan paper ballot systems coming through the door, not one, none, nada.

The vendor who told Assemblymember Sandy Galef that New York is a DRE state will have foretold the future. It's called a self-fulfilling prophecy.

Why? Simple. Vendors are going to make a lot more money from DRE machines. Period. I mean that's just the economics of the situation. And they will do so at our expense.

Why would they offer optical scan if they can make a lot more money from DRE?

You'll need to make them bring those machines in the door if you are going to give them to us. It's very simple.

You have a fiduciary responsibility to us, the New York taxpayers, and to yourselves, the New York taxpayers, as well as a responsibility to preserve the integrity of our vote.

So the statement I'm waiting to hear is we pledge to make absolutely sure that paper ballot optical scan systems are submitted for certification even if we have to take the initiative to make it happen.

Several speakers have shown you the way. Refuse to accept DREs from the vendors who manufacture both unless they do a credible job of submitting both types of systems.

And, in fact, the major DRE makers do make

optical scan systems.

I'd like to leave you with one more thought. And I think this is maybe not even in your purview. New York has legislated a paper trail, which is great. It's essential. We need it.

But if recounts are difficult to obtain, the paper trail is not going to mean anything.

Thank you.

EXEC. DIR. ZALEN: I actually would like to speak to that.

You're right. I said what I said. It would be tough for me to deny it.

But if I didn't say it, that we're taking aggressive steps to contact manufacturers to do our best - we can't insure, we can't guarantee - but to do our best to get both kinds of systems and many, if we can, to come through that door. We are doing that.

I can't say for sure what all our steps will be and how formal those steps would be. That's up to our Commissioners in terms of the final version of the rules and regulations.

But certainly we are doing aggressive outreach to those machine companies and those machine companies that also have optical scan systems.

EXEC. DIR. KOSINSKI: I'd like to just

comment, if I could, too.

I think -- I don't know. Maybe I feel a little more strongly about it. I think we have an obligation to offer up to our counties the choice between optical scan and DREs.

I think in my own mind, you know, that was the direction we were given by the State Legislature, is to provide that option to our counties. Because we're not making the choice of which machine to put in, I think it's our obligation to make that available.

That said, I just wanted to ask you a question.

MS. ANN HARVESON: Sure.

EXEC. DIR. KOSINSKI: You said in your statement that you believe the vendors' motivation for selling DREs rather than optical scan machines in this State is profit motive, money.

But what evidence do you have that a vendor will make more money selling a DRE system than they would selling an optical scan system?

I've heard that from other people, I might add, that there is this belief that that is what's driving why vendors may not bring in an optical scan system for certification.

I'm just curious what you believe is the evidence that there is a profit motive that's driving them.

MS. ANN HARVESON: Well, I've seen the numbers on it. I don't have them at my fingertips. The numbers don't stick in my brain. But just look at the quantity of equipment that they're selling. That's the first thing.

If you walk into a voting situation, as I did in Tallahassee, Florida in 2004 as a watcher, if you've got an optical scan system, you are walking into a large room with one little computer that checks the votes to make sure they are right - that's the precinct-based -and a number of privacy screens where people can go and vote using a No. 2 pencil or whatever.

If you walk into a voting situation where you got a DRE, every person who votes has to use a DRE.

So I don't know exactly what the numbers are, but in one system you have one computer, in another system you have to have several computers in order to not have long lines going out the door.

EXEC. DIR. KOSINSKI: Let me just say this.

MS. ANN HARVESON: So, just in terms of the quantity of equipment that is being sold.

The other thing is the obsolescence factor and the updating factor and the providing the training and the number of technicians, and all of these things required to keep this system up-to-date and going.

For most of the vendors that I have read about, you know, they get heavily involved in this process. And so they are going to make money out of that.

I mean that's sort of a general --

EXEC. DIR. KOSINSKI: So you believe that the number of DRE machines would be greater than the number of optical scan machines in a particular precinct?

MS. ANN HARVESON: Yes. Yes. They have to be.

EXEC. DIR. KOSINSKI: And, I mean --

MS. ANN HARVESON: So you have fifty people who show up at the poll.

EXEC. DIR. KOSINSKI: Right.

MS. ANN HARVESON: How many DRE machines are you going to need to serve those fifty people in a timely manner? Whereas if you have fifty people, maybe ten can vote at once, they walk over, they stick their ballot into the precinct-based optical scan, which reads it and tells them whether it's a valid ballot or not.

This -- you really only need one of those machines that's a computer. The other ones are tables with screens that let the person stand there and mark a ballot, a purely mechanical kind of thing.

And so --

EXEC. DIR. KOSINSKI: Do you know how many voters the optical scan machine serviced down in Florida when you were there?

MS. ANN HARVESON: Specifically in the precinct that I was in, no, I don't know. But you would never get a long -- you would never get a long line there. And if it went down because the electricity went out or the battery went out, which, in fact, it did in our precinct, people could continue to vote.

And that's another issue, is that with a DRE system, if the battery backup goes down, the hardware goes bad, the power goes out, the whatever, the people standing at that machine can't vote.

Whereas if you got a pencil and paper, you can vote. And you put in a box, the box is secured, you know. Whenever the electricity goes back on or the battery gets fixed or whatever, you can start feeding it into the machine.

Also, think about recount. What does the paper look like out of the DRE machine? Does it look like the stuff you get out of an ATM machine? Would you like to have to recount ballots from that? I wouldn't.

Whereas with an optical scan, you are using a substantial piece of paper that you can handle in a recount and actually process in a way that it would be really hard with any of the DRE papers I've seen described.

So think of the logistics of it, of the actual vote, using a DRE compared to an optical scan.

EXEC. DIR. KOSINSKI: Well, I have. I mean, I have.

And, you know, let me just say I'm not sure that, you know, there is a financial benefit here. I mean let me just say that I think when you get into these different types of systems -- well, I mean a couple of things I would say.

First of all, I'm not sure finances should drive our decision. Let me just say that first of all. I'm more inclined to think that maybe, you know, a better system is the way we should try to go here. Finances are an issue, but I don't think should be the issue that necessarily drives which system we go with in New York State.

But that aside, I know finances are an issue. And so I'm not sure that it is cheaper to go one way or the other because I think that when you get into different systems, the number of voters they can service does vary.

You know, touchscreens service X number of voters, but optical scan can service not necessarily more voters. I mean some of the experiences that we've understood from other states is that optical scans can actually service fewer voters on a specific system than a DRE system because of the way it takes it to read the ballot and you have an opportunity to correct your ballot

if you make a mistake, and go through those issues.

That, you know, there is a paper cost in an optical scan situation that you don't incur in a DRE situation, which is an additional cost. So, you know, when you're talking dollars and cents, what optical scans obligate boards, county boards, to do is continue purchasing relatively expensive paper ballots for insertion, because it has to be a very high grade paper to read properly, as opposed to a DRE system which the paper does not have to be of such a high grade because it's not being read by the machine. It is being printed out for a different purpose as we've discussed here. And so there is this ongoing financial obligation that a county incurs in continuing to purchase.

Again, just so you know, there are -- many of our counties, I mean we're not as a state ignorant of optical scan or of DREs I might add. We actually have DREs in use in our state up in Saratoga County. So it's not like New York hasn't used them. We have for the last about ten or fifteen years.

And optical scans are being used in many of our county boards for the absentee vote.

MS. ANN HARVESON: Right.

EXEC. DIR. KOSINSKI: So we are very familiar with both systems.

But the paper cost regarding optical scan does have some bearing as well.

So I just want it to be clear that when people discuss these financial considerations, that they understand that there are several components to it.

And I understand what you are saying, by the way, about DREs and having these ongoing computer upgrades and the costs associated with that as well, which can also be a factor and should be a factor in the cost of those.

So there are many costs that come into play as you are trying to evaluate whether or not a system actually is going to cost more than another system.

I know it's not easy to compare the systems because they have different needs and the costs associated with one are different from the costs associated with the other, and you can't just necessarily compare the cost of the machine on its face, but you have to take these other costs into consideration as well. And they do add up over time.

And our boards are going to be -- you know, we're getting \$200 million from the Federal government, to pay for the machines upfront. But then there is this ongoing obligation from the county standpoint that in the out years they are going to have to find county dollars to continue to service these machines. They're not going to have this Federal money anymore and now they have a financial burden at the county level to continue to service these machines. And whether that's servicing a computer or buying

paper, that they have to take into consideration. And that's going to be a very potentially cumbersome obligation that they are going to have to incur. And I'm sure they are going to have to weigh that as they look at what system to purchase.

But, again, our goal, and I think we share this, is to try to make those options available to our counties so they can make those evaluations and they have an opportunity to evaluate those two systems and they can make those considerations and make those decisions and that we don't, you know, eliminate one of those choices so that they don't even have that opportunity.

But I think as you see the counties going through the process, they are going to have to weigh a lot of these cost issues as they get into this that are going to be difficult to evaluate sometimes.

MS. ANN HARVESON: Right.

EXEC. DIR. KOSINSKI: Thank you though.

MS. ANN HARVESON: I appreciate that.

But one thing, when you were speaking, you were talking about the cost of paper, which, of course, is a cost. There also, of course, is paper with the other machines as well, but not, as you point out, as high grade.

But in terms of the vendor profit, they are not selling the paper. So that ongoing cost, although it's a cost to the

county, is not something that they're going to be making money on.

EXEC. DIR. KOSINSKI: Yes. I got you.

MS. ANN HARVESON: So in terms of the vendor profit argument, I think still, if you really look at how much -- why vendors are so pushing the DRE machines, I think you would find that profit is a big thing.

Thank you.

EXEC. DIR. KOSINSKI: Thank you. I appreciate it.

(Applause.)

EXEC. DIR. KOSINSKI: Do you have another comment?

MR. JOHN FISHER: Just an observation.

EXEC. DIR. KOSINSKI: Sure.

MR. JOHN FISHER: I don't know if you've looked at the traffic rate. And I'm thinking suburban communities, rural communities, counties with smaller populations, it's probably not a big issue. But if you take larger urban concentrations, you get an influx of five hundred voters during a lunch hour who are on a very tight time schedule, that certainly has to be an issue too, how do you accommodate those people without having thirty percent of them have to turn and get back to work and never vote.

EXEC. DIR. KOSINSKI: Well, I mean that is an issue.

I mean our -- just so you know, our present lever machines have an 800 voter limit on them. So that no machine can serve more than 800 voters. That's the limit the State has set for lever machines.

Now, we're going to have to reevaluate that as these new systems get put into place. And the law has been changed now to allow us to determine how many voters can be serviced by a particular machine.

So part of our certification process will include evaluating how many voters can realistically be serviced by a specific machine. And that will be part of the process. A part of that depends how long it takes you to vote on that particular machine.

I mean there are peaks and valleys through the day. And our local commissioners can speak to that better than me, that lunch hours, right after work, those are peak hours. You have to service your voters.

But we have to ensure that that machine can handle that number of voters without creating long lines. And that's a concern. We do not want a situation where people leave the voting place, the polling place, because they're frustrated that they have been standing there for twenty minutes and they can't get on a machine.

So we have to carefully look at that and we

will be looking at that as these machines come in of how many voters can you reasonably accommodate. And that will dictate how many machines the county has to buy of that particular model in order to service their voters.

And we will have to make a careful analysis of that before we put these out for county purchase because they need to know that as they are purchasing, how many of these machines do I actually need.

MR. JOHN FISHER: That plays to the issue I said of having transparency. When you do that, share that thought process with the voters and with the press because we are going to be interested that you gave thought to that.

EXEC. DIR. ZALEN: You had mentioned that earlier about full transparency, and it was one of many comments that I got a lot out of. I'm sure Peter did as well.

You also had said that you learned a lot from comments made by this Board here.

So I wanted you to know, I wanted you all to know that that was a two-way street. We also learned a lot here as we've done everywhere else.

Now because we did let you make your comment with your hand raised, we feel an obligation to allow others who have raised their hand and we had three.

We'll go with the three.

Sandy.

ASSEMBLYWOMAN GALEF: First of all, I wanted to thank you very much for coming.

I know the trip from Albany isn't such a neat one. And I really thank you for being here.

And hopefully I think there were a large number of people - I don't know what has happened at your other hearings - but I think this was probably an excellent hearing for all.

I just have one question that was brought to my attention.

What happens in a county -- you know, I know the law. What happens in a county when they can't decide which direction they are going to go, there's a stalemate in a county?

And I know the law indicates that it will be up to the State Board of Elections to make the decision.

Have you started to think about drawing straws, you know? What will you do? Have you gotten to that point?

EXEC. DIR. ZALEN: I haven't yet started to think about that. I'm too busy thinking about getting these rules and regs in final form and having some machines to certify.

Peter.

EXEC. DIR. KOSINSKI: Well, I just -- I mean to be fair, Assemblywoman, I don't think we want to reduce this to

drawing straws. I guess it will go to our Commissioners, of which we have four, much like the counties each have two. And, you know, your observation that there is a potential here for a stalemate is well taken.

And I think it was part of the discussion, as I recall, at the Conference Committee meetings, which were held between the Assembly and the Senate on this topic. And the decision was made at that time to kick it up to the State Board and let them make the decision when for whatever reason the county commissioners cannot agree.

But that entails then us -- we have four members and that entails the possibility that we would also have a split of maybe 2-2 or we can't agree. And then there is no way to resolve it.

So I don't have an answer either. I haven't really thought about that carefully myself. But there is the potential, we recognize that, that the county commissioners cannot agree on which system to buy, it comes to our board and our board can't agree.

I mean I have to admit there will probably be some reluctance on our board's level to tell counties what to do after the Legislature indicated they wanted the counties to make the decision.

But I think we will have to have some

discussions about how to resolve that.

EXEC. DIR. ZALEN: Before we move on to the next, which will be the two county legislators who also want to speak again or ask a question, is there anything more from the sitting Assemblywoman?

ASSEMBLYWOMAN GALEF: No. Thank you.

EXEC. DIR. ZALEN: Well, before you, sir, I did want to say something to Ms. Harveson, a small point.

You did indicate, and it made sense, that those who benefit by printing the ballots are not the same as those who produce it. And in many cases I'm sure you're correct. There are all kinds of printing companies out there.

But at least in one case that I'm personally aware of, there are interlocking agreements or ownership - I can't say exactly what - so that, in fact, I would think that there is some economic benefit for printing the ballots by the same producer of the optical scan machines in some fashion, however their business agreements are worked out.

And with that, why don't we do County Legislator Tamagna and then the little County Legislator from Dutchess County, Joe Tyner.

And then, of course, the cameraman.

LEGISLATOR TAMAGNA: First of all, thank

you very much for coming to Putnam County. We really do appreciate your being here with us.

And I just had --

EXEC. DIR. ZALEN: By the way, this is a wonderful facility. How did you guys --

A VOICE: This is Putnam.

EXEC. DIR. ZALEN: Is that what it is?

LEGISLATOR TAMAGNA: And this is all about fire and EMS. This is the Emergency Operations Center.

EXEC. DIR. ZALEN: Of course, again, we want to give due credit to our Putnam County Election Commissioners for this facility.

LEGISLATOR TAMAGNA: And for their patience.

What you heard in the way of the resolution that was read by our Town Board, that is from hours of sitting with both commissioners and talking about what we really need to have. And the County supports that as well and we are going to be listening closely to what they have to say.

But on the last speaker's comment, I think that -- I wanted to add just two points.

And that is, certainly you are absolutely one hundred percent on target where, when it comes to voting, cost does not matter. What matters though, I think, is when we have the

choice.

If we see that one is going to be harder to handle, more sensitive to handle, be obsolete in four or five years, and if it's a million plus now, what's it going to be in four or five years to replace, on the other side you see that your optical scan has been around, you don't replace them - there have been places in this country that they have been using optical scan for ten and fifteen years - those things, I hope, are all going to be weighed out into the equation of where we're going.

EXEC. DIR. KOSINSKI: Yes. Let me just comment on that for a second too because I think some of these images aren't, in my view, quite correct.

DRE systems have been in use in this country for twenty years. I mean we in New York State, as I indicated earlier frankly, have had them in use in Saratoga County for fifteen years alone.

So I don't think that people should assume that there isn't some experience with those, as there is with optical scan. And you're right. But there is an experience factor.

The other issue that, and I've heard this from others as well, that there is an obsolescence factor, that these systems are like your home computer where Windows comes in two or three years from now and upgrades you with some software and makes your system obsolete because you can't deal -- your

computer can't handle that new system and now it's obsolete.

You know, these systems, people should also understand, are a very limited use system. I mean this isn't a situation where suddenly they devised a whole new use of these systems. These systems are developed for one purpose, voting. That's it.

That's really not going to change. Voting is what voting is.

We've used lever machines, as we all know, for forty/fifty -- I mean we've had the same machine for forty or fifty years. It hasn't changed. The system hasn't changed.

And that's going to be true with whatever system we buy here.

So I don't think the counties - and I guess I say this to our county commissioners -- well, they should approach this like we'll buy these machines for you - and the federal is going to buy these machines for you this year - but, you know, in four or five years these are going to be obsolete, you are going to have to go back out and buy them again, so you'd better tell your county boards or county legislature about that.

I don't have any reason to believe that is true. I mean there's every reason to believe that once you purchase these machines, whatever they are, that they will be useful for fifteen/twenty years easy because that's the experience factor

we've had.

And I think there's, if you think about it for a minute, they are not going to change. I mean the system that's there will be a voting system where you'll go in and vote. That is not going to change over the next fifteen/twenty years that I see.

So I don't think people should anticipate that we buy something this year, five years down the road it's obsolete, got to go out and buy a whole new system, got to spend that \$200 million all over again except this time it's local money instead of federal money.

LEGISLATOR TAMAGNA: And my only other point on that as well - and I hope you're right.

I think a lot - and I don't know how it's set up in Saratoga, but with the sensitivity of the machines in movement, in storage, your DREs are certainly much more sensitive to climate, all of those things.

So all considerations and all costs.

And the other thing that I was thinking as I was sitting in the back of the room and just listening to the dialogue, which has been great today, and that is, if the companies that are manufacturing the DREs right now have not brought forward the optical scans for whatever reason, maybe one of the requirements is if you present us with a DRE, you should also present us with an optical scan. If it's a company that's

manufacturing both, then give us both.

EXEC. DIR. ZALEN: We've been getting a lot of those suggestions on behalf of our commissioners and our staff. That idea is being very seriously considered.

LEGISLATOR TAMAGNA: Thank you.

EXEC. DIR. KOSINSKI: I think that's a legitimate point.

EXEC. DIR. ZALEN: That's an issue but certainly it's not in our draft regulations. We will have to see if they come out with the final, but it's a possibility.

LEGISLATOR TYNER: I really appreciate you allowing me to speak again. Being so close to Dutchess County, it wasn't that long a drive.

I just wanted to echo everything that Legislator Tamagna brought up and, you know, what Ms. Harveson brought up and what he just said, that if a manufacturer is submitting a DRE, that, you know, you maybe lay down some law or regulation that there is no way, if they make an optical scan, that if they are submitting a DRE, that they have to also submit that optical scanner.

I mean I know I've heard some positive things. We have an obligation to offer out to the counties a choice of paper ballot optical scan or DRE. I think what you said maybe five or ten times. That's good. But I think it would make a lot of

people more comfortable if the draft regulations actually spelled that out.

I would also think that it's important to rely on studies and empirical evidence. I think people like Bo Lipari from New Yorkers for Verified Voting and Vicky Perry have pointed out to me studies -- at least one study I think that was recently done talking about the operational costs, a comparison. It was down south. I don't know what state it was. I will get you the information within the next week before that public comment deadline.

But the cost comparison showed that the paper ballot optical scan, the operational is actually cheaper.

All right. So I think, you know, any of us in this room can say, well, we think this, we think that. But, trust me, I will get -- I think it's right on Vicky's blog, midhudsonalliance.com. I think we need to really point to specific studies.

And, you know, again maybe Bo Lipari is full of it, but I don't think he is. And he has said over and over again that, you know, the touchscreens that they are talking about submitting to this State are a version of 1.0, and the paper ballot optical scanners have been around a long time.

And if it's true that the DREs have been around Saratoga County for fifteen years with no issues, that's fine. But I mean I've been studying this issue for a while and I've been told over and over again that this is really kind of untested

technology.

The only other thing I'll say is this, that it just disconcerts me a little bit that, you know, it seems like that there's like a huge -- I consider myself a fairly well knowledgeable activist. And I think this movement really kind of didn't take off until about a year or so ago.

And there are just like so many newspaper editorials and Republicans and Democrats and, you know, counties passing resolutions and citizens groups. It really seems to me like the vast majority of people - and I'm very interested in getting a response to what Vicky Perry submitted, that FOIA request on how many folks -- I know one person here today seemed to be for the DRE. But please don't take this the wrong way, but it seems like the vast majority of the comments coming from you folks are standing up for the DRE, standing up for the touchscreen, criticizing the paper ballot optical scan.

So I'm just asking you to listen to the people, to listen to the people here today, to listen to the people in New York State, to listen to those newspaper editorials.

How many newspaper editorials have been done for the touchscreens? There's just -- please listen to the people.

EXEC. DIR. ZALEN: Well, if the people are saying to have one and not the other, I prefer not to do that.

I did say I thought clearly here that I would like to see both systems certified. And I do.

On another point, maybe I shouldn't have gotten into this cost factor, I was just trying to be corrective about it, but I agree with Peter that cost is not the issue here.

Certifying machines to me or the systems is the issue. Cost obviously will be a factor for the counties when they decide which system and which particular machine they might be interested in.

But in terms of certifying I don't think, at least not in my view, that it ought to be based on price.

Anyway that's all I have to say about this.

EXEC. DIR. KOSINSKI: Yes. I mean I would echo Stanley in the sense that, you know, we have, as a State Board, have an obligation which is somewhat different from the county boards.

Our obligation is to certify machines. Our obligation is to say these machines work, they work properly, they work appropriately, they do the functions that the voting machine should do, they do it in a secure way, they're accurate, they're reliable, and they do what the State law mandates.

It's the county board's decision which one to buy then.

But if they want to base that decision on

cost, so be it. If they do an analysis, which we would be happy to help with, that determines a certain system is cheaper than another system and that's what drives their decision, so be it. That's their decision.

But I think we have a little different role in this process. We are not choosing which system to buy. We are making systems available to buy. Our job is just to make sure that the systems that are available in the State work and work properly.

So that's our goal.

Secondly, I just want to make, I guess, one other comment, which is that you perceived that we are somehow defending a certain type of machine over another. And I don't -- I don't mean to be perceived that way. That isn't my intent.

I will tell you that I've been to all four of these hearings. I don't know that we've had anybody else come and speak on behalf of DRE machines, Let me just say that.

My only goal in making comments is to try to what I believe to be is to make sure correct information is out there, just to make sure that the record is correct.

I don't have a preference personally, whether, you know, we go with DREs or optical scans. It's not my choice.

But I do feel that it's important that in this debate and in this discussion that is occurring - and it's not just

occurring in New York, but it's occurring nationally - that the correct information be out there.

And I sometimes do hear things said like it's cheaper to do this than that. And I'm not sure that's true. And I sometimes try to determine why you say that. You say it but I don't know that there's evidence necessarily to back that up. And so I don't know that it's fair to have statements made, particularly in a public forum, and left out there like they're true when maybe there's not true, and when challenged, the people who assert them cannot back them up.

Now, do I feel an obligation to enter into that kind of discussion? Absolutely. I think it would be irresponsible for this agency to allow anybody in this discussion to say things that they have no factual basis to say and be allowed to say it unchallenged.

So if that's perceived as standing up for someone, so be it. But that's not the case. I'm not standing up for someone. I'm just trying to ensure that as people get into this discussion, they get into it with facts and not just assertions that I'm not sure where they come from. I'm not sure where they started. I have no information as to what their basis is.

And that's what I think I'm trying to accomplish and I think we all are in our job. And we have an obligation here to ensure that the facts get out.

And that's what my intention is in making those comments.

LEGISLATOR TYNER: I appreciate that and I will definitely get you the details. You know, midhudsonalliance.com, I'll get you the details of that study that was done down south where not only the touchscreens weighed more expensive than the paper ballot optical scanner's initial cost purchasing, but operational costs. I'll get you that. I mean anybody can find it online at midhudsonalliance.com.

I would just ask -- I'm getting a lot of positive stuff about, I'm hearing, you know, you saying that we want to make sure the counties have a choice. I'm just asking, begging and pleading, then put that into the regulations. Put that into the regulations that any manufacturer that makes both kinds has to submit both kinds.

And the only other thing that I was going to say is the waiting thing. Bo Lipari, for what it's worth, has addressed that point and he said that, as other people here today have said, that there is much less waiting time with the paper ballot optical scanners.

But I will get you the documentation on that.

I mean in my mind I'm thinking you said something about Ohio. But I will get you --

EXEC. DIR. KOSINSKI: I mean let me just

also say this. I don't mean to belabor this either.

But you should know. We speak with other states. We go to national meetings of state election officials around this country where we discuss these issues with others. And we know other states have had experiences with certain systems. And we talk to them about their experiences and what their experience has been and how these systems work, whether optical scan or DRE.

I mean we have not had experience in this State with precinct-based optical scan as it's called. We don't call them precincts in New York. We call them election districts. But there is precinct-based optical scan machines in use in this country. They don't happen to be in use in New York.

Have we had discussions with state officials who used them? Absolutely.

Do we continue to have those discussions? Absolutely. Because we know it's important to get firsthand information about what is it like to use an optical scan machine at the precinct level.

New York has had the luxury I'll call it of having one system for the last fifty or sixty years in this State. Other states do not have that experience. Other states have explored and gone out with other systems.

Oregon does all paper ballots, all paper, all

mail-in paper.

Now we don't do that in New York. We just chose not to go that route.

Do other states do other things? Absolutely.

But we have a limited experience factor in this State. We understand that. We've had lever machines in our precincts forever. We have very, very little experience -- we have some DRE experience in Saratoga County as I mentioned. But we have very limited -- we have no experience with optical scans in a precinct-based situation. So we are relying -- but we do that. I mean don't think that we just sit in our offices in Albany and talk to each other. We do discuss these things.

So I just want you to be assured that we are discussing these things with other states who have used them and we're getting information from them about their experience.

LEGISLATOR TYNER: As you mentioned, Dutchess County does have an optical scanner for a few years. So there is no touchscreen machine in Dutchess County that I'm aware of. So actually Dutchess County I think you may have actually mentioned a half-hour or an hour ago that there are paper ballot optical scanners all over the State that have been around for a while measuring the absentee votes.

I know in Dutchess County in the presidential election, I think, as I mentioned, there's something like

over 7000 emergency affidavit and absentee ballots.

So Dutchess County has no experience with touchscreen.

EXEC. DIR. KOSINSKI: But understand those --

LEGISLATOR TYNER: But we do have experience with optical scan in a positive way.

EXEC. DIR. KOSINSKI: I do understand that. A lot of counties have that, by the way. So as these counties get into deciding what system to buy, the good news I guess is that a lot of them do have experience. Westchester has, a lot of counties have optical scan for these absentee-based systems. Putnam has it.

That said, that's a much different system than a precinct-based optical scan system. I mean you need to understand that, that using -- and I don't know if you've watched how an optical scan system works in central count. It's a completely -- it's a much different, let's put it this way, a much different system than what you would do at the precinct.

LEGISLATOR TYNER: That's true, but we have no touchscreen at all.

EXEC. DIR. KOSINSKI: No, I understand that.

LEGISLATOR TYNER: At least we have a

forum and we have experience with optical scan, absolutely no experience with touchscreens whatsoever in Dutchess County.

So I appreciate your patience.

EXEC. DIR. KOSINSKI: Thank you very much.

EXEC. DIR. ZALEN: Thank you all for coming. We appreciate your experience.

Oh, I'm sorry. Wait a minute. The cameraman, sit down.

MR. ROBERT MILLMAN: My name is Robert Millman, Scotia, New York.

I was wondering if the Board Members could name or review any voting machine systems and manufacturers that they've personally looked at.

EXEC. DIR. KOSINSKI: Oh, sure. Well, I can. I mean we --

EXEC. DIR. ZALEN: I can too.

EXEC. DIR. KOSINSKI: Yes. I mean let me just maybe -- I don't mean to --

EXEC. DIR. ZALEN: No, go ahead.

EXEC. DIR. KOSINSKI: Just to expand on what I was talking about earlier maybe.

We on a regular basis, and, in fact, we'll be doing this again next week, we on a regular basis in this State

have statewide meetings of commissioners. And at those commissioners meetings - and the commissioners here in the room can attest to this - we have vendors who sell voting equipment attend those meetings so that our commissioners can look at them, can use them.

We've looked at many systems. There's a Sequoia manufacturer that has a system. There's ES&S that has a system. There's a Liberty Vote system. All full-faced, DRE-based systems. A couple of them have optical scan systems. ES&S has an optical scan system as well. We've looked at all the systems.

EXEC. DIR. ZALEN: Sequoia we've seen, Automark also.

And in terms of full-face ballot, I'm pretty sure I saw Avanti and Danaher. They've shown us some things, Avanti particularly.

I don't know if they'll all come through the door.

MR. ROBERT MILLMAN: Would it be possible to get a list of what systems you have looked at to --

EXEC. DIR. KOSINSKI: And I mean -- yes. You know, when we say look at, I mean we should be clear on that. Look at means they've -- we haven't certified them, we haven't looked at them as a agency like we will look at them to certify.

We've merely looked at them, that they bring

them to the conference, they are out in the foyer, that anybody can look at them. Our local commissioners look at them. They are just to look at and to use.

But they have not been technically certified and we haven't looked at them in that sense.

MR. ROBERT MILLMAN: I didn't mean certification, just to get an idea of what systems you had seen.

And going with the rule that the stupid question is the one you don't ask, there was a system that I demonstrated and it looked like a touchscreen system, but it was, in fact, a printer is what it was. It looked like a touchscreen system. You hit buttons. A piece of paper came out with all the holes filled in exactly the way they were supposed to be filled in. So it lowered the chance of typographical error.

And you took that to another machine and fed it in. I just was curious if you guys had had a look at that particular system.

EXEC. DIR. KOSINSKI: I personally have not looked at that system.

A VOICE: That's the Automark.

EXEC. DIR. KOSINSKI: That's the Automark. I have not really looked at that system to be honest. But I know they've been available at our commissioners meeting. I know that some of our local commissioners have looked at them.

I don't know, Stanley, --

EXEC. DIR. ZALEN: Assemblywoman, did we have the Automark in the well of the LOB?

ASSEMBLYWOMAN GALEF: Yes.

EXEC. DIR. ZALEN: Because I thought I saw it there.

ASSEMBLYWOMAN GALEF: They were there twice. They were there the first time when we just did the demonstration. I don't know whether you came by. Then they were taken out. And then they came back again. We asked them to come back and Automark was there.

EXEC. DIR. KOSINSKI: Automark, for those who don't know it, is the system for the disabled community to use an optical scan system.

ASSEMBLYWOMAN GALEF: It also addresses the question that was brought up about language because the Automark can turn your vote into whatever -- I think they program like ten languages into it. So the person who goes in can be helped with their language issues.

So it -- Automark isn't just for the disabled in that sense. It's also for language issues.

EXEC. DIR. KOSINSKI: I mean some of our counties, and I don't know if they have done one down here, have done some demonstrations around the State where they've had

vendors come in and, you know, show them to local elected officials and whatever so they can get a sense of how they are functioning.

And we certainly encourage that kind of, you know, showing if the counties want to do that and it's based on availability of the vendors and everything.

But they've done some of them around the State as well.

So that's another opportunity for people, not just us, but, you know, anybody to come in and look at these systems and see how they work.

MR. ROBERT MILLMAN: Thank you.

And if it's possible to get a list. I know that nothing has been certified, but simply the list of vendors --

EXEC. DIR. KOSINSKI: I think we can do that.

MR. ROBERT MILLMAN: Thank you.

EXEC. DIR. ZALEN: Thank you, all.

EXEC. DIR. KOSINSKI: Thank you.

(At 2:35 o'clock p.m. the proceedings were concluded.)

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