

NEW YORK STATE BOARD OF ELECTIONS

---

PUBLIC HEARING

In the Matter of

VOTING SYSTEMS REGULATIONS

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Monroe County Board of Elections  
Voting Machine Service Center  
2595 Brighton-Henrietta Town Line Road  
Rochester, N.Y.

December 13, 2005  
10:25 a.m.

PRESIDING:

Douglas Kellner  
Commissioner  
NYS Board of Elections

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

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## P R O C E E D I N G S

1                                    COMMISSIONER KELLNER: Good morning, my name is  
2                                    Douglas Kellner. I'm recently appointed as Co-Chair of the New York  
3                                    State Board of Elections, and, in fact, this is my first official act.  
4                                    Sitting to the right of me is Peter Kosinski, the Executive  
5                                    Director of the State Board of Elections, and to his right, at your far left,  
6                                    is Michael Johnson, who is Enforcement Counsel for the State Board  
7                                    of Elections.

1 So we welcome all of you here this morning. We are very  
2 interested in all of the comments that you will have. This is a learning  
3 process for us as well as giving you an opportunity to be heard, and we  
4 look forward to your comments.

5 We do have 22 speakers signed up, so we would hope that  
6 people will try to keep their remarks on point and brief enough to be  
7 considerate of the others who also wish to be heard today.

8 Peter, would you like to say anything?

9 MR. KOSINSKI: No, I have nothing in particular.

10 COMMISSIONER KELLNER: Okay.

11 So our first speaker is the Honorable Barbara Lifton, who is a  
12 member of the New York State Assembly, and also a member,  
13 appointed by Speaker Sheldon Silver, to the Advisory Task Force on  
14 Voting Machines. And we look forward to hearing from Assembly  
15 Member Lifton.

16 HONORABLE MS. LIFTON: Good morning. Good morning.  
17 Am I talking in both mikes here?

18 I want to thank everyone who has spent time and effort  
19 developing the draft rules and regulations that we are, in large part,  
20 commenting on today.

21 I am a member, as Mr. Kellner has pointed out, of the Assembly  
22 Committee on Elections, the newest member appointed this session,  
23 and Speaker Silver's appointee to the Citizens Election Modernization  
24 Advisory Committee, otherwise called CEMAC. But the following

1            comments are mine and do not necessarily reflect those of Speaker  
2            Silver or the Citizens Advisory Committee.

3            I want to state what is undoubtedly obvious to most people, that I  
4            am not a computer expert of any sort. I sometimes say that we used to  
5            have children to help us on the farm and take care of us in our old age,  
6            but now we have children to work the many machines in our lives; cell  
7            phones, tape players, Tivos and of course, the ubiquitous computers.

8            I am speaking as a layperson and as a member of CEMAC who  
9            has read, as much as I have time to, the rules and regulations around  
10           this new law. And I have also listened at great length to a number of  
11           computer experts about their concerns regarding the computerized  
12           voting machines.

13           I am urging, at the outset, in the strongest possible terms, that  
14           the Board listen to those experts as we proceed down this road to  
15           computerized voting. But even as a layperson having slugged through  
16           the draft regs twice, I am very concerned that the Board seems to put  
17           the testing and qualification of new voting machines largely in the  
18           province of private machine companies rather than under the clear and  
19           strong oversight of the New York State Board of Elections, where I  
20           believe that authority should reside.

21           At every turn in the document in the rules and regs, in the draft  
22           rules and regs, it says the vendor shall provide all sorts of documents,  
23           specifications and test results, which leaves the impression that  
24           companies are being asked to do a great deal to qualify their

1            machines. Which undoubtedly they are. But at the crucial point where I  
2            look to assess the role of the state, the draft regulations indicate that,  
3            “The State Board or its designee, as part of its examination, may, at its  
4            discretion, submit the machine for laboratory analysis.” That clearly  
5            implies, of course, that the Board of Elections does not have to submit  
6            a machine for laboratory analysis.

7            As an aside, I don’t understand why we would allow a designee  
8            to make that decision for the state. Who would that designee be?

9            If the State Board decides not to submit a machine to a  
10           laboratory for analysis, I can only assume that the testing done and  
11           paid for by the company is accepted as proof and the last word on the  
12           worthiness of the machine in terms of state certification.

13           According to this BOE, the Board of Elections draft document,  
14           we might be willing to accept a machine that has passed muster with  
15           an independent testing authority, which the BOE says must be  
16           accredited by the Federal Election Assistance Commission, the EAC,  
17           fairly recently established and more recently up and operating and  
18           already subject to great criticism from many computer experts.

19           The EAC, that is the Federal Elections Assistance, what’s the C  
20           for, Commission, has not shown the kind of democratic instincts nor  
21           concern for competence that makes me want to put New York State’s  
22           voting system in their trust.

23           The attached, and I’m also attaching a New York Times’  
24           editorial, warned last year that the EAC might well be a body that was

1           going to primarily represent corporate interests over the greater  
2           interest to the American public. Unfortunately, it appears they were  
3           right, that is the New York Times was right.

4                   The EAC is showing a shocking lack of concern for real  
5           verification and oversight by ignoring the calls for a voter verifiable  
6           paper trail from many, many, many, including most noteworthy, the  
7           Association for Computing Machinery, the largest organization of  
8           computing professionals in the United States. If the foremost computer  
9           experts in the country have serious concerns about security and  
10          accuracy, that ought to alert us to carefully consider our actions in New  
11          York State.

12                   The fact that the EAC has ignored this crucial group discredits  
13          the EAC, in my mind, and makes me think that we should not rely upon  
14          them to make sure things are done right in New York.

15                   In addition, David Dill, Professor of Computer Science at  
16          Stanford University and founder of Verified Voting.org, has stated that  
17          the EAC and its advisory subcommittees, "Failed to represent many  
18          stakeholders and often do not have the needed technical expertise."  
19          That is a truly frightening statement, particularly these days when we  
20          have watched one disaster after another because incompetent people  
21          were put in charge of vital government operations at the Federal level.  
22          It seems clear to me, given the EAC's lack of responsiveness to both  
23          the computer experts and the public, that we should never allow  
24          ourselves to be dependent on their judgements.

1                    It's my opinion that the State Board of Elections must either  
2                    higher expert nonpartisan staff or carefully choose a truly independent  
3                    and competent testing authority, making sure they have no connection,  
4                    whatsoever, to the companies it would be qualifying, auditing or  
5                    otherwise overseeing. I much prefer the former, that is in-house  
6                    experts, rather than the latter. Since there is nothing in these  
7                    regulations to indicate who those testing authorities are or how they  
8                    would be selected, I would prefer an in-house approach. This is one of  
9                    the most important areas of our public life, and clear, strong  
10                    unambiguous public accountability is absolutely necessary. Too often  
11                    lately I hear, oh, the subcontractor made that mistake. We need to  
12                    make sure that we're not in that situation down the road.

13                    It seems to me that the State Board of Elections should be  
14                    doing the kind of testing at the start of the state certification process  
15                    that the regulations describe the counties doing. That is running mock  
16                    elections on many machines that simulate a real election. Hand-  
17                    feeding the number of likely ballots cast with perhaps 800 ballots in the  
18                    test deck rather than only 200.

19                    Given the time pressures at work here in New York, I think if we  
20                    wait for the acceptance testing and election day testing by counties, we  
21                    could be looking at a train wreck if many of these new machines  
22                    malfunction or are tampered with by someone out to disrupt our  
23                    elections. And it would be a terrible mistake, I believe, to think that  
24                    there are not people abroad in the world who have nefarious motives in

1 relation to U.S. elections or New York State elections. We should take  
2 the most conservative of measures, early and up front, in the rigorous  
3 testing of machines.

4 Then, of course, we need to put in place a quality control system  
5 so that we can be sure that the machines purchased by the counties  
6 are an exact replica of the machine that the state certifies.

7 Based on the current draft regulations, I'm not sure how that  
8 would happen. The current lack of transparency to the public in the  
9 state certification process where all the crucial decisions are being  
10 made in private and among only a few top-level experts due to the  
11 issue of proprietary information, can only be compensated for, it seems  
12 to me, by open and rigorous testing by the state and then rigorous  
13 quality control after that. The counties will not have the capacity to do  
14 real quality control in any meaningful way, and it could come too late.

15 I have other concerns such as the security and reliability issues  
16 raised by the recent General Accounting Office, that is the Federal  
17 GAO Report, I've attached that as well, and simply the ability of the non-  
18 technical public to be able to understand our rules and regulations.

19 According to Article 2, Section 201 of the State Administrative  
20 Procedures Act, "Each agency shall strive to ensure that to the  
21 maximum extent possible, it's rules, regulations and related documents  
22 are written in a clear and coherent manner using words with common  
23 and everyday meanings."

24 After having slugged through the draft rules and regulations

1            twice, I certainly wonder what percentage of the public could begin to  
2            understand it. I know some of the computer experts that I spoke to said  
3            that they couldn't understand it. I urge that the Board of Elections work  
4            to translate more of the technical jargon so it is readable and  
5            comprehensible to the general public. With a matter that is of such  
6            important to every citizen in the state, we should work hard to unshroud  
7            the mystery around these computerized machines and the regulations  
8            for them.

9            I have been very concerned that due to the court case around  
10           the Independent Living Center appointee to the Election's Advisory  
11           Committee, we have not been able to call for another meeting of that  
12           group. I hope that the full Board votes at its meeting this Thursday,  
13           December 15<sup>th</sup>, to fill that seat completing that committee and allowing  
14           us to meet again as soon as possible for a fuller and ongoing  
15           discussion of these rules and regulations.

16           Last, but far from least, I was glad to hear the rumor that both  
17           ES&S, Election System and Software, if I got that right, Peter, and  
18           Sequoia are planning to submit a New York State compliant optical  
19           scanner. I have spoken directly with ES&S and was told that they are  
20           committed to offering both the optical scanner and DRE with the  
21           caveat, of course, that they get through the Federal and State  
22           certification process.

23           It is still my position that the clear intent of state law is to allow  
24           for the optical scanner and to allow counties a choice in the machine

1 that they prefer. I believe the current wording of the law allows the State  
2 Board of Elections to insist that any company wishing to do business  
3 with the state submit both types of machines made compliant with our  
4 new law.

5 Thank you, very much for your time and attention today.

6 MR. KOSINSKI: Thank you.

7 COMMISSIONER KELLNER: Thank you.

8 MR. KELLNER: Does anyone have any questions? Do you  
9 want to —

10 HONORABLE MS. LIFTON: No.

11 MR. KELLNER: -- submit something?

12 HONORABLE MS. LIFTON: No. No, I just wanted to make sure  
13 that you didn't —

14 MR. KELLNER: No, I'm fine.

15 HONORABLE MS. LIFTON: -- want to ask me anything.

16 MR. KELLNER: No, thank you.

17 HONORABLE MS. LIFTON: Okay, thank you.

18 COMMISSIONER KELLNER: Thank you.

19 Our next speaker is Sally Brown from the League of Women  
20 Voters.

21 MR. KOSINSKI: Thanks a lot.

22 MS. BROWN: Good morning. Thank you for coming to  
23 Rochester. My name is Sally Brown. I'm the Co-President of the  
24 League of Women Voters for the Rochester Metro Area.

1                    Our local league has formed a coalition with other groups in the  
2                    Rochester/Monroe County area and regarding the issue of HAVA and  
3                    new voting machines. And this group has many members. Some with  
4                    expertise in the technological aspects, some are knowledgeable about  
5                    the requirements of the disabilities community.

6                    The League's contribution is an expertise about what  
7                    constitutes good government. We work to influence public policy  
8                    through education and advocacy. We believe that citizen participation  
9                    in all stages of a new initiative, such as HAVA, is absolutely essential  
10                    to the democratic process.

11                    There's been an unfortunate pattern with regards to HAVA, their  
12                    implementation in New York State from the beginning. Public input has  
13                    not been welcomed by those responsible for its implementation.

14                    Two years ago, the League and other interested citizens groups  
15                    voice their concerns at a hearing on HAVA. I found the testimony given  
16                    to the task force in April of 2003. Even though our own representative,  
17                    Amy Aload, had been appointed to the task force, we were concerned  
18                    because all other members of the task force were political appointees.  
19                    So already the public was not part of the process.

20                    The League and 26 other organizations sent the Board, State  
21                    Board of Elections a letter in February of 2003 asking for the following:

22                    That the Task Force be more representative; that its director be  
23                    independent and non-partisan, that all meetings of the Task Force and  
24                    all communications be open to the public, and that the public be

1            allowed to comment at the beginning and end for a specified time  
2            period.

3            That the Task Force should have open hearings to solicit public  
4            opinion on HAVA and that public opinion should be incorporated into  
5            their recommendations.

6            That all material and documents should be made accessible to  
7            the public and that the state website on HAVA be clear and up to date.  
8            So far as I'm aware, not one of these requests or recommendations  
9            was ever instituted. Instead, in 2004, our New York State Legislators  
10           could not agree on anything with regards to HAVA and no legislation  
11           was passed. A conference committee was convened to set up  
12           requirements and standards and eventually, in June, Governor Pataki  
13           signed the Committee's recommendation into law in July of 2005.  
14           Meanwhile, we've had to apply for an extension in order to still receive  
15           HAVA monies for the state.

16           The Federal HAVA legislation represents an unprecedented  
17           opportunity to revamp our state systems and procedures. The federal  
18           government has provided us with guidelines and some money. Since  
19           the federal government is forcing the states to improve anyway, why not  
20           take full advantage of the chance and embrace the change? Almost  
21           every other state legislature in the county has already passed the  
22           necessary laws and implemented their new systems. But not so in  
23           New York.

24           Our state's track record in implementing HAVA has been

1           fraught with procrastination, confusion and inefficiency. The lack of  
2           statewide education, that essential first step towards citizen  
3           participation, proves that our state is only marginally interested in  
4           eliciting public participation. These hearings are another proof that  
5           public input isn't welcome. There's only three hearings in the whole  
6           state and the average citizen isn't even aware that new voting  
7           machines are being chosen.

8                       New York conducts business with a lot of rules and regulations,  
9           but the first rule, I know, is that the state decides what's required and  
10          then contractors, or vendors, produce the product to the state  
11          specifications and then the state decides which product is the best and  
12          awards the business to the vendor. That's the process. With New  
13          York's voting machines, this practice seems to have been reversed.  
14          Indeed, last week New York State announced that they're going to  
15          partially test DRE machines that do not yet conform to state standards.

16                      The last two years have reflected a clear pattern that the state is  
17          reluctant to include the public as a part of the process and instead, has  
18          chosen to treat HAVA as if it were a minor regulation rather than the  
19          important legislative opportunity that it is. The League has been clear  
20          from the beginning that we expect the state's election commissioners  
21          to keep these specifications in mind when choosing voting machines.  
22          They should be secure, accessible, reliable and mature, transparent  
23          and audible and cost effective. Please, please, consider these all-  
24          important requirements and truly serve New York State public when

1 making your decision.

2 Thank you, for this opportunity.

3 MR. KOSINSKI: Thank you.

4 COMMISSIONER KELLNER: Ms. Brown. Ms. Brown.

5 MS. BROWN: Mm-hmm.

6 COMMISSIONER KELLNER: I appreciate your comments, and  
7 I've certainly tried to stay in touch with Amy Aload, who has also been  
8 working on these issues.

9 MS. BROWN: Mm-hmm.

10 COMMISSIONER KELLNER: Do you know if anyone at the  
11 League is actually working on reviewing the proposed regulations and  
12 will be getting us --

13 MS. BROWN: Yes, we do have a woman from New York. I  
14 believe her first name is Kathy. If you give me your e-mail address, I'll  
15 be happy to send it to you.

16 COMMISSIONER KELLNER: Okay.

17 MS. BROWN: Okay.

18 COMMISSIONER KELLNER: I mean as I say, the stated  
19 purpose of the hearings, --

20 MS. BROWN: Mm-hmm.

21 COMMISSIONER KELLNER: -- and we welcome the  
22 comments, is to move forward in the draft regulations --

23 MS. BROWN: Mm-hmm.

24 COMMISSIONER KELLNER: -- that the Commissioners

1 proposed --

2 MS. BROWN: I believe --

3 COMMISSIONER KELLNER: -- before I became  
4 Commissioner.

5 MS. BROWN: -- Kathy will be speaking --

6 COMMISSIONER KELLNER: Okay, good.

7 MS. BROWN: -- in New York City.

8 COMMISSIONER KELLNER: All right, thanks very much then.

9 MS. BROWN: Mm-hmm. Thank you.

10 COMMISSIONER KELLNER: Our next speaker is Jon  
11 Greenbaum from Metro Justice.

12 MR. GREENBAUM: Hi, how are you today?

13 MR. KOSINSKI: Good, how are you?

14 MR. GREENBAUM: Thank you, for coming to our area. I'm Jon  
15 Greenbaum. I'm on staff at Metro Justice. Metro Justice is a local non-  
16 partisan grassroots group in the Rochester area. We have over 800  
17 dues-paying members, and our newsletter and our e-mails reach  
18 thousands more.

19 Metro Justice has joined together with the Center for Disability  
20 Rights, League of Women Voters in the Rochester area, Regional  
21 Center for Independent Living, MoveOn/Fairport and the Western New  
22 York Civil Liberties Union, Democracy for America Rochester as well.  
23 Together we formed Every Vote Counts Monroe, and together we urge  
24 New York State Board of Elections to create standards that ensure that

1 New York State's voting machines adhere to the five basic principles  
2 for the machines.

3 These are the five basic principles that we've come together to  
4 support:

5 The machines need to be secure. That means they need to be  
6 tamper proof. They need to be, obviously, accessible to the disabled.  
7 The machines must allow people who are disabled to use the  
8 machines independently. The machines that this state chooses need  
9 to be reliable with mature technology. We are not Guinea pigs, us  
10 voters in New York State. The machines need to have a proven track  
11 record and be free from voter verification problems.

12 And number four, the machines need to be transparent and  
13 auditable. Each voter needs to be able to verify their vote with a paper  
14 record as required by New York State Law. And the machines, finally,  
15 need to be cost effective.

16 The current draft standards as written are unacceptable. We  
17 have four areas of concern:

18 Number one. New York State should not be following the  
19 vendors. We should be leading them. We're New York State, they're  
20 just vendors. In other words, we need to make sure that the vendors  
21 are submitting both DRE touch screen machines as well as paper  
22 ballot optical scan devices. We need to be in the driver's seat here.

23 Number two. The standards refer to remote control devices.  
24 This implies wireless networking. That's an invitation for hackers to try

1           to crack into the code. That's unacceptable.

2                   Number three. The standards seem to be weighted in favor of  
3           the touch screen DRE's. The rigorous requirements for the testing of  
4           optical scanners are not applied to the DRE machines. This is not a  
5           level playing field. We need a level paying field.

6                   And finally, number four. The draft standards, as written, allow  
7           the vendors to maintain proprietary computer code and make no  
8           allowance for independent review and analysis. Now that's like Detroit  
9           claiming that their car engines are trade secrets and not letting us look  
10          under the hood. This leaves local governments with no recourse to  
11          investigate instances of tampering. It's absolutely crucial that we  
12          eliminate the possibility that the vendors maintain proprietary computer  
13          code.

14                  So we urge the State Board of Elections to change the draft  
15          standards accordingly.

16                  Thank you.

17                  MR. KOSINSKI: Okay.

18                  COMMISSIONER KELLNER: Thank you.

19                  All right, next is Chris Hilderbrant from the Center for Disability  
20          Rights.

21                  MR. HILDERBRANT: Does it matter which one I use there?

22                  COMMISSIONER KELLNER: I don't think so.

23                  MR. HILDERBRANT: Good morning. My name is Chris  
24          Hilderbrant, I'm the director of Advocacy at the Center for Disability

1 Rights. I'm also a person with a disability.

2 In the recent months, the Center for Disability Rights was joined  
3 by the coalition that's come to be known as Every Vote  
4 Counts/Monroe, and as a coalition, we are advocating that every voting  
5 machine certified for use in New York State, be secure, accessible,  
6 transparent, reliable and cost effective.

7 Since my spinal cord injury at age 14, I've used a wheelchair for  
8 my mobility, and at the age of 18, I became a voter with a disability and  
9 have encountered barriers to voting in the two counties that I've in  
10 since.

11 Also in the past year, I ran for local office and experienced the  
12 electoral system as a candidate. And worth noting is that during that  
13 time as a candidate, I was frequently asked about the status of New  
14 York State implementing HAVA and buying new voting machines and  
15 people are very concerned about what's going to come out the other  
16 side.

17 I appreciate the opportunity to speak here today regarding the  
18 regulations to be used for certifying machines in New York State. And  
19 before I get to my comments that are more specific to the regulation, I  
20 wanted to express my frustration with the process that's gone behind  
21 the development of these regulations.

22 Firstly, the regulations were developed with the foregone  
23 acceptance of New York State's full face ballot requirements. That  
24 antiquated regulation, that antiquated requirement is a barrier to

1 access for people with disabilities. The regulations since then now  
2 have also chosen to ignore the Brennan Center for Justice's recent  
3 reading of the full face ballot requirement. The Brennan Center says  
4 that actually, the full face ballot requirement and its original intent would  
5 not prevent ATM-style viewing that would allow us to zoom in on a race  
6 and blow up the font to something larger and more readable for  
7 somebody with a visual disability.

8 By strictly adhering to the old interpretation of the full-face ballot,  
9 New York State has greatly impaired our ability to make voting  
10 accessible for people with visual impairments. It's unconscionable in a  
11 process that's specifically supposed to make voting more accessible  
12 for people with disabilities to adhere to rules that are barriers.

13 Consider how small and challenging the print on the ballot is for  
14 someone like myself who's, I'll confess and say that I turned 30  
15 yesterday, and the font is very small and my eyes are still perfect, as  
16 best I know. That it just, picturing how much our population is aging  
17 and how many folks that are a little older than myself are here today that  
18 if we have technology out there can make the ballot more readable and  
19 more useful for people, that's absolutely something we should be  
20 doing. And we should be demanding that vendors do that for us.

21 I'm very concerned that people with disabilities have been shut  
22 out of the development of these regulations, where a lot of other  
23 advocate groups have expressed some frustration that the advisory  
24 committee has been, at times, ignored. Our community is in the

1 process of suing just beyond the advisory committee, that New York  
2 State's Voting Machine Modernization Law explicitly stated that a  
3 member of the New York State Independent Living Counsel would be  
4 able to participate on the advisory committee. The State Board has  
5 not allowed NYSILC to appoint a person and NYSILC is pursuing a  
6 lawsuit.

7 Refusing to allow NYSILC to participate in this advisory  
8 committee certainly does not bode well for New York State's  
9 opportunity to make the voting system more accessible for all.  
10 Certainly with that context, I'm not surprised that the detail and  
11 specificity regarding access contained in the draft certification  
12 regulations, we find the specificity to be lacking. Indeed, there's as  
13 much guidance about how to make the machine, how much noise the  
14 machines can be allowed to make or how the curtains can hang or be  
15 positioned, as there is something much more intensely detailed as  
16 making voting accessible for people with disabilities.

17 The draft regulations require only that the fully accessible  
18 machines be equipped with a voting device with tactile discernable  
19 controls, an audio voting feature and voting, be equipped with a voting  
20 device for sip and puff technology, and while those features, certainly,  
21 we support, there's a lot of disability groups that are left out of those  
22 features. The draft regulations fail to meet the needs of people who  
23 are visually impaired and need larger print sizes or different contrast  
24 between text and background in order to read the ballot independently.

1                    The regulations make no provision for an expectation of input  
2                    controls that would be labeled with Braille, and the regulations fail to  
3                    address the needs of a voter who may be both deaf and blind.

4                    To address the needs and ensure that all voters with all types of  
5                    disabilities are able to vote privately and independently, the New York  
6                    State Independent Living Counsel developed the following list of  
7                    access features, which should be included on all accessible voting  
8                    machines.

9                    All machines should have a Braille keyboard or Braille on the  
10                   keyboard if there is keyboard used in the final machines we select.  
11                   The capacity in the machine to change the appearance of the ballot  
12                   from full face into a page system, like an ATM. The capacity to enlarge  
13                   the font up to 24 points, at least. Capacity to adjust colors in the text  
14                   and the background for contrast. An audio tract done in a human  
15                   voice, not a super-cheesy synthesized machine voice that when you're  
16                   trying to read candidates like Hilderbrant, can probably make  
17                   significant errors. So an audio tract with a real human voice that you  
18                   can control the volume and speed. Simultaneous delivery of the audio  
19                   tract and the large print text.

20                   Capacity to view or listen to parts of the ballot individually.  
21                   Capacity to view and listen to the ballot as a page system, like an ATM.  
22                   The previously stated sip and puff technology. Even blink control  
23                   devices that are becoming more common in some of the computer  
24                   equipment we operate with power wheelchairs. Something that could

1 be operated with a system of blinks. The technology is out there, we  
2 should have it.

3 Light pressure switches for somebody who has dexterity  
4 impairments. Alternative system of controls that would be moveable  
5 and lightweight for laptop voting instead of trying to get the big  
6 wheelchair positioned up against the big machine in a way that's  
7 useable. Why don't we have something that we bring on to our laps or  
8 on to a desk top, table top that would be more convenient for people?

9 Capacity for all individuals who are blind or visually impaired to  
10 also view the auditable paper trail, that certainly we support the efforts  
11 of other groups to demand a paper trail and New York State is required  
12 to have that. So that that paper trail can be verified by a voter with a  
13 disability.

14 And lastly, notification that if the voters fail to vote in a particular  
15 office or referenda, call that to the attention of the voter, make sure that  
16 it was a conscious choice not to vote in that, that it wasn't just confusion  
17 in dealing with the new voting systems.

18 Without these mechanisms to ensure access, the new voting  
19 machines may still leave many people with disabilities dependent on  
20 poll workers to assist them in casting their no longer private vote.

21 One issue affecting people with disabilities but also several  
22 other minority populations is the language and reading barrier that's  
23 inherent to this system and has not been addressed by the proposed  
24 regulations. If someone is not able to read English or not able to read

1 at all; are they less entitled to exercise their right to vote independently?  
2 Technology exists that would allow the ballot to be displayed in  
3 alternate languages or with pictures of candidates in order to  
4 accommodate needs of people with limited reading skills or limited  
5 English.

6 The New York State Board of Elections must assert itself and  
7 take control over what machines will be developed and presented to  
8 New York State for possible certifications. We're concerned that  
9 currently the vendors are driving this process, and they've been given  
10 too much reign and few directives as far as what accessibility features  
11 must be included and how those features must function.

12 By giving the vendors control, New York State puts itself in a  
13 situation of being forced to choose between the least worst of the  
14 machines and failing to meet the needs of people with disabilities.

15 Certainly the voters of New York State and those with and  
16 without disabilities deserve the best. All of our voters deserve the best.  
17 The proposed regulations currently fail to give us the best and,  
18 therefore, we must make some significant improvements, including the  
19 above-recommendations and those of my colleagues to ensure that we  
20 get the best voting machines our money can buy.

21 Thank you.

22 COMMISSIONER KELLNER: Thank you. All right.

23 MR. KOSINSKI: I just wanted to make a couple of sort of  
24 housekeeping, I guess, comments.

1           One would be that if you have written testimony and you can  
2           leave copies with us, that would be very helpful. We are having what's  
3           said today transcribed. It would be helpful to us if we had copies of  
4           what you're presenting today if you happen to have brought them with  
5           you.

6           Secondly, I just want you to know that this public hearing is part  
7           of a larger process that we're going through regarding these rules and  
8           regulations, which is that these are out for a 45-day comment period.  
9           These public hearings are just a portion of the comment period that  
10          we're actually under. The comments are being received, you know,  
11          through the internet, through the mail, through phone calls, through any  
12          other means that people want to use to get those comments to us at  
13          the State Board. We've made them available on our website and  
14          we've made them available to our local Boards of Elections that if you  
15          want copies to look at, you can call our office and get copies, so I don't  
16          want people to feel that these public hearings are the only opportunity  
17          that the public has to have input on these particular rules and  
18          regulations.

19          I should also let you know that what this is about really, is that  
20          once all of our comments are received by the office, they will all be  
21          considered by the Commissioners prior to the final adoption of the  
22          regulations so that the process involves the consideration of each of  
23          the comments that you're presenting here today as well as other  
24          comments that were received from our other public hearings and from

1 our other modes of receiving comments and that after the expiration of  
2 the 45 days, which I believe is in late January, we will then have a final  
3 adoption of the regulations to come out. So I just wanted you to  
4 understand kind of what the process was.

5 COMMISSIONER KELLNER: Next is Debbie Binonno.

6 UNIDENTIFIED MALE: Deb Binonno's paratransit ride didn't  
7 pick her up.

8 COMMISSIONER KELLNER: Okay.

9 UNIDENTIFIED MALE: One of our other joys is transportation.

10 COMMISSIONER KELLNER: All right, well then next is Gerry  
11 Miner.

12 MS. MINERD: Good morning, gentlemen.

13 MR. KOSINSKI: Morning.

14 MS. MINERD: My name is Gerry Miner, and I'm here today as  
15 an individual citizen, not representing any group or organization. I'm  
16 the mother of two grown children and I have three little grandsons.

17 I am here today and speaking out today because I want my vote  
18 to count. I want your vote to count, and I want everyone who exercises  
19 their right to vote to have their vote counted regardless of which  
20 candidate they're voting for and regardless of their political party  
21 affiliation.

22 Voting is one of the few tools that we as individuals have in a  
23 democracy. And voting has always been subject to fraud. Stuffing the  
24 ballot box began decades ago. But good and decent people like

1 yourselves with the authority to make decisions which affect the  
2 integrity of the voting process have continually worked to ensure that  
3 each of our votes are held sacred. Again, regardless of which political  
4 party wins the seat in question.

5 Today, we benefit beyond belief from technology. But we must  
6 also live with the fact that untested, unreliable, uncorroborated and  
7 manipulative technology can hurt us by not accurately recording our  
8 vote in any number of ways. By omitting our vote, and not to mention  
9 abracadabra, changing our vote. For me, that's a very big deal. I  
10 wouldn't feel like I live in a democracy if the sanctity of my vote were  
11 taken away.

12 You four gentlemen sitting here this morning hold the public trust,  
13 and you hold my trust. So please, don't let us down. Make sure the  
14 voting machines you select for me, for yourself, and for the people of  
15 New York will count our votes precisely and accurately with no internal  
16 or external intervention possible. No abracadabra. And make sure the  
17 voting machines you select have a paper trail that can be verified.

18 Thank you, very much.

19 COMMISSIONER KELLNER: Thank you.

20 MR. KOSINSKI: Thank you.

21 COMMISSIONER KELLNER: Here's another name I'm going  
22 to garble. Jason Nabewaniec.

23 MR. KOSINSKI: I'm sorry. I'm sorry, Doug. Don't you have Tim,  
24 Gerry and then Tim?

1 COMMISSIONER KELLNER: Oh, I'm sorry. So Tim Miner.

2 Okay. Thank you.

3 MR. KOSINSKI: I'm sorry.

4 MR. MINERD: Am I up?

5 COMMISSIONER KELLNER: Yes.

6 MR. MINERD: Jason or —

7 COMMISSIONER KELLNER: You're Mr. Miner?

8 MR. NABEWANIEC: No, Jason.

9 MR. KOSINSKI: Well, we can take him and then we'll take Tim.

10 COMMISSIONER KELLNER: All right, we'll take you and then  
11 we'll take you, Mr. Miner.

12 MR. KOSINSKI: We'll be there. Sorry.

13 COMMISSIONER KELLNER: My apologies.

14 MR. NABEWANIEC: Okay. Good morning, my name is Jason  
15 Nabewaniec. I'm here today both as the Co-Chair of the Green Party  
16 of Monroe County and as a representative of Metro Justice to the Every  
17 Vote Counts/Monroe Coalition.

18 Our goal today is to provide the New York State BOE with public  
19 input to consider when determining the final requirements for  
20 certification for the new voting machines used here in New York State.  
21 The Help America Vote Act allows New York State to receive federal  
22 funds if we update our vote process doing away with the lever  
23 machines and replace them with a method that provides equal access  
24 for people with disabilities.

1           The Federal Government is not empowered to mandate voting  
2           methods by our state, however, meeting this Federal Act was put into  
3           action by our New York State Legislature so that we could receive the  
4           federal money to improve our voting system. My concern is the time  
5           frame in which we currently are working in. To receive these federal  
6           funds, we need to write and approve certification standards, test and  
7           certify the machines that are not currently complete in their design,  
8           have machines manufactured and delivered in time for the November  
9           7<sup>th</sup> Federal Election.

10           I do not know why it's taken this long to get to this point, but this  
11           is the timetable we are currently working in. In a good democracy,  
12           people determine the best voting process in which they wish to select  
13           their representatives. Here in New York State, we have slowed down  
14           the process and bought into the timeline that puts us in a position  
15           where our electoral options are being held hostage by the Federal  
16           Government and by the three corporate vendors that have determined  
17           the machines that they will chose to put up for certification.

18           Why is it that the corporate vendors and the DRE sales  
19           department get to choose how New Yorkers select their  
20           representatives but we the people only get asked which of these two or  
21           three options will be the lesser of two evils at the tail end of this  
22           process? Why are we being asked how to write certification  
23           requirements for these three corporate vendors rather than being  
24           asked three years ago what specifications should we write for the

1 manufacturing of our new voting machines?

2 At this point, we've seen none of these machines brought before  
3 us, meet our voting needs as outlined by our coalition. We could chose  
4 to do a hand-counted paper ballot and then along with that, the optical  
5 scan for voter verification for the visually impaired community, and this  
6 would help improve the accuracy and integrity of our democracy.

7 However, it seems likely that the New York State BOE will continue to  
8 rush through a process continuing to claim that hand-counted ballots  
9 take too much time or too much effort. Yes, machines will accelerate  
10 the counting process, however, expedient does not mean democratic.

11 We need to instill integrity into the electoral process to build  
12 voter confidence; we need to ensure that machines, no matter what  
13 format, must be full faced by race, not zoom in and cut candidates out  
14 of view, as some of the machines currently do. We need the people to  
15 dictate democracy, the corporate sales departments can only be  
16 trusted to promote the vendor's most profitable options. We need the  
17 New York State to be committed to not certifying any machine that fails  
18 to meet our standards of secure, accessible, reliable, audible and cost  
19 effective. The New York State BOE has not implemented HAVA in a  
20 manner appropriate for democracy. Please listen to the people today  
21 and throughout this process and we can do better.

22 Thank you, very much, for your time.

23 MR. KOSINSKI: Thank you.

24 COMMISSIONER KELLNER: Thank you.

1 Tim Minerd.

2 MR. TIM MINERD: Good morning, and thanks for pronouncing  
3 my name correctly.

4 COMMISSIONER KELLNER: Yes.

5 MR. TIM MINERD: Security –

6 COMMISSIONER KELLNER: We can learn and we do listen.

7 MR. TIM MINERD: Security. I'm here to talk about security, as a  
8 lot of people before me have spoken. But after 911, there's been a lot  
9 of talk about security and the threat to our democracy by terrorists.  
10 Because of 911, and because of the controversy over the 2000 and  
11 2004 presidential elections, I am concerned about security in our voting  
12 machines.

13 An unprotected voting system that is vulnerable to terrorists as  
14 well as greedy politicians could bring down our democracy. New York  
15 State's future and the future of the United States depends on legitimate  
16 voting.

17 Security and reliability are the most important characteristics of  
18 a voting machine. There should be no limit to the amount of time that is  
19 spent on inspecting a voting machine or voting system to ensure  
20 security. Damn the 2006 elections and damn HAVA if the currently  
21 available voting machines cannot be deemed secure, let's wait until  
22 they can be.

23 There also should be no limit on the cost, although I'm not sure I  
24 believe that, that is spent on a voting machine or voting system to

1 guarantee security. Everyone's vote is of the utmost importance in a  
2 democracy. If one's vote cannot be assured, there is no democracy.  
3 There is only confusion and then havoc as we saw in our nation's early  
4 history when people had no vote.

5 A voting system that cannot be trusted will eventually be  
6 destroyed. Therefore, I feel the simplest, most straightforward, most  
7 technology mature voting machine and voting system is the best  
8 selection for New York State. One that mimics the typical voters' idea  
9 of voting, one where you fill out a paper ballot and then simply place it  
10 in a ballot box. Everyone understands this concept. It's easy to follow  
11 and it has a long history. Anything more complex will prevent the less  
12 technology-oriented voters from coming out to vote. This was  
13 expressed several times to me during my service as an election  
14 inspector in the 2005 elections. Not only expressed by the maturity  
15 endowed voters, but by the less maturity endowed voters. Their  
16 disdain for the DRE, and I refer to them as the don't record but eject  
17 type machines, was obvious.

18 As part of the coalition Every Vote Counts, I have submitted  
19 details on the voting machine characteristics that we think represents  
20 security. We hope you will read them before selecting a machine or a  
21 vendor. But in summary, we want a machine that cannot be accessed  
22 by any communication means, one that is not vulnerable to outside  
23 energies, such as a static discharge, one that cannot be manipulated  
24 by any means once certification has been granted and where no one

1 but authorized people have access to the machines. And after  
2 certification, a system that belongs to New York State so that full  
3 access to the design can be obtained and investigated.

4 I can't emphasize enough that every vote must count and be  
5 counted. Thank you.

6 MR. KOSINSKI: Thank you.

7 COMMISSIONER KELLNER: Susan Multer.

8 MS. MULTER: I'm Susan Multer from Horseheads in Chemung  
9 County. I'm a concerned citizen and an election inspector speaking on  
10 my own behalf. Thank you, for the opportunity.

11 As a former Associate Professor at Monroe Community  
12 College, I'd like to tell you what I taught my students in the first hour of  
13 the first class of every semester. Which is this; don't believe everything  
14 you read in print and will hear on television, but instead, determine the  
15 sources of the information, find the documentation of the points and  
16 learn to separate fact from opinion.

17 Since hearing about HAVA three years ago, I have followed  
18 these principles myself and come to the conclusion that the method of  
19 voting that is the safest, most reliable, easiest for voters to use and  
20 least expensive is what they do in Oregon, vote by mail.

21 Now before you assume that I've dropped off some other planet  
22 and come here to talk about something that's irrelevant to today's  
23 topic, please bear with me while I make my point.

24 When ballots are mailed to the homes of the registered voters,

1           there are no polling places. There are no machines. There is no  
2           transportation and storage of machines. There is no cost of recruiting,  
3           training and paying election workers. No risk of voting machine  
4           malfunction or manipulation. And no hurry on the voter's part to put, --  
5           and no pressure on the voter to vote in a hurry because there's a line of  
6           people waiting behind them.

7                        This system inspires voter confidence and increases voter turn  
8           out. How do I know that? Because in the report that I've included in my  
9           packet for you, an impressive statistic is this; in the presidential  
10          election of 2000, when only 51 percent of registered voters nationwide  
11          voted that year, in Oregon it was almost 80 percent.

12                      Ladies and gentlemen, voter confidence and voter turnout ought  
13          to be one of the primary concerns of public officials, whether you're  
14          elected or appointed, whether you're working at the state or the county  
15          level, but I have yet to hear one official talk about this. And I have yet to  
16          read in the 24 pages of regulations proposed by the State Board of  
17          Elections, the most important regulation that I think is necessary to  
18          implement the law passed by our state legislature and governor.

19                      Counties have been given the responsibility of choosing  
20          between electronic voting machines and optical scan systems, but if no  
21          optical scanners are submitted for certification, there will be no choice.  
22          It would be easy for you to add a regulation stating that if a company  
23          which makes both electronic and optical scan machines and chooses  
24          to submit one, it must also submit the other.

1 I have read that a spokesperson for the State Board of  
2 Elections has publicly said, well you can't force a private company to  
3 sell a product it doesn't want to. This is a free country. Gentleman, it  
4 may be free for the vendors, but it's not a free country for the New York  
5 State Legislature or our county Boards of Election if the vendors are  
6 going to make this choice for us. You can prevent this problem by  
7 adding this regulation, and I urge you to do so.

8 The other point about regulations that I wish to address is the  
9 absurdity of allowing vendors to decide what is proprietary. The source  
10 code of the software should be held in escrow so that in a contested  
11 election or a random audit, when there's a discrepancy between the  
12 paper tallies and the machine tallies, an independent auditor can have  
13 access to the source code. That is the only way to check whether every  
14 vote is counted the way it was cast. Without such an opportunity, we  
15 have no democracy.

16 In my remaining time, I will give four reasons why it's so  
17 important that optical scan systems be an option for New York State.

18 One, optical scan is easier for all voters to understand and use  
19 than electronic. Marking on paper is familiar, it's not unnerving as  
20 electronic can be for those who are not used to electronic technology.  
21 Specifically, senior citizens who probably are our biggest group of  
22 voters. It takes minimal time, minimal explanation and has a valid  
23 marking device for people with disabilities. Many public interest non-  
24 partisan groups agree, and many of them are speaking here today. So

1            do many states, such as North Dakota and Nebraska, who are the two  
2            most recent ones who have decided to go optical scan for the whole  
3            state. I'd like to quote from Secretary of State of Nebraska, John Gale.

4            "A paper ballot system has a lot of advantages. It's reliable and  
5            cost effective. Voters find it easy to use and the ability to conduct  
6            accurate recounts is preserved."

7            My second point is that optical scan is easier and cheaper for  
8            the county to recruit, train and pay the inspectors and easier for us  
9            inspectors to handle at the polls.

10           I have had retirees who were willing to sit, -- I know retirees who  
11           were willing to sit 15 hours for very little pay who are saying now, if we  
12           go electronic, count me out. We're going to have to pay more to get  
13           people who are computer savvy, but even then, if the machines  
14           malfunction, the workers won't be able to fix them necessarily, and the  
15           technical support from the vendors has cost far more than expected in  
16           other states, as shown in an article in your packet from Miami-Dade  
17           County in Florida where election day costs have quadrupled since they  
18           switched to electronic.

19           As a result, the Supervisor of Elections has recommended  
20           replacing \$24 million worth of electronic machines that they paid for, it  
21           wasn't HAVA, they paid for it themselves three years ago, and they're  
22           recommending replacing them with optical scans.

23           My third point; optical scanners are less likely to malfunction  
24           than electronic voting machines. And even if they do, the voting can

1                    continue and they can be counted later on another machine.

2                    I've enclosed two pages in your packet documenting the  
3 malfunctioning of electronic voting machines around the country in '02,  
4 '03 and '04. Even though those machines are not identical to ones, --  
5 to the full-face ballot one we're considering for New York State, they  
6 were considered top of the line technology at the time, and look what  
7 happened.

8                    For New York to be considering a full face ballot electronic  
9 machine that has never been used in an election and still doesn't have  
10 working voter verified paper trials or disability features is  
11 unconscionable.

12                    Optical scanners are less likely to malfunction for two reasons.

13                    A. They're not new technology. Some states have used them  
14 for more than ten years.

15                    B. They only do one thing. Count the votes. Whereas DRE's  
16 do three things. They print the paper record for the voter to verify, then  
17 they electronically record the vote, and they electronically count the  
18 vote. So there are three times as many chances of things going wrong.  
19 And in California's recent 8-hour testing of one type of electronic voting  
20 machine, it produced a 10 percent error rate. This is totally  
21 unacceptable.

22                    My forth point, electronic voting machines have a much higher  
23 risk of having vote counts secretly manipulated by an inside  
24 programmer. Ph.D. Computer Scientists from Rebecca Mercuri at

1            Harvard to David Dill at Stanford have warned of these risks for years.

2            In a presentation at Watkins Glen in July of '03, Dr. Barbara  
3            Simons, also of Stanford, explained how a secret program would only  
4            be triggered during a real election, not during a test situation. Well how  
5            would the computer know? Because an election takes 12 or 15 hours  
6            in our state. It takes at least 12 hours to run a real election, and voters,  
7            there's several minutes that pass between the time I vote and the next  
8            person votes. But when you're doing a test, it's a very short duration  
9            and the votes are fed in quickly, sometimes from a cartridge that's  
10           already prepared.

11           The secret loop that enables votes to be counted differently is  
12           only activated in the real situation, and the computer knows which it is  
13           because of the length of time and the frequency of the voters.  
14           Therefore, the testing that you or our county election commissioners do  
15           before the election will never reveal what you were talking about.

16           If you need someone else besides me to make the point better,  
17           in the recent report by the GAO, the General Accounting Office, which  
18           is the investigative arm of Congress, they say that there are serious  
19           flaws in security of electronic voting machines. And I think when the  
20           GAO speaks, we should listen.

21           It is essential to understand that even if a machine prints a little  
22           piece of paper that says, yes, you're choosing to vote for George  
23           Washington, for example, that is no guarantee that that machine will  
24           electronically record your vote that way. Or electronically count it that

1 way. Having votes counted by private companies on private software  
2 is not democracy, which brings me back to my starting point.

3 We need a system that inspires voter confidence by counting  
4 votes the way they are cast. Optical scan can do this. But counties  
5 cannot choose it unless you, the State Board of Elections, makes such  
6 a choice possible. I sincerely hope you will.

7 Thank you.

8 MR. KOSINSKI: Thank you.

9 COMMISSIONER KELLNER: Next is Avery Beer.

10 MR. BEER: Good morning.

11 COMMISSIONER KELLNER: Good morning.

12 MR. BEER: Thanks for being here and inviting us to have a  
13 moment to have our input.

14 I'm here this morning both as a member of Metro Justice, and I  
15 concur completely with the stated goals of our coalition in all respects,  
16 but I'm also here as a personal citizen, and I must say, I was very struck  
17 with the previous speaker's comments, and I concur with her  
18 completely. And I'll just recount a little of my anecdotal experience from  
19 last year.

20 My personal involvement in this issue of voting machines began  
21 last year. In the 2004 election, I worked as a non-partisan poll monitor  
22 in the State of New Mexico at a largely Hispanic precinct in  
23 Albuquerque. New touch screen electronic machines were being used  
24 at that polling place. In retrospect, I must say that I went into the

1            experience of that day somewhat naively.

2            It was our role at the polling place to assist voters with any  
3            problems they might have, i.e., directing them to the right polling place  
4            if they were in the wrong polling place, et cetera, et cetera. It was our  
5            role to assist other voters with problems they might have as well as  
6            keeping a log of any reported difficulties they had with their vote.

7            A specific kind of problem, that while only reported by a handful  
8            of voters in the course of the day, did repeat itself. And that report was  
9            that when I got to the end of the ballot, I realized that my intended vote  
10           had been changed by the machine. Not a few of the voters reporting  
11           this problem were visibly upset, and one could understand why. And  
12           frankly, I was a little shocked.

13           This one day encounter with the black boxes forever dispelled,  
14           for me, any notion that just because it's high tech or electronic, or the  
15           wave of the future, that it isn't potentially just as subject to malfunction,  
16           and sadly perhaps to malfeasance also, as any previous voting  
17           equipment. The experience of that day lead me to participate in  
18           subsequent hearings in Washington coordinated by Common Cause  
19           and other voting rights concerned groups. It turned out that my  
20           anecdotal experience in New Mexico was not an isolated event. The  
21           upshot for me is that I remain deeply concerned about the protection,  
22           security and sanctity of our voting process, especially now in the age of  
23           the apparently inevitable black box.

24           Born of this concern, I am an advocate for as much transparency

1 as possible. Transparency both in the machine and voting function as  
2 well as transparency in the selection process of machines. Or any  
3 process, for that matter.

4 I'm not a computer expert, far from it, and perhaps, therefore, I  
5 am more representative of the voting public. And so from my  
6 perspective, I am drawn to the simpler tried and true. That which can  
7 do the job that we need it to do with the greatest degree of  
8 transparency.

9 For this reason, when, last summer, I had the opportunity to view  
10 the machines that were brought here to Monroe County and put on  
11 display for us to get a first glimpse of, and I must emphasize that I went  
12 into this encounter with no preconceived notion, with no mindset about  
13 which machine I would be drawn to or like, with nobody programming  
14 me before I came in that I ought to like one machine or the other.

15 I was instantly drawn to the scanners, the optical scanner,  
16 despite the best efforts of the salesperson for the machine companies  
17 trying to show off the bells and whistles of the beautifully decorated  
18 Christmas tree of a machine that was the DRE. And the reason I was  
19 immediately drawn to the optical scanner, and that I continue to remain  
20 especially interested in this option, is that I was struck by the fact that  
21 the act of voting, the act of voting, did not present a machine interface  
22 right from the get-go. There was no touch screen. You recorded your  
23 vote on the ballot by your own hand effort and that ballot then was  
24 inserted in the machine for counting. Not to make the mark for you.

1 And the fact that that encounter with that machine struck me from the  
2 get-go and I remain interested in that option and if we're going to be  
3 stuck with the DRE's, I, of course, would insist on a paper trail,  
4 especially in the wake of my experience last year. But the fact that the  
5 voter's own marked ballot without any machine interface remains as  
6 the permanent record, which as everybody has cited before, makes it  
7 unnecessary, makes unnecessary, a concern for an additional verified  
8 paper trail. And when we talk about a paper trail, it's as if it's the be all  
9 and the end all now, but the fact that the ballot is the paper trail and you  
10 don't have to produce an additional one, is tremendously appealing to  
11 me.

12 And that's the sum of my comments, and I too, I guess Barb, I  
13 don't know if Barbara's still here, but I too spent last evening pouring  
14 through the draft of the voting system standards, and the complexity,  
15 the complexity, and the levels of interaction that you all are going to be  
16 responsible for overseeing, it's mind boggling. And my heart goes out  
17 to you, frankly. To do this job effectively and responsibly is going to be  
18 some undertaking. And I can't help but think that were we to pursue the  
19 option of the optical scanner, a lot of this would be eliminated.

20 In any case, thank you, very much for listening today.

21 MR. KOSINSKI: Thank you.

22 COMMISSIONER KELLNER: Thank you, Mr. Beer. And trust  
23 me, even if we were to do optical scanning, you still have to have these  
24 thorough regulations.

1 MR. BEER: I know.

2 COMMISSIONER KELLNER: Because that's the, that's what  
3 Gore v. Bush, Bush v. Gore taught us, is that there's so many different  
4 possibilities that come up and you want to try to provide for them in  
5 advance.

6 MR. BEER: I know.

7 COMMISSIONER KELLNER: But it is a daunting task. And you  
8 know the regulations are not just those because those incorporate into  
9 reference all of these. So...

10 All right, our next speaker is Carole Hoffman.

11 MS. HOFFMAN: Good morning, gentleman.

12 COMMISSIONER KELLNER: Good morning.

13 MS. HOFFMAN: And thank you, as other people have said, for  
14 being here this morning.

15 My name is Carol Hoffman, and I am part of the Every Vote  
16 Counts Coalition, and specifically representing Metro Justice and  
17 Fairport Move on.

18 While the basic principles of audibility, security, accessibility,  
19 reliability must be at the forefront in your decision to determine the best  
20 choice for a voting machine, cost should certainly be a priority as well.

21 With Monroe County receiving several million federal dollars to  
22 replace its existing lever machines, the Coalition asks the Board of  
23 Elections to carefully scrutinize total acquisition costs of the direct  
24 recording electronic machines referred to as the DRE, and the precinct

1            based optical scan machine, PBOS. The cost analysis that we have  
2            prepared is based on published prices, or based on estimates that  
3            were made by vendors during machine demonstrations. The findings  
4            are as follows: I do hope the figures won't cause your eyes to glaze  
5            over because they're hard for me to pronounce even.

6            Our research indicates that the cost of purchasing DRE's for  
7            Monroe County is conservatively estimated to be 64 percent more and  
8            could be as high as 109 percent more than the price of purchasing  
9            optical scan machines. The DRE could be between \$7,443,000 and  
10           \$9,510,500 vs. the optical scan, which is \$4,541,320.

11           The methodology that we used to reach these figures is; number  
12           one, DRE's replace -- I'm specifically going to be referring to Monroe  
13           County here. DRE's replace lever machines on a one-to-one ratio.  
14           There are 827 election districts in Monroe County and one machine is  
15           required for each E D. Our study reveals a price quote of \$9,000 for a  
16           basic DRE. Multiplying that number times the 827 E D's brings us to a  
17           figure of \$7,443,000. However, at a machine demonstration in Albany  
18           and Syracuse, vendors quoted \$11,500 as the cost for a fully  
19           accessible machine. Therefore, the cost for Monroe County for the 827  
20           E D's is \$9,510,500.

21           The optical scan, however, the unit itself, there's two parts to it;  
22           the optical scan itself is \$5,500 accompanied by the necessary ballot  
23           marking device, which costs \$5,000. That unit itself replaces up to four  
24           lever machines in a polling place. Therefore, we would only need one

1 optical scan per polling place. There are 406 polling places in Monroe  
2 County. At the 12 polling sites that have five or more lever machines,  
3 an extra optical scan machine would be needed at each of those.  
4 Therefore, a total of 418 optical scan machines would be needed,  
5 times the acquisition cost of the \$10,500, taking those two earlier  
6 numbers that I gave you, bringing us to \$4,389,000.

7 Privacy booths would needed at a one-to-one ratio to election  
8 districts and is estimated the privacy booths would cost \$160 each.  
9 Eight hundred and twenty seven electric districts times \$160 equals  
10 \$132,320. Adding the \$4,389,000 and the \$132,320 gives us a total of  
11 \$4,541,320.

12 Other factors that were not in this but they have to be taken into  
13 consideration, is that there would be higher replacement costs simply  
14 because there are more DRE's that have to be replaced. DRE's are  
15 larger, bulkier and more fragile and, therefore, it would be less  
16 expensive to transport optical scan machines. Less storage space  
17 would be needed for optical scan machines.

18 It is essential that extreme prudence is exercised in  
19 investigating all facets of the purchase costs involved and selecting a  
20 machine that abides by all five principles. Having served as a  
21 coordinator of Election Inspectors this past September and November,  
22 I came to know firsthand the thoroughness and integrity of the members  
23 of the Board. I feel confident that the right decision will be made.

24 Thank you.

1 MR. KOSINSKI: Thank you.

2 COMMISSIONER KELLNER: Thank you.

3 Ms. Hoffman, I know you're running away, but I appreciate that  
4 study and I've heard similar studies done by citizens groups in New  
5 York City.

6 One of the comments that I have is that your study starts off with  
7 the assumption that a DRE would replace a lever voting machine on a  
8 one-to-one ratio.

9 MS. HOFFMAN: That's correct.

10 COMMISSIONER KELLNER: And I'm not sure that that  
11 assumption is justified because my own experience in testing the  
12 DRE's is that it takes longer to vote on a DRE than it takes to vote on a  
13 lever machine. And so --

14 MS. HOFFMAN: Also longer to vote on a DRE than an optical  
15 scan.

16 COMMISSIONER KELLNER: Well, yes, although they're --

17 MS. HOFFMAN: Obviously because you're just doing a little  
18 paper, so ...

19 COMMISSIONER KELLNER: Well I think you factored that in  
20 because you were suggesting you could replace lever machines on a  
21 four-to-one ratio. Obviously that's yet to be really carefully studied,  
22 although other jurisdictions seem to have that experience. But the  
23 other number is the one that I was simply alerting to, is that certainly, I  
24 for one, am concerned that there not be an assumption of local

1 jurisdictions that they can replace lever machines on a one-to-one ratio.

2 MS. HOFFMAN: How do you suggest we go about getting the  
3 information?

4 COMMISSIONER KELLNER: Well that's one of the issues we,  
5 you know, I'm suggesting we need to address --

6 MS. HOFFMAN: Mm-hmm.

7 COMMISSIONER KELLNER: -- in the regulations is that the law  
8 that the Legislature passed requires the Board to adopt regulations on  
9 the maximum number of voters that can be assigned per machine.  
10 And these regulations don't do that. I think the theory of the staff was  
11 that you first need the machine and then you'll set the number, and one  
12 of my concerns is that perhaps these regulations should have a  
13 procedure on how the Board is going to go about determining what the  
14 number is.

15 MS. HOFFMAN: Mm-hmm.

16 COMMISSIONER KELLNER: That could be a part of the  
17 testing process. But I just wanted to just make that point --

18 MS. HOFFMAN: I'm aware that we're not able --

19 COMMISSIONER KELLNER: -- that I don't --

20 MS. HOFFMAN: -- to compare apples and apples here so that

21 --

22 COMMISSIONER KELLNER: That I don't assume that you can  
23 replace a lever machine with a DRE on a one-to-one basis.

24 MS. HOFFMAN: Well that was what our research indicated, so

1 that if you could show us otherwise, I'd be glad to review that.

2 COMMISSIONER KELLNER: All right.

3 MS. HOFFMAN: Thank you.

4 COMMISSIONER KELLNER: Okay, thank you.

5 MR. KOSINSKI: Thank you.

6 COMMISSIONER KELLNER: Erin Blakeborough.

7 MS. BLAKEBOROUGH: Hi, my name is Erin Blakeborough,  
8 and I'm the Policy Analyst for the Center for Disability Rights located in  
9 their Albany office.

10 Thank you for allowing me to comment on the proposed  
11 regulations regarding voting machine certification and the state's  
12 compliance with the Help America Vote Act of 2002.

13 HAVA requires that voting systems be assessable to voters with  
14 disabilities in a manner that provides the same opportunity for access  
15 and participation, including privacy and independence. The act  
16 requires that each voter be able to verify their vote by reviewing their  
17 ballot choices and making any changes necessary before their vote is  
18 cast and finally counted.

19 In particular, I would like to address Section 6209.2 polling  
20 place voting systems requirements. According to Part B of this  
21 section, it states that in addition to the requirements of subdivision A of  
22 this section, fully accessible voting equipment certified by the State  
23 Board shall meet the following requirements for usability by voters who  
24 are disabled. These proposed regulations barely address the creation

1                    of fully accessible voting equipment.

2                    All machines, according to those regulations, are required to be,  
3                    one, equipped with a voting device with tactical, discernable controls.  
4                    Two, equipped with audio voting features. Three, capable of being  
5                    equipped with a voting device of sip and puff technology. The  
6                    proposed regulations must expand on these capabilities.

7                    Additionally, the proposed regulations fail to focus on other  
8                    components that would accommodate the accessibility needs of  
9                    various other disability groups. Although the proposed regulations  
10                   relate to the changing of the voting systems, the actual access of the  
11                   machine and the review of the ballot prior to the individual casting their  
12                   final vote, the accessibility requirements must not forget about the  
13                   proper access to these polling sites.

14                   I would also like to reiterate the New York State Independent  
15                   Living Counsel's, NYSILC's election reform subcommittees list of  
16                   accessible features. It is imperative that this list be included in the  
17                   voting systems requirements to ensure independent, secure and  
18                   reliable success for all people regardless of their disabilities.

19                   One, a Braille keyboard or Braille on the keyboard if a keyboard  
20                   is utilized as part of the machine. Two, the capacity to change the  
21                   appearance of a full faced ballot to a page system or ATM style. The  
22                   ability to enlarge the machine font from 14 to 24 points. I'm visually  
23                   impaired too so it's sometimes very hard for me to read the ballot when  
24                   I vote. The ability to adjust the colors of the text in the background. A

1 human voice audio track with volume and speed control easily usable  
2 by the voter to simultaneously delivery of the audio track and the large  
3 print text. The capacity to view and/or listen to parts of the ballot  
4 individually.

5 In addition to the sip and puff technology, blink control devices  
6 or switches that will allow people to blink in order to navigate through a  
7 ballot. Light pressure switches, an alternate system of controls that is  
8 moveable and lightweight for laptop voting with keys that are color  
9 coded, shape coded and labeled in Braille. The capacity for  
10 individuals who are blind or visually impaired to verify an audible paper  
11 trail, and last, notification if the voter has failed to vote for a particular  
12 office or referendum.

13 The voting machines or systems must be simple,  
14 straightforward in operation and unassuming to achieve voter  
15 acceptance and to be secure. The proposed regulations will not  
16 ensure voting machines that are accessible to all voters with  
17 disabilities. While this is a challenging goal, it is not impossible.  
18 Several states and localities are already using at least one accessible  
19 voting machine at each polling place on election day.

20 During the 2004 election, Maryland and Georgia had at least  
21 one accessible voting machine at every polling place to assist the  
22 visually impaired population. It is possible for New York State to  
23 achieve full accessibility if these proposed regulations direct the  
24 vendors to produce voting machines that meet the needs of all voters

1           that have disabilities.

2                       It is not new to our political history to isolate one particular group  
3 of our nation. Prior to 1828, only a wealthy, tax-paying land owner,  
4 white man was able to vote, discriminating against the working class.  
5 Before 1920, voting requirements were gender specific. Women and  
6 supporters fought a long battle and were arrested, jailed and fined to  
7 get their right to vote. Prior to 1965, some states utilized Jim Crow  
8 Laws to prevent African Americans their constitutional right. Even age  
9 groups were isolated. During the Vietnam War Era, 18 to 20 year olds  
10 who were eligible for the draft, sought and succeeded in establishing  
11 their right to vote.

12                      Few may consider voting as a privilege. It is not. It is a right to  
13 go into a polling place and to cast a ballot without any barriers. It is  
14 unwarranted that an individual with a disability is dissuaded from  
15 utilizing their right to vote due to the lack of accessible voting machines  
16 and polling place options. Individuals with disabilities must be able to  
17 participate fully, independently and equally in the democratic process.

18                      It is estimated that 40 million Americans of voting age have  
19 disabilities. Historically, voter turn out for this population is extremely  
20 low. In a Get Out The Vote Initiative in Ohio, 19 disability organizations  
21 worked a Get Out the Vote Initiative. They concluded that of the 50,000  
22 people with disabilities that they reached, an alarming 70 percent were  
23 not registered to vote. This is very disconcerting to know that such a  
24 large group of eligible voters are either not registered or discouraged

1 by barriers to the voting process.

2 The current proposed voting system requirements for New York  
3 is too vague in defining how the voting process will be truly accessible  
4 and inclusive to those with disabilities. Accessible voting means the  
5 ability to vote independently and privately, regardless of the person's  
6 physical, sensory or cognitive disability. With the advances in  
7 technology, voters have the opportunity to independently cast a vote in  
8 a secure and reliable manner. They will be able to verify their vote by  
9 reviewing their ballot choices to make any needed changes before  
10 their vote is cast and finalized. There must be, excuse me, there  
11 must be a continued dialogue among voters with disabilities and  
12 disability advocacy organizations with the state in each local  
13 jurisdiction in order to implement the best accessible voting systems.

14 New York State must remove any and all barriers which prevent  
15 the purchase of voting machines that are secure and accessible for all  
16 voters. Failure to certify and purchase such machines will not only  
17 jeopardize the loss of significant federal funds, but more importantly,  
18 compromise the voting rights of millions of New Yorkers. The state  
19 must ensure that its voting systems to be reliable, secure from fraud  
20 and tampering, and most of all, accessible and independent for all  
21 voters.

22 Thank you, very much.

23 MR. KOSINSKI: Thank you.

24 COMMISSIONER KELLNER: Thank you.

1 Anthony Griggs.

2 UNIDENTIFIED WOMAN: I'm going to be reading this for  
3 Anthony.

4 I'm here today to talk about the accessibility of voting polls.

5 UNIDENTIFIED MAN: Louder please.

6 UNIDENTIFIED WOMAN: Unfortunately, the microphone is not  
7 accessible like a lot of things in our lives.

8 UNIDENTIFIED PERSON: The main concern is that I must  
9 always ask for help. I have the right to be independent and vote by  
10 myself.

11 To begin with, the curtain is made so that I am unable to shut it  
12 by myself. Second, the machine itself was not made accessible for  
13 me. I cannot get too close to it and the levers are too high for me to  
14 reach. Third, the voting machine letters are made too small, and I  
15 cannot read them. Voting machines would be better and more  
16 accessible if they were made at table level with push buttons instead of  
17 levers. Also, there needs to be room under the machine for my feet so  
18 that I'm able to get close enough to reach. Finally, the letters need to  
19 be made in large print so that they are readable.

20 The state of the voting booths is a concern for all people with  
21 disabilities. I am requesting, no, demanding, that the booths be made  
22 more accessible so that I can have the same rights as everybody else.

23 COMMISSIONER KELLNER: Thank you. Thank you, Mr.  
24 Griggs.

1 MR. GRIGGS: You're welcome.

2 COMMISSIONER KELLNER: Ruth Young.

3 MS. YOUNG: Good morning. My name is Ruth Young. I am  
4 from Schuyler County. I am a past Legislator in that county, so I'm quite  
5 familiar with the voting process.

6 I honestly feel that our right to vote and have that vote counted as  
7 intended is slipping away due to the, frankly, the lack of courage of our  
8 New York State Assembly and Senate. To allow the certification  
9 process to be put into the hands of the Board of Elections is to take  
10 away the verification, the accuracy and the accountability for that vote  
11 to count. The Posted Draft Voting System Standards are full of  
12 holes. And they look like they were written by the voting machine  
13 vendor lobbyists. I wonder if it was their Christmas bonus.

14 Clearly the best way to protect the vote is to ensure a permanent  
15 voter marked paper that cannot be lost or altered electronically. The  
16 only machine that simply and effectively counts votes so that they  
17 cannot be tampered with is the optical scanner, and the paper ballot is  
18 left in the ballot box after the vote is recorded for further verification and  
19 challenge when necessary.

20 Instead, the Draft Voting System Standards recently released by  
21 the New York State Board of Elections allows the vendor to define what  
22 they consider to be proprietary without independent public review and  
23 analysis of documentation. The code must not be considered  
24 proprietary of the manufacturer. It must be in the public domain so that

1 the software can be reviewed by independent auditors or third parties.

2 The private corporation takeover of the voting process at the  
3 very core of democracy raises disturbing issues about who does  
4 control the fate and the future of our nation. Since and including 2000  
5 elections, there have been far too many incidents of exit poll results  
6 being very different from the computerized voting machine results in  
7 many parts of our country. With no paper trail, there is no way to know  
8 what really happened in those elections.

9 The so-called standards allow the State Board of Elections to  
10 waive any part of the requirements they choose if the vendor submits  
11 test reports on its own. We know that vendors use so-called  
12 independent testing authorities to produce these results that are neither  
13 independent, conduct adequate tests or are they authorities. No part of  
14 the test or other requirement should be waived by the State Board of  
15 Election. These regulations are rendered meaningless by this.

16 The Standards say all subsequent changes to the software  
17 baseline configuration shall be subject to reexamination. With no  
18 definition of what the baseline configuration is, what constitutes a  
19 change that would require such reexamination. The definition is  
20 missing.

21 Paper ballot systems are held to a standard that the DRE's are  
22 not. The testing of DRE equipment, routine maintenance tests of DRE  
23 voting equipment is limited to test periods but does not call for testing  
24 during the election process as required of the paper ballot machines.

1            Public demonstrations, DRE's, are not called for as they are for paper  
2            ballots. Of course it would take longer. Democracy is not necessarily  
3            fast.

4            All of the sections in operational and testing procedures for  
5            paper based voting systems must be applied to DRE's. The so-called  
6            test deck concept should also be applied to DRE's. This requires  
7            manual entry of test votes on the DRE. Not an automated testing  
8            cartridge supplied again by the vendor. All machines, touch screen as  
9            well as scanners, must be tested in the same way.

10           The regulations imply that the voting machines are part of a  
11           network which is remotely controlled, and this is totally unacceptable.  
12           Each machine must be a stand-alone equipment and render total  
13           specific to that machine only. Wireless communication capabilities of  
14           any sort cannot be allowed.

15           The Standards must require that vendors who make both DRE's  
16           and optical scanners submit New York State Law compatible scanners  
17           if their DRE's are to be considered for certification. We cannot allow  
18           the vendors to tell us what voting system we can choose from and  
19           dictate the rules of the process by which machines they are willing to  
20           provide. In this case, the cart is truly drawing the horse.

21           Many developed countries have resorted to paper ballots only  
22           because they know that democracy is far too sacred to sacrifice on the  
23           fires of a corrupt, corporate controlled process. Is our democratic  
24           republic for sale now after the price that has been paid to bring it

1 about? Shame on those of you who would sell this out and thus make a  
2 farce of our precious right to honest elections.

3 In terms of getting out the vote, may I refer you to a small  
4 developing country of about four million people called Costa Rica.  
5 They get out the vote, 90 to 95 percent on election day by causing the  
6 election day to be a national holiday. Should we celebrate our  
7 elections with honesty and start the new HAVA process with national  
8 holiday as our election day?

9 Thank you.

10 COMMISSIONER KELLNER: Thank you.

11 William Gerling.

12 MR. GERLING: Good morning. My name, for the record, my  
13 name is William Gerling. I live at 42 Henrietta Street, Rochester, New  
14 York.

15 I've been involved in the electoral process one way or another,  
16 including some, a good many years doing voter outreach in the form of  
17 voter registration.

18 The 25-page draft subtitle 5, part 6209 concerning the voting  
19 system standards is not easy bedtime reading. These proposed  
20 regulations, and with the State Legislations, will take the — that created  
21 them, will take the voters of the New York State from 19<sup>th</sup> Century to the  
22 21<sup>st</sup> Century in only one election cycle. Will the County and State Board  
23 of Elections be ready? Will the election inspectors be ready? Will the  
24 voters be ready?

1 For the people of New York State to be ready in time, we urge  
2 the State Board of Elections to finalize, as soon as possible, all  
3 approvals for new equipment to be used as well as establishment of  
4 the proper funding stream so the people on the front lines of this  
5 proposal, the more than 60 Board of Elections can get started in  
6 getting delivery of all equipment and materials as soon as possible so  
7 the training of Board of Election staff and election inspectors can start  
8 as, at an early date so a possible test run could be made in May of  
9 2006 at a few selected school district annual elections.

10 Section 2609.9 of the draft proposal speaks to the issue of  
11 contracts and vendors. I feel this section could provide additional firm  
12 language that the vendor supplying new equipment be prepared to  
13 have the representatives available on a regular basis as a part of any  
14 contract working with county boards of elections from the time of  
15 delivery of the equipment through and including the completion of the  
16 2006 general election official canvas.

17 In my view of the Voting Standards Regulations, several items  
18 are not clear to me. One, intense training and election inspectors. So  
19 the multi-thousand election inspectors needed to conduct a general  
20 election in New York State be ready. This should include at least two  
21 training sessions, one prior to the September primary and one prior to  
22 the November general election. To lessen financial impact on county  
23 board of elections and municipal government in our state, I urge both  
24 State and Federal funds under HAVA should be made available to

1 counties and municipal governments to pay for this extra training.

2 Two, the draft regulations does not spell out the long standing  
3 and history and tradition of displaying a full face ballot must be  
4 maintained on any new voting machine equipment used and that a  
5 facsimile of the full face be on display at all polling places at the time of  
6 the election as the custom in the past.

7 I urge the New York State Board of Elections to provide funding  
8 to the county board of elections for a community outreach program,  
9 which should include a media program using all media, internet and  
10 electronic and print. B, that the County Board of Elections staff and  
11 their representatives should develop a program of public outreach and  
12 demonstration of the new voting equipment at meetings in civics clubs,  
13 church groups, political committees, senior citizen clubs and senior  
14 citizen housing as well as others.

15 Another avenue of outreach should be considered would be on-  
16 site demonstration of the new voting equipment at shopping malls,  
17 county courthouses, city, town and village halls with media notice given  
18 to the dates, times and location of these events. An outreach program  
19 is critical to ensure the fullest participation of the electoral and all  
20 registered voters in the Empire State.

21 At this point, I plan to submit additional information to the State  
22 Board of Elections during the 45-day public comment period. Copies  
23 of this have been filed with your department.

24 Thank you, very much.

1 COMMISSIONER KELLNER: Thank you.

2 Lisa Helen Hoffman.

3 MS. HOFFMAN: Thank you for the opportunity to speak with  
4 you today. I don't know if this is working.

5 MR. KOSINSKI: Yes, it's fine.

6 COMMISSIONER KELLNER: You're doing fine, Ms. Hoffman.

7 MS. HOFFMAN: My name is Lisa Helen Hoffman, and I am the  
8 Disability Rights Advocate at the Regional Center for Independent  
9 Living, and I serve on the subcommittee on Election Reform of the New  
10 York State Association on Independent Living. And, incidentally, this  
11 committee is the one that developed the list of accessible voting  
12 machine features that you've heard so much about this morning.

13 COMMISSIONER KELLNER: Yes.

14 MS. HOFFMAN: This statewide group of advocates for the  
15 rights of people with disabilities at the polling site has been advocating  
16 for equality and accessibility regarding the implementation of the Help  
17 America Vote Act. By writing letters and dialoguing with the New York  
18 State Assembly Task Force, people with disabilities, particularly,  
19 Assemblyman Kevin Cahill, as well as with Senator John Flanagan,  
20 Chairman of the New York State Senate Elections Committee and the,  
21 and Senator Tom Morahan, the immediate past Chairman of this  
22 Committee.

23 My suggestions focus on improving the voting machine  
24 regulations in order to produce a more inclusive voting system that

1 accommodates people with a greater number of disabilities as well as  
2 increasing the participation of the New York State's Election  
3 Modernization Citizens Advisory Committee.

4 I have tested accessible features of several voting machines.  
5 As a person who is blind, I found that some accessibility features were  
6 accommodations that create accessibility for me as a voter, and I urge  
7 you to include those in the regulations of voting machines. Other  
8 features that I learned about were accommodations that create access  
9 for voters who have disabilities that impair their dexterity, ability to  
10 reach or their vision, and I urge you to include these features as well.

11 The ability to access the information on, and vote on the ballot,  
12 is key to the voting process. For those who cannot read a printed  
13 ballot, it is imperative that the same information that is listed on it be  
14 made available in an audio track that is included as part of the voting  
15 machine. The audio voting track on a voting machine is an  
16 accommodation that enables voters who are blind or visually impaired,  
17 or who have limited reach or hand dexterity, to cast a secret ballot  
18 using a device that has buttons or keys that are easily identifiable by  
19 touch.

20 It is also critical to the effectiveness of the audio track of a voting  
21 machine that there are clear instructions on how to navigate through the  
22 contests, candidates and propositions. Once the voter has finished  
23 making his or her choices and before he or she casts the vote, there  
24 must be an opportunity to review the choices and make any necessary

1            changes prior to casting the vote.

2                    Some voters with limited hand dexterity will need to navigate  
3            through the ballot and vote using a sip and puff device that connects to  
4            the audio track. This device is controlled by a pneumatic switch and is  
5            operated orally by alternately creating a gentle pressure or vacuum. It  
6            is critical that the voting system include a volume control for the audio  
7            track with a range of 20 decibels to 105 decibels in increments of no  
8            greater than 20. This range in volume levels will enable the voter to  
9            hear the audio track especially over any ambient sound.

10                    The requirements for useability of the voting system by voters  
11            who are disabled address the specific accessibility features of voting  
12            machines. Additional information is necessary in order to more clearly  
13            define them. The voting device that is attached to the audio system is  
14            defined as having tactile discernable controls. The addition of the  
15            statement that tactile devices will include but are not limited to raised  
16            buttons with different shapes; large and raised print, numbers and  
17            letters for those who cannot read Braille, as well as Braille for those  
18            who can, clearly defines the types of buttons and labeling that is most  
19            useable by voters with disabilities.

20                    Equipment shall be equipped with an audio voting feature  
21            pursuant to the statute. Equipment must be capable of being equipped  
22            with a voting device of a sip and puff technology nature pursuant to  
23            statute. For clarification, add the definition of the sip and puff device  
24            as one that can be connected to the voting machine's audio system, is

1 disposable and hygienic and is provided by the vendor. In order to  
2 ensure that the regulations address the needs of voters who have low  
3 vision, the regulations must require that font style should include a sans  
4 serif option. The contrast between color of the text and the color of the  
5 background must be adjustable. Additionally, the font size of all print  
6 on the ballot must be adjustable up to 24 points.

7 In order to ensure that the voting booth curtains provide the  
8 maximum amount of privacy and facility of opening and closing by  
9 people with a variety of disabilities, and in order to ensure that lighting  
10 within the voting booth accommodates voters who have low vision. The  
11 following information must be included in the regulations:

12 \* The voting machine curtains shall be installed at a minimum  
13 height of 15 inches above the finished floor and a maximum height of  
14 48 inches above the finished floor.

15 \* Curtains must be designed and installed to be accessible and  
16 used by voters with a variety of disabilities.

17 \* Voting booths must contain lighting controls that are  
18 adjustable for voters who need very bright lighting as well as those who  
19 need low lighting.

20 The regulations lack access requirements for paper based  
21 voting systems for voters and poll workers who have physical  
22 disabilities including limited dexterity, blindness and low vision. The  
23 addition of the statement, the system shall provide an accessible  
24 method for write-in voting and shall report the number of votes cast in

1            each contest in write-in positions provides the necessary information.  
2            While all ballots shall meet the specifications to form an content  
3            required under Section 7-122 of the Election Law, ballots shall also be  
4            printed in black ink on white paper or on paper stock of different colors  
5            to identify different types of ballots such as emergency affidavit, or  
6            affidavits, or in the case of a primary to identify ballots, or each political  
7            party according to the color assigned to such party pursuant to the law.  
8            The ballots shall be made available in large print, 18 to 24 point, and  
9            assistance to voters shall be provided to read and mark the ballots with  
10           a ballot-marking device.

11                      Functional tests of voting machines with accessibility features  
12                      should include tests of actual use of the voting systems by people who  
13                      are not specifically trained in the use of the voting system. These tests  
14                      would indicate how much training must be required and how well the  
15                      adaptive features work with real voters with a variety of disabilities. In  
16                      my experience testing voting machines with accessibility features, the  
17                      physical features of the machine are only as useful as the instructions  
18                      for how to use them.

19                      Additionally, when it is difficult to navigate through the  
20                      candidates in a contest and the contests on the ballot, I need a longer  
21                      period of time to first learn how to use the machine and then to vote. All  
22                      of the voting machine testing that I have participated in was conducted  
23                      in the presence of the vendor. Although each vendor has been helpful,  
24                      it is important to remember that polling site workers will not have the

1 same background and experience with the machine and will not be  
2 able to provide such in-depth technical support to the voters.

3 How much time do I have left?

4 COMMISSIONER KELLNER: Go ahead. You've gone for a  
5 while but --

6 MS. HOFFMAN: I'm --

7 COMMISSIONER KELLNER: -- you're addressing substantive  
8 issues, so I think --

9 MS. HOFFMAN: I don't want to take --

10 MR. KOSINSKI: That's fine. Go ahead, whatever.

11 COMMISSIONER KELLNER: I think you should continue.

12 MS. HOFFMAN: Oh, thank you.

13 COMMISSIONER KELLNER: And I have some questions --

14 MR. KOSINSKI: Sure.

15 COMMISSIONER KELLNER: -- to ask you when you're  
16 finished.

17 MS. HOFFMAN: Thank you. The New York State Election  
18 Modernization Citizens Advisory Committee should play a greater role  
19 in the modification and reexamination of the voting system of New York  
20 State. The Committee members are individuals who represent various  
21 populations from across our state, including people with disabilities.

22 Since this Committee needs to assure ongoing access to  
23 voters with reach, dexterity, vision, cognitive and hearing related  
24 disabilities, the regulations should state that no modification of

1            previously certified voting systems equipment shall be used in any  
2            election until such modification has been approved by the State Board  
3            as well as the New York State Elections Modernization Citizens  
4            Advisory Committee.

5                       Additionally, vendors must not work on machines, machine  
6            software or download software or any information to machines  
7            independently without the presence of Board of Elections security  
8            personnel and representatives from the state or local citizens advisory  
9            committee.

10                       Regarding modifications to the system, prospective  
11            modifications shall be reviewed by the State Board or by an examiner  
12            or laboratory of the choice of the Board of the New York State  
13            Elections Modernization Citizens Advisory Committee in accordance  
14            with the fee schedule established by Section 7-201 of the Election  
15            Law.

16                       Upon completion of a review of such respective modification,  
17            the State Board of the New York State Election Modernization Citizens  
18            Advisory Committee may cause a reexamination of the entire voting  
19            system or within its discretion, grant continuation of the certification  
20            pursuant to the provisions of the Section 7-201 of the Election Law.

21                       The citizens of New York State who have disabilities want to  
22            practice their right to vote. For too many years, we have been  
23            disenfranchised by an inaccessible voting system.

24                       I have presented you with some suggestions about how to

1            improve the regulations that govern the accessibility of our voting  
2            system. With an accessible voting system in New York, the citizens  
3            who have disabilities will finally be able to practice their right to vote  
4            privately and independently. I urge you to make these changes to the  
5            regulations in the name of access.

6            Thank you.

7            MR. KOSINSKI: Thank you.

8            COMMISSIONER KELLNER: Thank you. Ms. Hoffman, it  
9            sounds like you have tested a number of the prototypes that the  
10           vendors have offered for these various accommodations for the  
11           disabled.

12           MS. HOFFMAN: Mm-hmm. Yes, I have.

13           COMMISSIONER KELLNER: And I've tried a couple of them  
14           myself, and I think you alluded to a concern that I have, which is that the  
15           time it takes a voter to use an audio voting system, compared to what  
16           they would be able to do with a tactile system.

17           Would you agree that now, that most visually impaired voters  
18           who would use an audio system will take much longer than an average  
19           voter in, or a non-impaired voter, in voting if they're using the same  
20           voting machine, right?

21           MS. HOFFMAN: Well, I would say yes. But I would have to also  
22           say, if you wanted to compare, you know, with other regulations, for  
23           example, taking an exam in high school or college, you know, we're  
24           allowed, if someone's reading it to us, which is the same —

1 COMMISSIONER KELLNER: Right.

2 MS. HOFFMAN: -- idea, we're allowed time and a half to  
3 complete that work, but also I maintain that it, as I say, clearly here, the  
4 features are only as good as the instructions. What I neglected to put in  
5 here was, also is as good as the design. I can't tell you, I think it was  
6 probably this very room when I, you know, gave, on three separate  
7 days, lots of pointers and suggestions to the vendors on how to make  
8 the contests, make the ballot more accessible through their audio  
9 track, and they all oohed and awed and thought it was a great idea,  
10 and I, you know, we'll see, when, if we get to see, if they've actually --

11 COMMISSIONER KELLNER: Well I very much appreciate that,  
12 and certainly I don't dispute that voters should be allowed to take as  
13 much time as they need. But when the State Board puts together the  
14 regulations on how many machines, how many voters should be  
15 assigned to a machine, one of the more difficult questions that I've  
16 been thinking about is, how you take into account the time and potential  
17 number of impaired voters who will need increased time on a machine  
18 and how that effects the number of machines you need at a poll site.

19 MS. HOFFMAN: Well I think you start with the regulations. You  
20 go back to the people and, who will be using the machine and find out  
21 from them what is it that you need to make using this machine more  
22 useful. And then you get it into the regulations so that the vendors can't  
23 just stand there and say, oh, what a great idea, and then they go home  
24 and I go home and I come and look at their machines six months later

1 and it's still the same old thing.

2 COMMISSIONER KELLNER: Right. But the State Board  
3 needs to determine how many machines have to be purchased for a  
4 given election district. And the time factor is one that I just ask you to  
5 think about too because it sounds like you're involved in this process  
6 and you'll be involved down the road on it.

7 MS. HOFFMAN: The time, but the time factor can be reduced if  
8 the equipment is really designed in an efficient fashion. You know, I  
9 can't go any faster if I don't understand what the machine –

10 COMMISSIONER KELLNER: Right.

11 MS. HOFFMAN: -- what the instructions are telling me to do.

12 COMMISSIONER KELLNER: Right. And I don't know that you  
13 can be expected to go faster, if for example, in Greenwich Village this  
14 year, we had a primary with 61 candidates on the ballot. You know, just  
15 the time it would take to read 61 names, to go through that ballot would,  
16 and then if a voter needed to track back because they weren't voting a  
17 straight slate, that would take quite a, I mean, we experimented with  
18 that and I think we found that the average person who is using an audio  
19 system would take almost 20 minutes to go through that ballot.

20 MS. HOFFMAN: Mm-hmm.

21 COMMISSIONER KELLNER: And I don't think that, well, these  
22 are ideas. I mean, there's no question this is what we're going to have  
23 to do, I'm just asking the question of how we account for the time it  
24 takes when we calculate the number of voters per machine.

1 MS. HOFFMAN: Mm-hmm.

2 COMMISSIONER KELLNER: Okay.

3 MR. KOSINSKI: No, that was very helpful though, I'll say that.

4 Having specific recommendations to our regulations is really very  
5 helpful to us as far as trying to, you know, flesh these out a little bit more  
6 and to make them more specific, so it's very helpful.

7 COMMISSIONER KELLNER: You know, I had one other though  
8 too on this, was that you and several of the others who have spoken  
9 today have mentioned the need for a Braille keyboard. On most touch  
10 screen machines, there's no keyboard at all because the screen itself  
11 is the keyboard. Are you suggesting that if we were to have touch  
12 screen machines that those machines should have to have a  
13 keyboard?

14 MS. HOFFMAN: No, the, let's see, the -- I was talking about  
15 labeling the voting device in Braille for those who are looking for  
16 Braille, as well as raised print for those who don't read Braille. The  
17 write-in, I'm trying to remember it, there's only one machine that's  
18 coming to mind that had a keyboard for writing, doing a write-in.

19 COMMISSIONER KELLNER: The Sequoia Advantage, I think.

20 MS. HOFFMAN: Yes. But generally they have, they do have a,  
21 they use the accordian style --

22 COMMISSIONER KELLNER: That's right, for the keyboards.

23 MS. HOFFMAN: -- type. Right.

24 COMMISSIONER KELLNER: But in a touch screen machine --

1 MS. HOFFMAN: Right.

2 COMMISSIONER KELLNER: -- the voter only touches the  
3 screen.

4 MS. HOFFMAN: Right, but --

5 COMMISSIONER KELLNER: So...

6 MS. HOFFMAN: That's where the voting device, the separate  
7 unit that's connected by a cable, the hand-held device would come in  
8 where you have the different shapes.

9 COMMISSIONER KELLNER: Okay.

10 MS. HOFFMAN: Shaped buttons.

11 COMMISSIONER KELLNER: The tactile buttons, yes.

12 MS. HOFFMAN: Right.

13 MR. KOSINSKI: We've seen that.

14 COMMISSIONER KELLNER: Right.

15 MS. HOFFMAN: Right.

16 COMMISSIONER KELLNER: Okay. All right, well thank you  
17 again.

18 MS. HOFFMAN: And I've submitted my comments in writing.

19 MR. KOSINSKI: Great.

20 MS. HOFFMAN: And my contact information is there should  
21 you need any --

22 COMMISSIONER KELLNER: Well we appreciate that.

23 MS. HOFFMAN: Thank you.

24 COMMISSIONER KELLNER: And I hope you stay involved.

1                    MS. HOFFMAN: I want to vote.

2                    COMMISSIONER KELLNER: Good.

3                    MS. HOFFMAN: So I will.

4                    COMMISSIONER KELLNER: Steve Lovi.

5                    MR. LOVI: Good afternoon. My name is Steve Lovi, and I'm  
6 with the Center for Disability Rights. Can everybody hear me? Okay.

7                    I'm a deaf American who has had many opportunities to vote  
8 independently. However, there are many more American New Yorkers  
9 and Monroe County residents with disabilities who have not had the  
10 given right to vote, all because of inaccessible equipment that needs to  
11 be replaced with current voting technology that is compatible with the  
12 many needs of voters with disabilities.

13                    The New York State Board of Elections must develop  
14 regulations with voting machine technology that focuses on the ability to  
15 increase print, font size, lighting contrast, accessible switch control and  
16 the removal of the full-face ballot requirement.

17                    Having been a long-time personal and professional advocate  
18 among individuals with disabilities, I hear and see over and over again  
19 at election time the frustration and lack of accessibility in being able to  
20 simply cast a vote independently when it comes time to head to the poll  
21 in local, state and national elections.

22                    During the last national election for our country's next president, I  
23 was asked by a deaf city resident with a visual impairment if I could  
24 accompany her to vote as she was not able to read the printed names

1 and physically unable to open and close the large, lever switch for  
2 privacy. The two of us were crowded into the old-fashioned voting  
3 machine while I read off and finger spelled the candidate names so that  
4 she could pick her choices. While she was happy to have been able to  
5 cast her vote, I was less than happy having known that she should have  
6 been able to vote without assistance and independently if there were  
7 voting machines designed to meet her needs and the countless  
8 number of New York State voters with disabilities.

9 Several years when Nelson Mandela was about to voted  
10 president of South Africa, I had the privilege of seeing an actual voter  
11 ballot being used for this election and was amazed at the ease and  
12 simplicity of their election ballot with all the names having pictures of  
13 each candidate and their party level besides these names for those  
14 who cannot read. My point in mentioning this is that technology does  
15 not have to be absolutely high tech and outrageously expensive.

16 The New York State Board of Elections in Monroe County has  
17 been giving several voting machines vendor choices, all with different  
18 options. Clearly there is no one machine that will meet all the needs of  
19 voters with disabilities. However, the Board of Election and New York  
20 State Counties must make every effort to secure the most accessible  
21 technology that will allow everyone to be able to vote with an increased  
22 level of independence and promote barrier-free voting.

23 New York State is dragging its bureaucratic foot while it sits on  
24 \$7 million appropriated by the Federal Government to implement

1            HAVA. New York State stands to lose this money if we cannot get our  
2            collective policymakers and the Board of Elections together to make  
3            needed decisions that are in the best interest of New Yorkers with  
4            disabilities. Many counties are waiting for the Board of Elections to  
5            issue recommendations relating to voting machine purchases that they  
6            are ready to buy. The Board of Elections must proactively pursue  
7            collaboration and put aside differences of opinion that are not reflective  
8            of the voting public.

9            In addition to being an advocate, I am also a recently retired  
10           New York State Region Appointed Board Member of the New York  
11           State Independent Living Counsel. As you may be aware, the New  
12           York State Independent Living Counsel has made every effort to be  
13           counted conciliatory to the Board of Elections in promoting the  
14           disability needs of New Yorkers while awaiting for a member of the  
15           disability community to be appointed to the Advisory Commission. The  
16           Board of Elections has again rebuffed the efforts of disabled New  
17           Yorker not once but twice with undue delays in purchasing accessible  
18           voting equipment, and now the unnecessary delay of appointing a  
19           NYSILC member to the Board of Elections Advisory Committee.

20           I urge you to move forward in an expedient and proactive  
21           manner to address both of these longstanding and critical issues  
22           facing the voting public of New Yorkers with disabilities and their  
23           advocates.

24           Thank you.

1 COMMISSIONER KELLNER: Thank you.

2 MR. KOSINSKI: Thank you.

3 COMMISSIONER KELLNER: Bruce Darling.

4 MR. DARLING: My name is Bruce Darling, I'm with New York  
5 State ADAPT. We're a grassroots disability rights organization that  
6 works for the full integration of people with disabilities, and for 20 years  
7 I've worked on disability rights issues.

8 I think it's appropriate that you chose Rochester to have one of  
9 these hearings because after all, Rochester is one of the great  
10 battlegrounds that women fought to get the right to vote. I'm actually  
11 privileged to know two women who were arrested to try to get their right  
12 to vote. Not because – they weren't arrested because they were  
13 women or they couldn't vote because they were women, the issue was  
14 that they had disabilities. Susan Stahl and Barbara Knowlen were  
15 arrested as part of the process to move HAVA forward and address  
16 the issues of people with disabilities.

17 After going to numerous meetings and being promised time and  
18 time again that the accessibility issues would be addressed, the  
19 disability community finally got fed up and trapped the Assembly and  
20 Senate fin--

21 MR. KOSINSKI: Conference Committee.

22 MR. DARLING: Conference Committee, thank you.

23 MR. KOSINSKI: You're welcome.

24 MR. DARLING: They were quite annoyed. In their room --

1 MR. JOHNSON: You were there.

2 MR. DARLING: -- for about 20 minutes -- oh, you were there?

3 Wasn't it festive? The thing is --

4 MR. KOSINSKI: Festive is the first word that comes to mind.

5 MR. DARLING: It's appalling to me. I mean, it's outrageous that  
6 in 2005, that any citizen shouldn't be able to vote privately and  
7 independently, and although the disability people have used those  
8 words, I don't know that people understand what the means. Privately  
9 and independently. It's a secret ballot for a reason. If you're blind right  
10 now, you have to have people go in with you. That's appalling. And I'm  
11 concerned.

12 Personally from a disability perspective, I hate paper. Because  
13 paper means someone has to handle it. And Shelly, I could, I could do  
14 an example and hand a piece of paper off to someone -- (passes  
15 paper to Shelly). Okay, now, Shelly, feed that into the optical scanner.  
16 It doesn't work for us. We have been promised, or we have been told  
17 that, oh, well, we'll do a privacy sheet over a piece of paper that'll go  
18 into a scanner. Well, you know what, that means someone else has to  
19 intervene and assist us when we vote. If that's the process we're going  
20 to use, I think it should be applied to all New Yorkers. That every New  
21 Yorker should have to hand their ballot off to someone else so that they  
22 could do the process, to do that process for them.

23 I encourage you to look at the process that you implement and  
24 determine whether or not everyone can do it, because the reality is, if

1           you're going to demand that we do something like this, you're just  
2           continuing to disenfranchise us. It's no longer private, it's no longer  
3           independent. See, it's assumed by everyone else that their vote gets  
4           to be done privately and independently. For us, that's not an  
5           assumption and we believe that's why a lot of people with disabilities  
6           simply don't vote. Even strong advocates, people who I know have  
7           traveled to Washington, DC to make their voice heard, they know that  
8           their voice can be heard when they're chained to the White House  
9           fence, actually, with these, but when they go – they don't have any belief  
10          that their vote, they'll be able to vote privately and independently and  
11          make any difference in the polling place.

12                   I am particularly frustrated because while you have included  
13          other groups in the process of moving forward, our NYSILC  
14          representative has not been at the table. And indeed, maybe you  
15          shouldn't have even started meetings without having us at the table  
16          because we bring a very serious and significant point of view to this  
17          dialogue. For us, the Help America Vote Act was our act of suffrage; it  
18          was going to give people with disabilities the right to vote privately and  
19          independently, and maybe we put a little too much hope in that. Maybe  
20          we thought when we were helping America vote, we were part of  
21          America, but it appears to me that that's not necessarily the case.

22                   And I just want to add one other thing. I've heard a lot about cost  
23          and fiscal analysis and people liking the full-face ballot. I really would  
24          like to see, what are the cost implications of acquiring the full-face

1 ballot?

2 Some of these machines are bulky and difficult to use simply  
3 because you have to see the whole face, everyone across the whole  
4 row. Frankly, a lot of our legislators believe they just want people to be  
5 able to check off all the people in the same row. You know what, the  
6 full-face ballot makes me go do the exact opposite. I look very closely  
7 to see if I can vote for someone who's on a different line because I am  
8 not going to vote across the whole row. You know, so, I mean it really, I  
9 think you're insulting our intelligence by requiring us to have to get the  
10 information all in a little row so that we can be taken to the voting booth  
11 so that they think that we're all going to vote democrat or republican, or  
12 what have you. So we'd appreciate you looking into that as well.

13 So again, I just want to say that whatever system you come up  
14 with, please, it needs to be equal to everyone. It's appalling that the  
15 disability community so far in this process has needed to protest, be  
16 arrested and sue to get our voice inserted into a dialogue about  
17 helping Americans vote because we're part of America, and we want  
18 to vote too.

19 Thank you.

20 MR. KOSINSKI: Thank you.

21 COMMISSIONER KELLNER: Felicia Cerini.

22 MS. CERINI: Good morning.

23 MR. KOSINSKI: Good morning.

24 COMMISSIONER KELLNER: Good afternoon.

1 MS. CERINI: Yes. My name is Felicia Cerini, I'm from Monroe  
2 County and I'm not a representative of any group. I'm here because  
3 this issue is so important to me.

4 In a democracy, there is nothing more important than the right to  
5 vote. As a New York voter, I would like my representatives to choose a  
6 system that first and foremost safeguards our vote. The votes need to  
7 be secured every step of the way including tabulation and storage. If  
8 the system itself is not tamperproof, then we the people have lost the  
9 ability to choose our leaders. If this happens, we've lost the very basic  
10 bedrock of our democracy.

11 Since the new electronic voting machines have been  
12 introduced, many problems have arisen. I've read extensively about  
13 the irregularities that have taken place in recent elections in Ohio,  
14 Florida, and other states that have used questionable practices, voting  
15 machines or technology.

16 After reading about the new voting machine technology that is  
17 available, I've learned that the DRE touch-screen machines are being  
18 pushed by the voting machine companies, are unreliable and can be  
19 tampered with easily. The optical scanners are a much simpler  
20 technology with fewer steps that involve computer functions. They  
21 involve a paper ballot and an optical scanner which records your vote  
22 and shows you how you have voted. The paper ballots stay in the  
23 machine and become the actual paper trail if a hand count is needed.  
24 In any secure voting system, a paper trail alone is not enough. Paper

1                   ballots are needed in the event of a recount.

2                   The optical scanners have a longer life span and cost much  
3                   less. The cost of purchasing the touch screen DRE's is estimated to  
4                   be 64 percent more and could be as high as 109 percent more than  
5                   the optical scanners. It's estimated that Monroe County can save at  
6                   least \$5 million if they buy the optical scanners. In addition, the  
7                   expense of DRE's are bulkier and more fragile. They would need more  
8                   storage space and more repairs. As a New York voter, I would rather  
9                   have the best and most secure voting machines even if they cost more.  
10                  In this case, however, the best voting system costs less. It's a win-win  
11                  situation.

12                  The currently released New York standards for voting machine  
13                  purchase do not protect the integrity of our vote. Under the current  
14                  standards, voting machine vendors are allowed to maintain proprietary  
15                  computer code and make no allowance for independent review and  
16                  analysis of the data. In addition, there are rigorous requirements for  
17                  the testing of the optical scanners but not the DRE touch-screen  
18                  machines. The standards, as set up, seem to allow the DRE machines  
19                  to be set up in a network that is remote controlled and wireless.  
20                  Wireless networking is not secure. The standard should be the same  
21                  for all systems being considered.

22                  If the voting machine companies are allowed to maintain  
23                  proprietary computer code, as is currently allowed, then our voting  
24                  process will be controlled by private corporations. Powerful groups

1 and money interests would have access to the machines internal  
2 software. They could tamper with our election results in order to push  
3 their personal agenda and to stay in power. That is an obvious conflict  
4 of interest and is unacceptable and dangerous.

5 Policies and laws could be adopted that would benefit only the  
6 powerful and hurt most of our citizens. In that case, there would be no  
7 mechanism by which to vote these leaders out. The power of the  
8 people would be lost. In states and counties where the voting machine  
9 companies had been allowed to control the machine's software, the  
10 outcome was suspect. And in many cases, there was no means by  
11 which to do a recount. This is unacceptable. It is of the utmost  
12 importance that the voters of our state have confidence in the voting  
13 process.

14 A secure voting machine system must have the following five  
15 principles that some other people here have also mentioned; Security,  
16 accessibility, reliability, maturity, transparency, audibility and cost  
17 effectiveness.

18 The coalition Every Vote Counts Monroe County has put  
19 together a position paper outlining the requirements that they feel are  
20 needed in order to protect our votes. It covers the five points above in  
21 detail. It addresses preventing tampering, technical breakdowns and  
22 many other issues extensively. May I suggest that this Board use this  
23 comprehensive document when deciding on our voting machine  
24 criteria. I also am in agreement with the recommendations of the group

1 New Yorkers for Verified Voting.

2 Optical scan machines are already in use at the New York State  
3 Division of the Lottery, the State Education Department, the State  
4 Motor Vehicle Department and other state agencies. They have a  
5 proven track record.

6 Members of the Board of Election, you've been entrusted with  
7 an important job. I feel that at the moment we are standing at a  
8 crossroads. The voting system decision will impact all of us for a long  
9 time. I can't think of anything that is more important for our future. Our  
10 leaders in Washington are constantly talking about how we're trying to  
11 export our democracy to foreign countries. To that I say, if we don't do  
12 everything in our power to make sure that our voting system is  
13 accurate, secure and verifiable, then we are kidding ourselves. We  
14 could kiss our democracy goodbye. Please don't let that happen.

15 Thank you.

16 MR. KOSINSKI: Thank you.

17 COMMISSIONER KELLNER: Jack Ossont.

18 MR. OSSONT: Would you like copies of my comments now?

19 COMMISSIONER KELLNER: If you have them.

20 MR. KOSINSKI: Oh, thank you.

21 COMMISSIONER KELLNER: Sure. Much preferred.

22 MR. OSSONT: Well, I hope there is something that this  
23 microphone is connected to because so often I've spoke to it and I  
24 wonder if there's anybody behind the curtain whoever really reads

1 these things and reacts to them in this corporate and politically driven  
2 system that we have. So that's my preface to my remarks.

3 My name is Jack Ossont. Board Members, members of the  
4 public. I'm a private citizen and I'm privileged today to be able to enter  
5 into the public record the comments of Robert Fleischer of Groton,  
6 Massachusetts.

7 Mr. Fleischer has graciously permitted me to convey his  
8 comments in an effort to show members of this Board and this public  
9 that the direction of the state of New York and its reliance on electronic  
10 voting machines is a mistake that threatens the very foundations of  
11 representative democracy. So, with your indulgence, I will attempt to  
12 give Mr. Fleischer's comments the representation to this body that they  
13 deserve.

14 The following statement was delivered to the Joint Committee  
15 on Election Laws of the Massachusetts General Court on 19 July,  
16 2005. This is Mr. Fleischer's statement:

17 "I hold a Master's degree in computer science from MIT and  
18 have over 30 years experience in programming and computer systems  
19 consulting, most recently in wireless and network security. I am retired  
20 from Hewlett Packard and am now a principal in a software startup.

21 The word "machine" is used to refer to any computer-based  
22 election systems, including direct recording electronic DRE, commonly  
23 also called touch screens, optical scan and central tabulating systems."

24 Software is a problem.

1                    As a computer professional, I find myself in a bit of an awkward  
2                    position arguing against the use of computers in elections. My position  
3                    is this: Computers are extremely helpful, even necessary to solving  
4                    many problems, but computers are not essential to elections and the  
5                    risks are just too great.

6                    We would be unable to use our ATM cards to access our bank  
7                    accounts from around the world without computer-based funds  
8                    transfers. However, there are risks associated with all of those  
9                    computer systems and transmission links carrying all those funds  
10                    transfers and extraordinary measures are taken to avoid the risks and  
11                    to detect tampering or other breaches of security. For modern financial  
12                    transactions, there is no alternative to the use of computer-based  
13                    systems.

14                    Computer-based systems are not essential to the conduct of  
15                    elections. Many large democracies in the developed and developing  
16                    world conduct their elections without computer-based systems. There  
17                    are basically only three real benefits to the use of computers in  
18                    elections. One is that results are available a few hours earlier. The  
19                    second is that certain accommodations can be made for voters with  
20                    disabilities. The third is that certain errors made by voters in marking  
21                    their ballots can be detected and the voter informed so that a  
22                    correction may be made at the polling place. Getting early results is an  
23                    extremely minor benefit that must be weighed against the dangers,  
24                    which I will outline below. The other benefits, accessibility and

1 checking for voter errors, can be provided without using computer  
2 systems in the counting and tabulating process.

3 Software is a powerful medium for solving problems. Software  
4 can be duplicated easily and instantly. Software is what makes a  
5 computer-based system perform its functions. Anything that a  
6 computer-based system can do is performed at the command of the  
7 software running invisibly inside, perhaps transmitted the instant before  
8 from somewhere else.

9 As a result, software is a powerful medium for creating  
10 problems. A software defect can cause any kind of malfunction. Both  
11 pranksters and saboteurs love to work with software. Malicious  
12 software can take advantage of phone lines and networks and memory  
13 cards and discs to transmit itself to other systems. Malicious software  
14 can lie in wait, even for years, before doing its evil deeds. Malicious  
15 software can cover its tracks and even erase itself after the deed is  
16 done.

17 In my work as a computer systems consultant, I must assume  
18 that attempts will be made to attack, compromise and invade any  
19 software-based systems I design. I must be humble enough to assume  
20 that a clever prankster or saboteur may overcome my best defenses.  
21 As a result, I design systems to check both the innocent errors that will  
22 occur and deliberate tampering. I must always check for intrusions and  
23 failures, and the system must be designed so that the reliable  
24 independent and original records are maintained so that a meaningful

1 check can be made.

2 It only takes one person. One person acting alone can cause  
3 many computer-based machines to malfunction. One person can write  
4 a piece of software, a virus or a Trojan horse, we'll call them  
5 generically, an intrusion, that can corrupt any number of machines. A  
6 machine can be infected at any time before an election. Software can  
7 even be infected before it's put on the machine, even at the factory.  
8 Intentional sabotage by an unauthorized programmer is also always a  
9 possibility. Consider that the software is held to be a secret by the  
10 vendors; this possibility cannot be dismissed.

11 Well intentioned programmers sometimes make provisions in  
12 the software for maintenance. While not directly malicious, such  
13 provisions can subsequently be exploited to alter the software in  
14 malicious ways. Any connection, permanent or temporary, can be  
15 exploited to transmit an intrusion. By connection, I mean a computer  
16 network, a phone line, a memory card, a disk, or wireless  
17 communication to an internal device. Note that the person actually  
18 establishing the connection, for example, inserting a card, may not  
19 know that a software intrusion is being transmitted. As far as they  
20 know, it's an innocent maintenance or data retrieval operation.

21 Given the attention and high value of election tampering, we  
22 must assume that tampering will be attempted and that it may some  
23 time succeed in spite of our best efforts. Thus if we were to use  
24 computer-based systems, we would have to take measures to detect

1            tampering with election machines. And we would have to implement  
2            procedures to recover from this tampering. However, as I will show,  
3            tampering is surprisingly hard to detect, even harder to prove, and after  
4            the fact recovery mechanisms may be ignored.

5            It only takes one vote per machine.

6            In 2004, Ohio didn't appear to be that close, but a shift in just  
7            one vote in 87 would have changed the outcome of the presidential  
8            race in Ohio, and thus, in the United States. This would need only a  
9            handful of changes per machine. A change in many machines is as  
10           easy as a change in one machine. Thus the pattern we are more likely  
11           to experience, but less likely to notice, is one of many small  
12           discrepancies on many machines.

13           Who would do this? This tampering could be accomplished by  
14           a single individual or a small band; a prankster, a disgruntled  
15           employee, an unscrupulous campaign worker, a vendor that is  
16           overzealous in its support of a candidate, organized crime, a foreign  
17           power or a terrorist group. Anyone with an interest in or desire to see a  
18           particular outcome in any U.S. election or perhaps just wanting to  
19           create chaos.

20           Tampering is hard to detect.

21           Software in a machine is hard to see and hard to fully  
22           understand, even for experts. Software intrusions can accomplish any  
23           effect; in particular, they can mimic glitches in human error.

24           Since many machines can be infected, and since only a small

1 change in result is needed per machine, the tampering is easy to miss  
2 or overlook. For example, someone can switch whom votes are for but  
3 keep the total number of votes cast the same. This kind of insidious  
4 small change is easy to ignore or easy to dismiss as insignificant.

5 There were tens of thousands of reported small computer  
6 problems in 2004. But we don't know how many additional problems  
7 were never recorded because they were not noticed or they were  
8 considered insignificant. Some kinds of tampering might look quite  
9 harmless. For example, an occasional default vote, which has the side  
10 effect of a higher quality election, fewer undervotes.

11 Another kind of innocent tampering is one that doesn't alter  
12 votes and thus cannot be detected by any kind of auditing. The  
13 election can be biased against certain precincts by software tampering  
14 that causes the machines in those areas to slow down or crash. If  
15 these precincts are chosen to be precincts that favor one particular  
16 candidate or party, such tampering will cause that candidate or party to  
17 lose votes. This is why I discourage any thought of auditing and paper  
18 trails as solutions to the threats against electronic voting. We cannot  
19 assume that fraud would be obvious if it were serious enough to  
20 change the outcome of an election. Software intrusions can cover their  
21 tracks, even erase themselves when done. Only the altered election  
22 result remains.

23 Can machines be made more secure?

24 The very nature of computer-based systems makes the above-

1 risks possible. One person making very small changes in many places  
2 without leaving tracks is just not possible with paper. Today's  
3 computerized voting systems are very poorly designed with regards to  
4 security. Passwords are widely known and are rarely changed.  
5 Breakable forms of encryption are used and systems are connected to  
6 networks, phone lines and memory devices without best practices and  
7 security. Once they are delivered, election systems are rarely under  
8 tamper-proof seal from the point at which no uncertified software is  
9 loaded.

10 Regarding certification and testing, it is a maxim in computer  
11 science. "Testing can only show the presence of errors, never the  
12 absence of errors." Likewise, testing cannot prove the absence of  
13 malicious code or the absence of opportunities for intrusion; testing the  
14 software is not a solution.

15 Some of the problems with computer-based systems have  
16 technological fixes but only at the cost of increased complexity. We are  
17 rendering the systems beyond the knowledge of all but a handful of  
18 experts. All of us non-experts would simply have to trust that these  
19 systems had not been compromised.

20 A quote from Computer Science Professor David Dill of  
21 Stanford University sums up the problem quite well. "Why am I always  
22 being asked to prove these systems aren't secure? The burden of  
23 proof ought to be on the vendor. You ask about the hardware. Secret.  
24 The software. Secret. What's the cryptography? Can't tell you

1            because that will compromise the secrecy of the machines. Federal  
2            testing procedure, secret. Results of the tests, secret. Basically we  
3            are required to have blind faith. I can assure you, even if nothing were  
4            secret, it would still be a practical impossibility to prove the security  
5            and reliability of a state-of-the-art electronic voting machine.

6                            On paper trails and auditing.

7                            Note that in the systems that print a paper trail, the paper trail  
8            itself is created by software that may be altered by tampering or error.  
9            And thus is unreliable as a record. Having the voter review the paper  
10          trail is an attempt to fix this additional problem, but it is an attempt that  
11          is likely to fail. A voter verified paper audit trail is a problematic  
12          attempt to create the equivalent of an original document. Using in part  
13          the system being audited to create it's audit document. The document  
14          itself must then be audited by the voter. Such an audit trail is certain to  
15          be an accurate reflection of what the voters selected only if 100 percent  
16          of voters check 100 perfect of the votes, 100 percent correctly. An  
17          impossibility in real situations. Otherwise, we start out with an audit  
18          record that itself cannot be assumed to be 100 percent correct  
19          resulting in a less than useful sham of an audit.

20                          With a printed paper trail, we also have the problem of what if  
21          we find a discrepancy? If we only see one or two discrepancies per  
22          machine, would we do anything about it? Would it be just treated as a  
23          glitch written down and forgotten? Would that one machine be taken  
24          out of service? But what about the votes it already counted? What

1            about the other presumably similar machines on which no voter  
2            reported a discrepancy? Remember all it takes to steal an election are  
3            a few discrepancies per machine.

4                            The political realism problem.

5                            The first official results create a strong presumption of the  
6            correct result. How compelling would any evidence of tampering have  
7            to be to work against that presumption? Our efforts must be directed  
8            towards limiting the opportunities for tampering in the first place. If  
9            possible, the counting process itself should produce the first cross-  
10           check or audit of the result. One way to accomplish this is to  
11           immediately count the ballots twice by two independent teams. Very  
12           much the way the handicapped population was advocating earlier.  
13           Detection of tampering is always necessary, but experience shows that  
14           evidence of tampering won't always change a tampered result that's  
15           delayed.

16                            Simplicity, Transparency, Openness.

17                            Our voting systems must be simple enough so that non-technical  
18            observers can see what is going on. They must be transparent and  
19            open enough so that once the ballot is cast in secret, the rest of the  
20            process is observable by the public and all intermediate results are  
21            open to checking by all. Our election systems must be designed so  
22            that the secret actions of a few cannot have an effect without raising  
23            suspicion. It is unfortunate that in some jurisdictions, you will be  
24            arrested if you try to observe the vote counting process.

1 Paper systems can be made to meet these criteria easily.  
2 Computer-based systems cannot. When this fact is combined with  
3 recent results that show a lower error rate for hand-counted paper  
4 ballots, is there any reason to consider machines? Only a hand-  
5 marked paper ballot is an original documentation of the voter's intent.  
6 We must have that as a minimum. And if we have that, there is no  
7 reason against and many reasons for, counting those ballots in an  
8 open, public process that is visible and understandable for all.

9 Software based systems introduce many opportunities for  
10 problems, including tampering. One person, one vote, must be a  
11 principle of democracy, not a description of all it takes to steal an  
12 election."

13 Thank you, gentlemen, for your time.

14 COMMISSIONER KELLNER: Thank you. Mr. Ossont.  
15 Certainly I've been raising problems with the potential for tampering  
16 with electronic machines for many years. But I also take to heart  
17 Professor Rebecca Mercury's comment that there are far more  
18 incompetent programmers than there are gifted hackers. And that we  
19 have to be just as concerned about that.

20 MR. OSSONT: Well let's see, if you're accepting either side of  
21 that aisle, I think there's --

22 COMMISSIONER KELLNER: Yes.

23 MR. OSSONT: -- a reason for concern, sir.

24 COMMISSIONER KELLNER: Right. And then on the other side

1 of this, let me just add though, that while I agree and have raised many  
2 of these sentiments for many years, I think that we also have to look at  
3 the other side of the issue, that there are potential weak points for fraud  
4 in an optical scanning ballot system. And we should not ignore that, so  
5 that the advocates of optical scanning also need to be paying attention  
6 to those security weak points in optical scanning and to make sure that  
7 the regulations are also addressing them.

8 If there's any criticism of these regulations, the regulations are  
9 all focused on an assumption, for the greater part, that DRE's are  
10 where the action is. And there are weak spots with optical scanning  
11 security, and the biggest one is, what happens to the ballots after they  
12 leave the poll site on election night, and before the hand recount of  
13 those ballots, or a machine recounted those ballots at the central  
14 counting site, usually at the County Board of Elections.

15 MR. OSSONT: And I assume that you would agree with Mr.  
16 Fleischer's concerns on all of these systems that rely on software as  
17 opposed to having an actual count in District.

18 COMMISSIONER KELLNER: Yes, but what I was just saying  
19 though is that the greatest threat, in my view, on the optical scanning  
20 system, is the control over the physical ballots before the recount.  
21 Whether the recount is by hand or whether the recount is by machine, if  
22 somebody gets access to those ballots and pulls out 100 of the original  
23 ballots and substitutes 100 ballots that are marked otherwise, and I've  
24 seen it happen with emergency ballots and with absentee ballots, and

1 I've also seen Boards of Elections Officials lose ballots, where they just  
2 plain mislay them and can't find them. So I'm just raising that, and I'm  
3 just saying that the community that's pushing optical scanning should  
4 be aware that there are those threats as well, and I think it serves us  
5 well to be paying attention to that in the regs.

6 MR. OSSONT: Well make no mistake by my comment --

7 COMMISSIONER KELLNER: I'm not criticizing, I'm just  
8 suggesting.

9 MR. OSSONT: Make no mistakes by my comments that I'm not  
10 advocating for optical scan either, I'm advocating for --

11 COMMISSIONER KELLNER: For a hand-counted --

12 MR. OSSONT: -- a hand-counted --

13 COMMISSIONER KELLNER: -- paper ballot.

14 MR. OSSONT: -- paper ballot, which I think in the case of  
15 several of the democracies in the industrialized world are utilizing  
16 those, and there have been no huge outcries for the replacement of  
17 them because it is a transparent system to all involved.

18 Thank you.

19 COMMISSIONER KELLNER: Thank you.

20 Edwin Carstensen.

21 MR. CARSTENSEN: Okay, thanks.

22 One advantage in being at the end of the program is that I don't  
23 have to point out the problems with black boxes. What we need is a  
24 solution to the problem, and we came very close to it in our last

1 speaker.

2 What I'm suggesting is that we have what amounts to double  
3 entry voting. An automatic recount.

4 We all deal with our banks. There are black boxes, we have no  
5 idea what's going on. But we don't worry about it because we keep  
6 our own records at home, we keep a separate accounting, and when  
7 the two numbers agree, everything's fine. That's what I'm proposing  
8 here.

9 So, we have a DRE, some kind of a machine which the voter  
10 approaches, enters the selection of candidates, then the machine  
11 prints the ballot and an imaginatively easy to read form, the voter  
12 checks it, makes sure that it's correct, puts it in the ballot box and it's  
13 counted then, manually, just as was suggested by the last person. In  
14 the meantime, the voting machine has produced whatever it does, you  
15 know, in the way of counting votes. And it, and it sends off it's  
16 message, or whatever it does. We simultaneously, on the same day,  
17 we get a manual count and we get an electronic count, and we can tell  
18 then whether the two agree. The information goes forward and finally  
19 we can choose our winning candidate.

20 If it should turn out that the vote is very close, then we can go  
21 back and explore these data that we've gotten from two independent  
22 sources. One electronic and one manual, and we can then decide  
23 whether we need a recount of some kind or need a whole new election.  
24 And either would be a possibility. So this is an amazing opportunity

1 that we have at the present time.

2 We're going to spend this money on machines. We can go with  
3 the machines, which I think is an open invitation for fraud. Or we can do  
4 the double voting, double entry voting, automatic recount, whatever you  
5 wanted to call it, and we will have for the first time in the history of  
6 democracy, we'll have a really fraud free election.

7 Thank you.

8 COMMISSIONER KELLNER: Thank you, professor.

9 Matthew Lilly.

10 MR. LILLY: Good afternoon, how are you?

11 COMMISSIONER KELLNER: Okay.

12 MR. LILLY: Okay, thank you.

13 COMMISSIONER KELLNER: If you could leave some extras.

14 MR. LILLY: Okay.

15 COMMISSIONER KELLNER: If you have them.

16 MR. KOSINSKI: This is it.

17 MR. LILLY: Chairman Kellner, Commissioner Aquila,  
18 Commissioner Donohue, Directors Kosinski and Zalen, my name is  
19 Matthew Lilly, and I am here on behalf of Danaher Controls, a wholly  
20 owned subsidiary of Danaher Corporation.

21 Danaher Corporation is a Fortune 500, S&P 500 industrial  
22 manufacturer with about \$8 billion in annual sales. And we employ  
23 about 37,000 people across the globe and nearly 1,000 hard-working  
24 men and women here in the state of New York. Our parent company is

1 publicly traded on the New York Stock Exchange under the call letters  
2 of DHR. We produce a wide array of precision devices, counting and  
3 measuring equipment, including Craftsman tools and nearly 70 percent  
4 of all gas station pumps in use here in the U.S., about 125,000  
5 locations, and about 50 percent of stations worldwide, including the  
6 receipt printers that are integrated into each pump that most people  
7 are familiar with.

8 In addition to these many business areas, Danaher is the  
9 nation's leading manufacturer of full-face electronic voting machines.  
10 We have produced nearly 30,000 machines, deployed in 13 states  
11 throughout the U.S. plus the Virgin Islands over the past 20 years.  
12 More people in the U.S. vote on Danaher equipment than all other full-  
13 face machines combined. In the northeast, we provide voting  
14 machines, training and support for the city of Philadelphia, the state of  
15 Delaware and many other cities and towns throughout the northeast. I  
16 just want to share some of our company's perspective on the Draft  
17 Voting Standards recently published by the Board.

18 We believe New York's implementation of the Help America  
19 Vote Act, although somewhat slower than other states, may ultimately  
20 be safer, fairer, and more inclusive and a more accessible election  
21 process. We applaud the Legislature and the State Board of Elections  
22 for several key innovations incorporated in the statute and draft  
23 regulations.

24 As the New York State Legislature began considering HAVA

1 implementation legislation many months ago, Federal law had already  
2 required fully accessibility for people with disabilities. To meet these  
3 challenges, our machine rotates forward and provides the ballot within  
4 reach of the voters and with visually and severe mobility restrictions to  
5 vote unassisted utilizing our audio monitor.

6 New York's additional requirements for sip and puff mechanism  
7 inspired our engineers to develop a module that empowers  
8 quadriplegics and others with significant disabilities to vote without  
9 assistance on the same machine as other voters here in New York.  
10 This module is in the last stages of development and is going to be  
11 available for demonstration later this year.

12 In addition to the legislature's requirement for a voter verified  
13 paper audit trail, is laudable, with nearly two decades of experience in  
14 electronic voting technology and with tens of millions of votes cast on  
15 our system without incident, we believe that the full-faced DRE voting  
16 machines have passed the critical tests throughout America. Hopefully  
17 the Legislature's paper trail requirement will put an end to the  
18 conspiracy theories surrounding electronic voting.

19 The truth is clear. New York's bi-partisan Board of Elections  
20 structure at the state, county and local levels has ensured fair elections  
21 and reliable vote counting for many generations. We have faith in the  
22 professionalism and integrity of everyone involved in this sacred duty,  
23 whether it's the engineers who develop our machines, the election  
24 officials that operate them or the technicians who get them ready for

1 the election. Toward this end, we have incorporated a voter verifiable  
2 paper audit trail in our machines and will submit these for  
3 enhancement, all of these enhancements for approval by the Board in  
4 the coming weeks.

5 We also applaud the Board of Elections for including in the draft  
6 regulations a full-face ballot for all machines in use in the state. As I  
7 noted earlier, we have produced and installed more full-face electronic  
8 voting machines in the U.S. than all the other manufacturers combined,  
9 and I emphasize full-face there, okay. We embrace this type of system  
10 for a variety of reasons:

11 Particularly, full-face machines encourage broad voter  
12 participation in every race. Most voters, let's face it, are drawn to the  
13 polls because of the high-level contests, such as governor, president,  
14 mayor and county executives. The so-called down-ballot races are  
15 crucial to elections as well, and by seeing the entire ballot at once,  
16 voters are instinctively more likely to vote in contests for town board,  
17 city council, state legislature and party committee.

18 Full-face machines are flexible enough to handle any local  
19 election or format. It's not surprising that in a state as large and  
20 diverse as New York, there's not one consistent statewide ballot. Any  
21 machine in use in New York State must be able to handle these  
22 complexities. Our machine does contain 504 voting positions and can  
23 be configured in either the horizontal party alignment used in most of  
24 New York or the vertical alignment that's used in New York City and

1            Albany County. However, not all full-face machines are created equal,  
2            and based on our company's nationwide experiences, just a couple of  
3            recommendations for the Board to consider.

4                    Full-face DRE machines with a printed ballot are easier for  
5            voters and poll workers. Our machines use a familiar voter interface.  
6            In other words, it looks like a lever machine without the levers. This  
7            brings the advantages of technology to the election without confusing  
8            voters, and some voters, particularly those that are seasoned, have  
9            trouble adapting to touch screens and optical scan systems as  
10            evidenced throughout the United States during the last couple of years,  
11            particularly Florida. By using a familiar interface, electronic voting is  
12            intuitive for every voter.

13                    Moreover, poll workers using our machine require less training  
14            and encounter far fewer problems than touch screens or scrolling  
15            screens and optical scanners. Our machine does not require a  
16            computer or electronic skills to operate it. It's simply set up and  
17            functions similar to existing lever machines.

18                    We believe that New York should not experiment with unproven  
19            technology or vendors. The state is large and complex, that operates  
20            under significant time constraints as it seeks to comply with HAVA.  
21            There's really not any room for error during this process. We strongly  
22            urge the Board to maintain clear standards, I believe you're doing that,  
23            in vendor qualifications and responsibilities. New York deserves voting  
24            systems that are reliable and proven in use, and vendors should be

1 required to demonstrate experience in training officials, educating  
2 voters and deploying election systems. Our system has been used for  
3 more than 20 years and millions and millions of voters have voted on  
4 our machine during the past five presidential elections.

5 The State Board may want to consider calculating the true cost  
6 of ownership for the local boards. A great deal of attention has been  
7 aid to the federal funds intended to help localities purchase the  
8 equipment, however, it doesn't cover the operational costs over the life  
9 of the system. As many local governments face tough fiscal times, we  
10 urge the State Board to help them calculate the true cost of ownership  
11 for the various systems under consideration, okay. That's a key  
12 element going forward as local budgets cover the cost of operations in  
13 conducting elections. We believe that the ongoing cost of printing  
14 ballots for optical scan systems can be enormous and wasteful  
15 considering that on average, less than 20 percent actually show up and  
16 vote. And the requirement is typically 110 percent plus in printing of  
17 ballots, thus you're wasting 80 percent of those that are printed.

18 COMMISSIONER KELLNER: Don't you have to print those  
19 ballots anyway as emergency ballots?

20 MR. LILLY: You do have to print a certain percentage for  
21 emergency ballots, but you're not printing 100, one for every single  
22 registered voter in each county. Plus extra.

23 Danaher's approach to voting systems is reflected in our  
24 commitment to providing our customers with safe, stable, reliable,

1 accessible and cost effective, easy-to-use in-store system. We  
2 welcome the opportunity to help New York modernize its voting  
3 systems and appreciate having this opportunity to offer our expertise  
4 and analysis on the draft regulations published by the Board.

5 Thank you.

6 COMMISSIONER KELLNER: Thank you.

7 UNIDENTIFIED MAN: So after two and a half hours of  
8 testimony, the only person speaking in favor of a DRE is a  
9 representative from industry.

10 COMMISSIONER KELLNER: Shelly Pering, please. We're  
11 almost done.

12 UNIDENTIFIED MAN: Shelly just got taken away by her lift line  
13 ride.

14 COMMISSIONER KELLNER: All right. How about Karl  
15 Peleger.

16 MR. PELEGER: Peleger.

17 COMMISSIONER KELLNER: Peleger, sorry.

18 MR. PELEGER: That's all right.

19 My name is Karl Peleger, I'm just a, I live in the Rochester area  
20 and I'm just an individual citizen with a couple ideas.

21 You know, currently we've been using these, in this area, these  
22 lever machines for 50 to 70 years and now we're going to transition to  
23 something else. How long these new machines are going to be used, I  
24 don't know, but I think in the future, we'd want a system that's more

1 efficient, more convenient, more accurate, more reliable, and giving the  
2 voter more confidence in the outcome of the voting. And I think most  
3 importantly, something that's more honest. And my comments are  
4 strictly on the back end of the system, not the interaction with the voter  
5 with the voting equipment, but what is recorded in the vote to be  
6 attached to a vote, to give you a better audit trail of what actually  
7 happened in the process. So I am going to encourage you to include in  
8 the specifications the following, and it has to do with a build-in audit  
9 trail. And that with each voting record, you should have the following  
10 information attached to it.

11 Now this idea is a little different maybe, in what was used with  
12 the mechanical voting machines where a bunch of counters were  
13 incremented in the back and recorded as a vote. This is more of  
14 looking at this as a data set. The vote is a data set. And composed of  
15 a record for every voter and this information I'm talking about is what  
16 you attach to it. And the, it consists of the following:

17 A serial number that identifies the exact voting machine used to  
18 create the vote. I mean every machine, if it's a mechanical or an  
19 electronic device, should have built into it, preferably in the physical  
20 form, maybe in the hardware, in the processor, they do, I think they do  
21 make processors that have serial number built into them, but to have  
22 that serial number of the processor in the piece of equipment attached  
23 to the voting record. This idea is that if you have a voting machine, say  
24 an electronic voting machine that's created in some factory that, you

1 have to actually control that, the machine from its manufacture to its use  
2 about people working on it, and that the machine should have a serial  
3 number attached to it.

4 Also, on the record, voting records, you should record the date  
5 and more specifically, the time of the vote. This is very critical. Having  
6 the time –

7 COMMISSIONER KELLNER: As soon as you do that, you’ve –

8 MR. PELEGER: The time, whether it’s a paper ballot, an optical  
9 scanner record or electronic, the time should be put on it.

10 COMMISSIONER KELLNER: Yes, but then you’ve tagged the –

11 UNIDENTIFIED PERSON: Yes.

12 COMMISSIONER KELLNER: -- ballot so that it’s no longer a  
13 secret ballot.

14 MR. PELEGER: But I’m concerned about --

15 COMMISSIONER KELLNER: That’s the problem with unique  
16 identifiers to a ballot that can be traced back to the voter. All right, go  
17 ahead, I --

18 MR. PELEGER: Well, you know, an absentee ballot is not --

19 COMMISSIONER KELLNER: I interrupted you.

20 MR. PELEGER: Okay.

21 COMMISSIONER KELLNER: I want to let you finish.

22 MR. PELEGER: All right. So and then we want to add  
23 information such as the location of the vote, the polling place, the  
24 election district ID, and maybe if you don’t, if you skip the time, this last

1            item should be put on it, and that's a sequential vote number from that  
2            piece of equipment.

3                    COMMISSIONER KELLNER: Same problem.

4                    MR. PELEGER: But I'm trying to prevent people from slipping  
5            votes in --

6                    COMMISSIONER KELLNER: I --

7                    MR. PELEGER: -- where they shouldn't be.

8                    COMMISSIONER KELLNER: I understand, and that is the very  
9            special problem of the computer science behind electronic balloting, is  
10           that you have the conundrum of a secret ballot, so the ballot can't be  
11           traced back or indeed the voter verifiable paper audit trail, for  
12           example, in New York, requires that it be random. You know, in other  
13           words, it be separated out for each voter when it goes into the box, so  
14           that it, when it's recounted, it's done randomly.

15                   MR. PELEGER: Now you're saying because you have a list of  
16           voters --

17                   MR. KOSINSKI: Yes.

18                   MR. PELEGER: -- that somebody's writing down a sequential  
19           order.

20                   COMMISSIONER KELLNER: That's right. Well, you know, by  
21           law --

22                   MR. PELEGER: And that, you could --

23                   COMMISSIONER KELLNER: -- in York we track them. If you, I  
24           know you --

1 MR. PELEGER: Yeah.

2 COMMISSIONER KELLNER: Many of the people here have  
3 been inspectors. Inspectors write down next to the name of the voter  
4 when they sign what their voter number was, what the sequential  
5 number was when they voted. And that's, by the way, a very important  
6 safeguard against fraud because if you add names, you have to assign  
7 the sequential numbers to the names on the voter role. In fact, you  
8 know, the great Lyndon Johnson fraud of 1948, Box 13, I mean the  
9 reason everybody believes it was a fraud is the last 200 names on the  
10 voter roll for the precinct were in alphabetical order.

11 MR. PELEGER: It wouldn't be a random thing.

12 COMMISSIONER KELLNER: All right, go ahead. I'm sorry,  
13 again, I've cut you off.

14 MR. PELEGER: Well, no, that's fine. And that's valid, I mean  
15 apparently, you know, you'd have to come up with some other system  
16 of recording the valid voters and maybe having, and —

17 COMMISSIONER KELLNER: Well that's —

18 MR. PELEGER: -- have them make a choice of two or three  
19 machines to vote on.

20 COMMISSIONER KELLNER: That's why —

21 MR. PELEGER: Or something.

22 COMMISSIONER KELLNER: That's why many of us argued  
23 there's really not much alternative to a voter verifiable paper audit trail if  
24 you're going to use a direct recording electronic machine. That,

1 without the voter verifiable paper audit trail and all of the problems that  
2 many people have identified with that, you do have to trust the software,  
3 and it's virtually impossible to audit the software. But with the audit  
4 trail, at least you're able to randomize, you have to rely on the voter to  
5 actually look at the paper strip before it's cut off, but when it's cut off,  
6 it's then (unintelligible). And theoretically, it should be an exact match.  
7 In other words, the number of votes in the paper strip should be the  
8 exact match of what's been counted electronically.

9 MR. PELEGER: But somehow, all right, you're trying to avoid  
10 fraud, which means, well you can do it by counts. You know, you could  
11 count the number of voters vs. the number of votes.

12 COMMISSIONER KELLNER: You need to wrap, you know  
13 —

14 MR. PELEGER: You know, if you had a ten sequence in this,  
15 you could at least see whether it's reasonable or not to have something  
16 like that, the votes come in at that particular rate.

17 COMMISSIONER KELLNER: We could give up secret voting  
18 and just have everybody vote in public. That would be the ultimate  
19 audit.

20 MR. PELEGER: Mm, no.

21 COMMISSIONER KELLNER: And indeed, that's how it was  
22 until 1880 in New York. And it wasn't till 1896 that they added the  
23 secret ballot to the state constitution.

24 MR. PELEGER: Well then, that's all I'm going to say.

1           Essentially that was just some ideas I had come up with.

2           MR. KOSINSKI: Thank you though.

3           MR. PELEGER: Thank you.

4           COMMISSIONER KELLNER: All right, thank you.

5           Andrew Malcolm.

6           MR. MALCOLM: Good afternoon, gentlemen.

7           MR. KOSINSKI: Afternoon.

8           MR. MALCOLM: I didn't come prepared and my remarks will  
9           come off this paper napkin, and if you want to --

10          MR. KOSINSKI: Can you leave that for me?

11          MR. MALCOLM: I will be happy to do so, Commissioner, or  
12          Executive Director.

13                   I came saying what we all know, if the current system isn't  
14                   broken, let's not fix it. But I think we have to move past that.

15                   We have a partially funded mandate, not quite a mandate, you  
16                   can refuse the money from the Federal Government and punish the  
17                   state by taking less money.

18          COMMISSIONER KELLNER: No, no, but --

19          MR. KOSINSKI: We still have to do the program though. You  
20                   should understand that. This is not an option where the state takes the  
21                   money and then does the program. We have to do the --

22          MR. MALCOLM: Well the plain --

23          MR. KOSINSKI: -- program whether we take the money --

24          MR. MALCOLM: The plain --

1 MR. KOSINSKI: -- or not.

2 MR. MALCOLM: -- black letter reading of the Constitution says  
3 this is our state matter and none of the Federal Government's  
4 business. And I think we have an option there, but beyond that,  
5 because we all know that's not going to happen.

6 MR. KOSINSKI: Right.

7 MR. MALCOLM: I just felt better satisfied having said it and  
8 knowing that that won't happen.

9 MR. KOSINSKI: Okay.

10 MR. MALCOLM: I had the opportunity in this room, it's strange  
11 talking to four people with what is in fact an audience behind, but --

12 MR. KOSINSKI: Would you rather turn around?

13 MR. MALCOLM: No, it's okay, I'm fine. I had the opportunity to  
14 look at only one of the machines, which was one of the direct voting  
15 machines, and I saw the little window that we were to look through, and  
16 as I'm sure many people said, difficult to do even with normal vision to  
17 see it. I perceive with that a very great problem. I'm an election  
18 inspector coordinator, and I see lots of people on voting day. And  
19 there are all the people who sit there and pull the lever and the current  
20 system and say, you know, oh, but I'm not sure I voted the way I  
21 intended to vote.

22 MS. KOSINSKI: Mm-hmm.

23 MR. MALCOLM: Well I can just picture on election day with the  
24 verifiable thing, looking through the window, that there are going to be

1 very large numbers of voters who will look at that and say, oh, that's not  
2 what I voted. You know. And then we're going to have to have some  
3 process by which we're going to have to do something to mollify the  
4 people because we can't change the vote, et cetera, et cetera. So I  
5 think that's what's wrong with that kind of system, it doesn't work in the  
6 practical world of human beings that are going to do that.

7 Ms. Multer, who seems to have come here from the x-files, I  
8 guess, suggested that the OCR and a number of other people, have  
9 many advantages over the other system, and the great fact of the  
10 matter is, is that having a paper ballot obviates the problem of that.  
11 You can look at your paper and you can change it and it would  
12 eliminate that problem. So I'm an advocate of some paper ballot  
13 system which is held by the voter and processed in some way, OCR  
14 being a reasonable way to do that.

15 There's one other issue that didn't come up here, rather  
16 strangely, I thought, considering the number of advocates for the  
17 handicapped here, and that is the question of interpreters for the deaf.  
18 We have a law in New York, as you all know, that deal with when the  
19 population, I think it's 10 percent, are Hispanic, an interpreter is  
20 provided. No such provision is made for the deaf.

21 We have one election district here in Henrietta, which has a very  
22 large number of deaf people and where explanations of the voting  
23 process, of what's ever on the ballot or the propositions, such things,  
24 often need to be explained to people who simply do not understand

1           them because we do not have an interpreter at that place. I think it  
2           would be wise for the state of New York to provide sign language  
3           interpreters, certified ones, RID is the certification, there are others, to  
4           allow such people to be available where there's a significant number of  
5           deaf people within that district. And I certainly have one out of the 35  
6           districts that I have that would qualify for that, and I would point out to  
7           you that Monroe County has the largest number of deaf people per  
8           capita of any county in the United States.

9           MR. KOSINSKI: Hmm.

10          MR. MALCOLM: Having had NTID move here about 25 years  
11          ago.

12          MR. KOSINSKI: Hmm.

13          MR. MALCOLM: And the last item I would like to add to my list,  
14          is when dealing with actual paper ballots, the system of establishing an  
15          evidence trail for those ballots sealed, I think, needs to be improved  
16          even over what we do now, that we now do it, by the way, with a single  
17          person taking the envelop of materials from the election district to the  
18          Town Hall and then from the Town Hall to the Election Board. It seems  
19          to me it might be more appropriate to have two people, one on each  
20          side of the political spectrum, carrying that envelop forward. So, those  
21          are my remarks, and --

22          MR. KOSINSKI: Great.

23          MR. MALCOLM: -- yes, you certainly may have this.

24          MR. KOSINSKI: Okay. Thank you.

1 MR. MALCOLM: Did you have questions for me?

2 MR. KOSINSKI: I don't.

3 COMMISSIONER KELLNER: No.

4 MR. MALCOLM: Thank you.

5 MR. KOSINSKI: Thank you.

6 COMMISSIONER KELLNER: Debra Duminuco.

7 MR. KOSINSKI: That's our last one.

8 COMMISSIONER KELLNER: This is our last one, okay. You  
9 have the honor of being last.

10 MS. DUMINUOCO: Yes. Hello, my name is Debra Duminuco.

11 As a current voting poll inspector for the town of Webster, as  
12 well as a former employee of the Monroe County Board of Elections, I  
13 urge you to consider the following points in regards to the draft HAVA  
14 voting machine regulations:

15 Wheelchair accessibility is critical. The draft HAVA voting  
16 machine regulations currently omits the statutory requirement that  
17 machines be constructed to permit a person in a wheelchair to vote.  
18 This prevents constituents who require mobility aides such as  
19 wheelchairs, from having access to machines with tactile, discernable  
20 controls, audio voting features and sip and puff technology. For voters  
21 that are both vision and hearing impaired, the regulations should  
22 include that voting machines or systems permit the voter to select a  
23 typeface on the ballot between 14 and 24 point font size and to adjust  
24 the foreground and background text contrast.

1           The regulations must ensure that individuals who have impaired  
2 vision, reach or dexterity, will be able to verify their votes. In polling  
3 places serving multiple election districts, more than one accessible  
4 machine must be available for each election district. For individuals  
5 such as myself, who live with multiple sclerosis and depend on mobility  
6 aides and assisted technology to maintain activities of daily living, I  
7 urge you to preserve our rights to vote by addressing these points of  
8 concerns.

9           On behalf of the National Multiple Sclerosis Society, Upstate  
10 New York Chapter and all those living with MS, I would like to thank you  
11 for your time and consideration.

12           Thank you.

13           COMMISSIONER KELLNER: Do you want to say anything,  
14 Michael, you've been silent.

15           MR. JOHNSON: No, I —

16           MR. KOSINSKI: Do you have anything you want to say?

17           MR. JOHNSON: I've taken eight pages of notes.

18           MR. KOSINSKI: You've taken a lot of notes.

19           COMMISSIONER KELLNER: All right, well, we've heard quite a  
20 bit today, and there's lots of thoughtful comments that we very much  
21 appreciate. The process of drafting these regulations will certainly  
22 continue through the comment period and beyond, while at the same  
23 time we recognize that there is considerable urgency in getting this  
24 done because of the deadlines set by the Federal Help America Vote

1                    Act that are fast approaching, I guess.

2                    MR. KOSINSKI: Very fast approaching.

3                    COMMISSIONER KELLNER: I'm not going to publicly say that  
4                    we're not going to be able to meet, but we're certainly aware that we  
5                    have to keep this process moving.

6                    So thank you all for coming, and we appreciate your  
7                    participation and hope that you will stay involved in these issues.

8                    (Whereupon the above-entitled matter is  
9                    adjourned)