

2 YORK NEW STATE SENATE

3 STANDING COMMITTEE ON ELECTIONS

4 -----X

5 Public Hearing

6 Re: Election Law Reform

7 -----X

8 Room 124

9 New York State

10 Capitol Building

11 Albany, New York

12

13 November 30, 2009

14 1:45 p.m.

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17 B E F O R E:

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19 JOSEPH P. ADDABBO, JR.,

20 The Chair

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2 A P P E A R A N C E S :

3 New York State Senators in attendance:

4 Joseph P. Addabbo, Jr., the Chair

5 Senator Libous

6 Senator Griffo

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Also Present:

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David Kogelman, Esq., Counsel to the Committee

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Other Staff Members

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11 The Public

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Reported by:

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Kari L. Reed

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I N D E X   O F   S P E A K E R S

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P R O C E E D I N G S

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SENATOR GRIFFO: Please note that Senator Libous and Senator Griffo were here and we are going to conference.

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MR. KOGELMAN: If I could just have

your attention for a minute. I apologize, I

appreciate all of you coming for the hearing today

and waiting so patiently. Unfortunately the

exigencies of the legislature have the chairman

tied up for the moment in a conference, but he will

be here as soon as possible and will stay here as

long as necessary to hear the testimony which we

are very grateful that you are here to provide. So

if you'll continue patiently we appreciate it, and

I apologize on behalf of the senator and all the

committee for the delay.

(Recess taken)

THE CHAIR: Good afternoon,

everybody. Again, my name is Joe Addabbo. I have

the privilege and honor of appearing for the

Legislature and the state Senate. And first let me

apologize for my delay. It's kind of an

interesting day as we deal with the budget. And

the senate Democrats are in conference. We do have

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2 a session at two o'clock, so I'm going to be very  
3 brief. I want to get the first panel up. And  
4 again, I may have to take a break for this  
5 committee hearing as we just see what happens at  
6 the two o'clock session.

7                   As you know, this committee has  
8 been going around the state talking about election  
9 issues, and this is just in furtherance of that.  
10 We are now obviously talking about what can we do  
11 to make the process better. And I appreciate all  
12 those who are here to give testimony and start a  
13 good discussion today. We have a program that was  
14 a pilot program that started out this year with  
15 both the primary and general elections with regards  
16 to new voting machines, the next generation of  
17 voting machines. And again, I think that's going  
18 to be a good discussion to have as we go forward  
19 and look at the expansion of these devices for next  
20 year.

21                   Again, without further adieu, let me  
22 call my first panel. Thomas Ferrarese, the  
23 Commissioner of the Monroe County Board of  
24 Elections and chairman of the executive committee  
25 of the Election Commissioners Association. Dennis

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2 Ward, Commissioner of Erie County. Ralph Mohr,  
3 Commissioner of Erie County as well. So please,  
4 commissioners, take your time. I know you traveled  
5 a bit today, so we appreciate you being here as  
6 well.

7 (First panel seated)

8 THE CHAIR: Please state your name  
9 for the record and present your testimony, please.

10 MR. FERRARESE: Okay. My name is  
11 Tom Ferrarese, and I'm the commissioner for the  
12 Monroe County Board of Elections. I'm also the  
13 chair of the executive committee of the New York  
14 State Election Commissioners Association. And  
15 although I'm not speaking for them today, I will  
16 share some comments that I have had with other  
17 commissioners.

18 Actually I have prepared comments  
19 which you have been handed. Rather than go through  
20 and read them all, I'd really like to take a few  
21 moments and highlight so you can hear each of us  
22 and then answer some questions that you have.

23 At every one of these sessions that  
24 I have appeared before I do have to raise this  
25 issue. I've raised the fact that New York state is

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2 unique, one of about only five states in the whole  
3 country where the elections are run bipartisan,  
4 actually from the very top all the way down to the  
5 polling place. And too often we set this aside as  
6 not being as important as it is. And I think it is  
7 a critical issue from which to work from. Very  
8 often we ignore that when we look at what is  
9 happening in other states. And what is happening  
10 in other states doesn't have that kind of check and  
11 balance to begin with.

12                   We also today are going to talk a  
13 little bit about the pilot programs. And my other  
14 commissioners here will go into quite a bit of  
15 detail probably on those programs and the issues  
16 around that. What I'd like to do is I'd like to  
17 actually jump from that right to the issue of the  
18 audit and just make a few comments about the audit  
19 that we do.

20                   One of the things that we look at  
21 is too often take a look at the audit as an issue  
22 of recount. But that isn't it at all. New York  
23 state, again being a state that frankly is very  
24 concerned about the votes being counted right and  
25 accurately, we do a canvass. New York state does

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2 it automatically. It's funny, when people ask  
3 well, what will trigger a recount in New York  
4 state, well, we recanvass our machines  
5 automatically. It's just New York state does that.  
6 It doesn't happen in other states. And so very  
7 often when you get into this concept about the  
8 audit I am very concerned about the need to  
9 understand that the audit is really verifying that  
10 the rules that have been established for that  
11 equipment, in other words, the use of how it is  
12 going to count votes, is really being followed.  
13 And it really comes down to that simply.

14                   At the risk of probably upsetting  
15 a number of people, I'm going to suggest that  
16 another human factor, that of doing hand counts of  
17 ballots, the potential for error really does go up  
18 quite a bit. And that, by the way, you might need  
19 to consider in the audit using an independently  
20 programmed scanner, it could be a high speed  
21 scanner, to do that audit. And frankly we could do  
22 a better job of it and probably be more assured of  
23 its results.

24                   Now, I don't want to suggest that  
25 in fact there is not times at which there may be

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2 issues with equipment. And the paper, actually  
3 looking at the paper very closely is going to be a  
4 critical part of that. But even in that situation,  
5 using the independently programmed high speed  
6 scanner to gain the original count and then using a  
7 regular scan that they use in the polling place to  
8 get your second count to do the verification and  
9 the audit would be just as good and frankly in some  
10 cases may be better, because again, the error that  
11 exists there is very high when you enter the human  
12 factor.

13                   If we look at all of the issues  
14 around equipment that occurred within our pilot,  
15 you will discover that all of them were because of  
16 human error or human factor entering into it,  
17 rather than it being an issue around programming  
18 that was done or an issue frankly around getting  
19 the necessary ballot layout late and having to  
20 program very, very late. Those are issues that are  
21 going to have to be addressed, and my colleagues I  
22 think will talk a little bit more about that.

23                   But if you have a problem with the  
24 machine in a given simple situation and have the  
25 paper, you can always go back and recount the paper

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2 rather than electronically or by hand if that  
3 indeed continues to be necessary to be done. And  
4 frankly, we're concerned that there's nothing else  
5 that provides us with that kind of protection, not  
6 even our current running machines. Frankly, if  
7 something went awry, we are without anything to  
8 count those votes and count them properly. So the  
9 situation really we are in we have had great  
10 experience with, and to be honest with you I think  
11 that we are moving forward in a very positive  
12 direction.

13 MR. MOHR: My name is Ralph Mohr.  
14 I'm one of the commissioners of the Erie County  
15 Board of Elections. And Commissioner Ward prepared  
16 a statement which has been submitted to the Chair,  
17 and I'm not going to read this as well. The  
18 commissioner did a very good job of highlighting  
19 the areas that were of concern in Erie County and  
20 some of the suggestions that we have. I would like  
21 to briefly tell you our experience.

22 We have participated in the pilot  
23 program. We conducted the pilot program in every  
24 election district with two cities and 25 towns, 661  
25 election districts and covering 425,000 registered

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2 voters. We were quite satisfied with the equipment  
3 that we had and the way the election came off. We  
4 conducted the election in this area both in the  
5 primary and in the general elections. We employed  
6 machines at 250 polling places, 250 machines at the  
7 primary and 300 for the general election. And we  
8 had several machines that we used ES&S and 200  
9 optical scan machines.

10                   The results were quite positive.  
11 We received a lot of positive feedback from the  
12 voters. There were some concerns with regard to  
13 privacy. We adopted, instead of trying to make a  
14 selection on the privacy booths we decided to go  
15 with cardboard stanchions, which actually didn't  
16 seem to be as much of a problem I think as the  
17 curiosity with the voters peering in the ballots of  
18 the voting machine and making sure that the  
19 machines were working properly.

20                   We had several close races. We  
21 conducted hand counts in those close races. We had  
22 under our experience a race which we felt a hand  
23 count was necessary because of the voters, for  
24 voter assurance and for the candidates' assurance  
25 we conducted. We found the machines to be

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2 absolutely accurate in all respects.

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4                   When both Commissioner Ward and I  
5 decided to provide the voting machines in such a  
6 large area across the 661 election districts, I  
7 think we had confidence that the machines would  
8 work but we always had that little fear that you  
9 don't know exactly what's going to happen until it  
10 does. We had a candidate actually come in and  
11 wanted to verify for himself that the votes were  
12 accurately counted in his race. He had lost by 99  
13 votes. When he got done hand counting, it was  
14 probably around 20,000 ballots, he had lost by a  
15 hundred votes, so that's how accurate the machine  
16 was. And it wasn't because the machine didn't scan  
17 properly, it was because people had difficulty in  
18 marking the ballot; did a circle rather than filled  
19 in the oval.

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20                   And that brings us to the  
21 situation that we find most prevalent is that we  
22 are trying to adapt all the areas of the election  
23 law to the new technology that we have, and we find  
24 that many areas of the election law are outdated.  
25 And I'll cover two of them and Commissioner Ward  
will continue to cover even more.

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2                   Flexibility in staffing of the  
3 polling sites. The election law provides for four  
4 inspectors, two Democrats and two Republicans, in  
5 each election district. And because these scanners  
6 can now handle multiple election districts, we  
7 found areas in which particularly we have as many  
8 as eight election districts at one polling site,  
9 and in some areas when you have that many  
10 inspectors crowded into an area you have more  
11 confusion I think in some respects than benefit.  
12 And there should be some change in the election law  
13 to allow some flexibility for election staff to  
14 staff each polling site and each area as they see  
15 fit.

16                   In addition to that, the number of  
17 voters in the election districts were based upon  
18 the older machines that you can only count up to  
19 999 before the machine turned over. Now these  
20 optical scan sheets can handle many more ballots we  
21 found, and we utilized them for several election  
22 districts. And thus as we are going through the  
23 number of voters in the election districts when  
24 they're coming to the time that they're out of the  
25 period in which we can't alter election districts,

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2 we should be about flexibility and being able to  
3 change election districts to be geographically more  
4 convenient for the voters, and, secondly, to change  
5 that number. And the old rule doesn't really apply  
6 anymore and it should change.

7 Commissioner, would you like to  
8 continue?

9 COMM. WARD: Okay, thank you.

10 Dennis Ward, Democrat Commissioner  
11 of Erie County.

12 I would like to continue on the  
13 issue of the timeline. I know this is something  
14 that perhaps has political ramifications to it. I  
15 know we're all shocked at that. But the time  
16 implications, the timeline for conducting elections  
17 with the new optical scan ballots has the potential  
18 to leave the board's election in a very difficult  
19 position.

20 Erie County, first of all, we have  
21 an advantage in the sense that we are now doing  
22 in-house printing of the ballots for our optical  
23 scan machines. So we are able to respond to  
24 changes in the ballot perhaps a little quicker, no  
25 doubt a little cheaper. But that also brings with

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2 it a limitation as far as the time we have in which  
3 to print the new ballots. We were faced this year  
4 with two late breaking court decisions which were  
5 handed down by the appellate division at 7:20 on  
6 Friday night before the election. As luck would  
7 have it, the one which had county-wide ballot  
8 implications did not change what had initially been  
9 printed as a result of the trial level decision.  
10 So we were not required to make a county-wide  
11 reprint of all the ballots. One of them did entail  
12 one of the fifteen legislative districts and we had  
13 to work two straight days pretty much around the  
14 clock, I think we worked twenty hours a day for our  
15 printing operations, and we were able TO do it this  
16 year. But I think it has to be recognized that  
17 with the advent of optical scan and therefore paper  
18 ballots, that there is a practical limitation on  
19 the time in which the ballots can be prepared and  
20 then re-prepared if there is a late breaking court  
21 decision.

22 Now, we have suggested in our  
23 submission the bold concept of giving at least  
24 three more weeks between the primary and the  
25 general election. And I suppose because the

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2 general election isn't going to get moved farther  
3 into November, that by its very nature implies that  
4 we are suggesting that the primary be moved back at  
5 least until August if it's not moved back to June.  
6 We recognize there are political ramifications.  
7 Everybody has an opinion on this. I think pointing  
8 out the, you know, the concern of the federal  
9 government in the recent attachment to the  
10 appropriations bill Senator Schumer put in and the  
11 concerns that were expressed there about military  
12 ballots, overseas voters not getting the ballots on  
13 time, is symptomatic of what the problem is.  
14 That's a small segment of the population, an  
15 important segment, but it indicates that we do have  
16 to be aware that there cannot be the shortened  
17 period of time of a primary on say September 10th  
18 and a general election on November 3rd with the  
19 litigation that may necessarily follow with a close  
20 election at the primary. And of course my  
21 sympathies to those who have a runoff election.  
22 That's even a greater challenge.

23                   There simply must be more time  
24 between the primary and the general election.  
25 Otherwise every county, every board of election is

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2 potentially up against the same problem that we  
3 are, that we were this year. And that is a late  
4 breaking court decision where you may get to the  
5 point where there simply is no physical possibility  
6 of complying with the court order. If we had been  
7 ordered to reprint county-wide ballots, I don't  
8 know how we could have physically done it.  
9 Certainly not in-house, and I don't know if we  
10 could have outsourced it, and then get the ballots  
11 printed and delivered to the polling sites in a  
12 timely fashion. So for purposes of the general  
13 election ballot there certainly should be more time  
14 between the primary and the general election.

15                   Now, as to the primary election  
16 ballot, that is something which, again, whether or  
17 not the primary election were moved, there  
18 certainly should be more time given to the boards  
19 of elections between the last day to designate  
20 petitions filed and the day of the primary.  
21 Currently we have the primary usually the first  
22 week or the second week in September, and the  
23 designated petitions are filed generally the second  
24 week in July. If we could be given three more  
25 weeks, and I realize that means backing the

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2 petition period up so the petition would be filed  
3 in the latter part of June if you kept the  
4 September primary, and that means obviously  
5 extending petitions, so the first day would be to  
6 get the petition's signature would be in May rather  
7 than June. That would certainly ensure that all  
8 petitions were adequately taken care of, the boards  
9 of elections objections addressed, litigation  
10 completed well in advance of the primary election  
11 were it being held, whenever it's being held, at  
12 this time in the first week in September. Again,  
13 it would permit the boards to prepare ballots in a  
14 timely fashion and get the ballots mailed out to  
15 those who are absentees and militaries throughout  
16 the world and make certain that they have a  
17 meaningful ability to participate in these  
18 elections. And that of course would also guarantee  
19 that the boards of elections would have their  
20 ballots prepared for everybody who's voting on  
21 primary day as well.

22                               So we would hope that the  
23 legislature would keep an open mind and address  
24 these issues, because this is a movie coming to a  
25 theater near you soon. Maybe it was Erie County

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2 this year, but it's going to be another county next  
3 year and everybody may potentially have to face  
4 this issue. So thank you for your concern and we  
5 hope that we will see some progress in that area.

6 THE CHAIR: Thank you,  
7 Commissioner Ward.

8 COMM. MOHR: Just to put some  
9 numbers on that, with regard to the printing of the  
10 ballots, the primary ballots, we printed 120,000  
11 ballots for the primary election, the number of  
12 primaries we had. And 110 percent of the ballots  
13 for the general election would have amounted to  
14 about 650,000 ballots. Obviously we weren't able  
15 at that late date to print, you know, 110 percent.  
16 But we certainly believe we were able to cover all  
17 the election districts with an excess of 300,000  
18 ballots that we printed the weekend before the  
19 election.

20 THE CHAIR: Thank you, Commissioner  
21 Mohr.

22 Commissioner Ward, your issue about  
23 the timeline, that's established in your written  
24 statement as well; correct?

25 COMM. WARD: That's correct.

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2 THE CHAIR: As we digest it post  
3 this hearing.

4 Let me just do a little quick  
5 housekeeping. I want to thank those who put this  
6 together, our staff who is here, to my right Dave  
7 Kogelman, legal counsel for the committee. To our  
8 stenographer. I want to thank everyone here for  
9 allowing us to have this hearing.

10 Commissioners, what I am going to do  
11 is I am going to go through a couple of issues for  
12 all three of you. These are the issues that came  
13 up at the hearing that we did on this issue earlier  
14 this month, we did it in Manhattan, downstate. So  
15 again, I want to have some continuity between that  
16 hearing and this hearing. So these are also issues  
17 that residents or others have come forward to me as  
18 regarding this issue, the issue that had come up  
19 regarding the next generation of voting machines.

20 So first is the cost with regards to  
21 this issue. We are obviously in difficult  
22 financial times. We understand the mandate we have  
23 to comply with, but how does the timing of the  
24 requirement for next year, having these machines,  
25 impact the individual budgets of the boards of

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2 elections throughout the state? So please, if you  
3 can weigh in on what will be the impact of the cost  
4 to do this mandate of the next generation of  
5 machines, how does it impact the budgets of the  
6 boards of elections?

7                   COMM. FERRARESE: Well, for Monroe  
8 County the biggest impact is going to be obviously  
9 the ballots, the cost of preparing ballots because  
10 of the requirements of the 110 percent. And to be  
11 honest with you that's probably going to be the  
12 biggest issue that we need to deal with.

13                   It would be helpful if in fact we  
14 could deal with one of the issues that were brought  
15 by my fellow commissioners here in terms of  
16 inspectors is to be able to figure out points size,  
17 because one of the other big costs of the day is  
18 inspectors. And to be honest with you, they're not  
19 probably paid all that much to begin with, and they  
20 probably think they should be paid more. So if in  
21 fact we can begin with the polling places and deal  
22 with the issue of how many inspectors we need, that  
23 definitely would help a lot.

24                   The other thing is that we are  
25 also learning of additional expenses at this point.

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2 There's all this extra material that's needed, the  
3 stanchions for people to fill out their ballot or  
4 just whatever it may be. And I think each board, I  
5 know we in Monroe County are trying to find  
6 different ways to cut back on those costs. Do we  
7 need the expensive stanchions that are out there in  
8 terms of voters being able to have privacy to sit  
9 down and fill out their ballot, or does a simple  
10 cardboard box, a tri-fold at a table, does that  
11 suffice. And you're talking about substantial  
12 costs there. You know, where can we put the money  
13 that we have, can we put it into the board of  
14 education, those kinds of things. Those are  
15 definitely the issues that we are looking at and  
16 how we are dealing with costs. I hope that answers  
17 your question.

18 COMM. MOHR: Certainly the  
19 preparation of the ballots is a considerable  
20 expense. We were able to minimize that by doing it  
21 in-house.

22 The 110 percent requirement which  
23 is imposed on us is really impractical. When  
24 you're talking about in the case of Erie County  
25 where we print in-house, if we were short of

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2 ballots we would do it very much like a checkbook  
3 and we have different a color slip after the  
4 ballot, if we're about a hundred ballots short and  
5 say if you get to this point you'd better call the  
6 board of elections. And really within twenty  
7 minutes we can have new ballots out to the polling  
8 place so we can continue ongoing. So the  
9 requirement that's in the election law is really a  
10 waste of money in many respects.

11                   With respect to the privacy  
12 stanchions, because in the town of Woodbury they  
13 had school board elections recently, and we had  
14 just at that time received, various vendors had  
15 dropped off some voting booths, privacy booths for  
16 us. So what we did is we set up tables with the  
17 cardboard stanchions. We also set up the different  
18 voting booths. And I observed for about an hour  
19 and a half where the voters were going. Probably  
20 about thirty to one they went into the cardboard  
21 stanchions, sat down right behind the 36 cent  
22 cardboard as opposed to the privacy booth. So I  
23 think some flexibility has to be given to the board  
24 of elections with respect to that.

25                   COMM. WARD: I think with regard

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2 to the expense, I think as Commissioner Mohr said,  
3 Erie County being of a larger size, we have been  
4 able to acquire the facilities to do the in-house  
5 printing. And because of that our cost per ballot  
6 is considerably less than if we were contracting  
7 with the outside. Now we are talking in terms of  
8 ten cents, twelve cents.

9                               COMM. MOHR: It's about four cents  
10 a ballot.

11                              COMM. WARD: Again, at this point  
12 this low level, if we get into different kinds of  
13 paper it may go up but it's nowhere near the 56  
14 cents per ballot that is being charged on the open  
15 market. I put those in quotation marks.

16                              I think that that question I would  
17 hope that the panel or a panel that comes here is  
18 more representative of some of the smaller upstate  
19 counties because I think that some counties may not  
20 even have gotten to that reality until there's full  
21 implementation. But the counties that are going to  
22 rely on outside vendors for the printing of their  
23 ballots are going to be subject to much heavier  
24 expense. And, as Commissioner Mohr said, they're  
25 going to have to just do a big order in advance to

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2 cover themselves just in case they ran out of  
3 ballots on Election Day. We have the option that  
4 we can, if someplace goes short, if there's a super  
5 heavy turnout someplace, we can simply print the  
6 ballots and have them on the road in a matter of  
7 minutes because we have the in-house and our staff  
8 is ready to go at any given time. So I think  
9 that's an issue that is going to be more of an  
10 expense and more of a burden on a lot of the  
11 smaller counties that are not going to be able to  
12 acquire an in-house printing facility.

13                   As Commissioner Ferrarese said, we  
14 may be able to do a little counterbalance.  
15 Although ballot printing will be an expense, even  
16 with higher salaries for our poll workers, given  
17 the flexibility that we have suggested in our  
18 submission, we may be able to decrease some of the  
19 costs of inspectors by a little bit better  
20 organization at various multiple district polling  
21 sites. And that offset of cost savings there may  
22 help us offset in our budgets the added expense of  
23 the printing of the paper ballots.

24                   THE CHAIR: I want to, again, I  
25 appreciate the budgetary impact that this may have,

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2 and that's something that we are obviously going to  
3 have a future conversation on as we go forward.

4 Commissioner Ferrarese, you had  
5 said in your testimony about the structure of the  
6 board of elections. And we also appreciate, again,  
7 as the chair of the committee I appreciate the  
8 structure, the nonpartisan way in which we need to  
9 work together for our people, the qualified voters.  
10 And again, I appreciate your input and suggestions  
11 as we go forward on this issue.

12 Looking back at the primary and  
13 general and the pilot program that occurred, you  
14 had mentioned a little bit in your testimony about  
15 the issue that had occurred. If we could just  
16 briefly sort of elaborate on the issues, tying into  
17 that if there were any common problems, how they  
18 were addressed.

19 And also the issue that pops up  
20 most frequently is the security of the vote. With  
21 these new or next generation of machines, the issue  
22 I keep hearing about that people are most concerned  
23 with is is their vote secure both prior to voting  
24 and even post voting. So if we could talk about  
25 the common problems and then just tie into that

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2 your opinion about how secure is the voting  
3 process.

4                   COMM. FERRARESE: In terms of  
5 problems in terms of this and in terms of the pilot  
6 program, mostly, I mean we had virtually no  
7 equipment problems. We did have issues of, and  
8 this was mentioned by both of my counterparts here,  
9 the inspectors. And there's no malice on the part  
10 of the inspectors. They always want to help the  
11 voter. And I think getting them to back off a bit  
12 in terms of their issues around the voting machine  
13 itself, particularly the setting up of the polling  
14 place, these are all issues about the voter feeling  
15 more comfortable that their vote is private. I  
16 mean we were very, very -- making sure every voter  
17 came in and got a privacy screen for the ballot.  
18 We actually also put each one of the voting booths  
19 that they could put them up any way they wanted to.  
20 And that seemed to be frankly the biggest complaint  
21 or the biggest issue that was brought to our  
22 attention. And my fellow Commissioner Flynn and I  
23 went around to a number of polling places together  
24 to kind of see what was going on.

25                   There is another issue, and we

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2 definitely think we need to address this, and that  
3 is the spoiled ballot. And right now the  
4 inspectors take that spoiled ballot and write  
5 spoiled on it, it goes to the envelope, there's a  
6 procedure in place. So we actually in a  
7 conversation the other day that Commissioner Flynn  
8 and I had, we talked about the fact that maybe  
9 there should be a process by which the voter  
10 actually in front of the inspector folds the ballot  
11 and sticks it into an envelope, a sealed envelope  
12 that says spoiled ballot so the inspectors at the  
13 polling place don't actually see the ballot.

14                   You know, as we do this pilot we  
15 are learning things, and we really worked hard to  
16 do that, and I think that's, you know, some of the  
17 stuff that came out of this process.

18                   In terms of the security of the  
19 ballot, you know, as long as the procedures are  
20 followed, and I say that kind of as, you know, we  
21 train inspectors, they are learning, and are they  
22 having, you know, never following everything  
23 perfectly well, they're getting used to this. It's  
24 going to take them a while in terms of procedures  
25 of locking down the machine, all that. They had

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2 102 years to get used to it, so we really have to  
3 give them a little bit of time to get used to this  
4 process.

5                   So but we feel, we felt pretty  
6 confident about the security of our ballots in our  
7 pilot area. You know, we followed procedures that  
8 had been laid down by the state board, we walked  
9 through them all in advance ourselves, and it gave  
10 us a sense of security that those ballots weren't  
11 touched. You know, we had additional security  
12 within the ballot box with the ballot bag that was  
13 in there, that was secured with a numbered thing  
14 that goes through it and it locks in. So I mean  
15 there is double security in many cases in terms of  
16 the ballots, particularly once they have been cast.  
17 I do feel that that is something that probably we  
18 could train inspectors better. It's going to get  
19 better all the time. But I do believe it's there.

20                   COMM. MOHR: I'll address the  
21 security and Commissioner Ward will address the  
22 observations.

23                   The security we didn't find that we  
24 had a problem. We went and purchased seals from a  
25 New York state vendor. They're basically

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2 industrial cable, so that they're not going to be  
3 able to be cut. And people even had a hard time  
4 with dies and pliers to cut the seals afterward. I  
5 don't see the security as being any problem.

6                   One of the very first things we do  
7 in a recanvass is a count for all the ballots. We  
8 sub number the ballots. We utilize actually three  
9 programs to print the ballots, the main program  
10 from the vendor and then two Adobe PDF programs  
11 that we got off the Internet and purchased to  
12 produce it. And during the count of the recanvass  
13 in one town where thousands of ballots were cast we  
14 were able to reconcile that we were missing two  
15 ballots. We called back, we had a person check or  
16 one of our employees check underneath, and sure  
17 enough the two ballots were up under securely  
18 inside the machine. And this happened where we had  
19 a close recount. We had, we were reconciled to  
20 within one ballot, and by hand counting it we found  
21 that a ballot had indeed been cast. It was in an  
22 emergency side, one of the employees pulled it out,  
23 they included it as having gone through the  
24 scanner.

25                   So the other very first thing when

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2 we do the recount is to, first we open the ballot  
3 box in front of candidates who would like to be  
4 present at the time we do it, we cut the seals at  
5 that point in time, and then after that we  
6 reconcile the ballots. And we had no problems  
7 whatsoever.

8                               COMM. WARD: I think to finish on  
9 that there were two instances post election with  
10 the machine itself and the counter was not working  
11 properly. One in a single election district, the  
12 other in a town for a particular race in that  
13 office, for that office. I think that what our  
14 experience in there was that rather than viewing it  
15 as an error or a downside, I think it was viewed as  
16 a positive. And that is that we were able to show  
17 the public and the candidates that in fact this is  
18 the wisdom of the paper trail, and that is that  
19 your ballot box in the end, at the end of the day,  
20 regardless of what anybody believes or thinks about  
21 the reliability of the scanner or whatever, in the  
22 end the ballots were all there. The paper trail is  
23 available. And in fact in these two instances we  
24 notified the candidates immediately and the next  
25 day set up at our service center the disputed or

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2 not disputed but the uncounted ballots with the  
3 machines, they were present to cut the seals, watch  
4 the ballots removed and fed through an additional  
5 machine, a new machine, which counted the ballots  
6 accurately.

7                   The transparency of that I think  
8 is one of the things, rather than viewing it, as I  
9 say, as an error, I think it's important to  
10 understand that that is actually part of the  
11 system, that there is no machine made by man that  
12 is going to function one hundred percent at all  
13 times. What we do have, however, is we have a  
14 backup system in trial in New York state that will  
15 allow us to get the accurate results if that  
16 machine fails for whatever reason.

17                   The issue of security I think  
18 also, and I don't know if it gets into the area at  
19 the polling place, which was touched on as far as  
20 by Commissioner Ferrarese, the voters in New York  
21 state are used to voting behind a curtain and  
22 closing that and that is their world of the secret  
23 ballot. As we enter the new era of marking  
24 ballots, we encounter the issue that we have  
25 commonly referred to as hovering. And that is the

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2 inspectors, as Commissioner Ferrarese said,  
3 actually well meaning and wanting to be there to  
4 assist and help the voter in any way, sometimes  
5 give the impression that they are hovering and that  
6 the voter is looking over their shoulder saying  
7 what are you doing here, I want to mark my ballot.

8                   The second part of that of course  
9 is the inspectors are always used to being at the  
10 machine, because with the old machines, the lever  
11 machines, we have an inspector at the machine. And  
12 so a lot of the inspectors instinctively posted,  
13 you know, posted themselves at the machine to be of  
14 assistance. And of course a number of voters have  
15 said wait a minute, I don't want them there because  
16 they may be able to see my ballot, notwithstanding  
17 the secrecy sleeve or whatever.

18                   So I think those are all things  
19 that are training. When I say training I think  
20 it's training not only the polling inspectors but  
21 also the voters. This is the first change in our  
22 system in over a hundred years. Voters are going  
23 to get acclimated to it, they're going to get used  
24 to it. And my prediction is in two years from now  
25 we won't be talking about anything like this, we'll

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2 probably just be here talking about funding.

3 (Laughter)

4 THE CHAIR: No doubt.

5 COMM. WARD: But I think the voters,  
6 the poll workers will acclimate themselves to the  
7 system. I think it's a system that is easily a  
8 skill that's easily acquired by inspectors and I  
9 think we'll be fine.

10 THE CHAIR: Lastly, gentlemen, last  
11 question. And I understand, you know, the time  
12 frame issue about the primary and the general  
13 election, that's an issue or a suggestion that you  
14 have raised in your testimony. But lastly, with  
15 this issue or any other issue that you foresee, is  
16 there any way the legislative body can be of  
17 assistance to you?

18 COMM. FERRARESE: I mean I think we  
19 have laid out a number of things that do require  
20 some legislation relative to the inspectors and  
21 those issues in terms of how we run the polling  
22 places. We do know the election issue is a fairly  
23 hot one sometimes and we understand that. But I  
24 think it's kind of the same respect in terms of my  
25 past testimony to the legislature is that when you

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2 do do election law, try to look at it from the  
3 perspective of allowing the state board to do  
4 appropriate regulations and go on with election law  
5 instead of trying to write in election law every  
6 minute detail of how exactly the votes should be  
7 attached and which way the door should open, from  
8 the right or from the left. I mean so often I know  
9 our legislators in their great concern about making  
10 sure that elections are safe and secure will very  
11 often try to get into that ultimate detail. And  
12 very often it really is try to set policy that's  
13 going to protect the voter and then allow the state  
14 board to do their job, and that is to write the  
15 appropriate regulations that go along with that  
16 law.

17                                   COMM. WARD: I would just ask if  
18 the legislature would keep an open mind and an open  
19 door. The Election Commissioners Association  
20 produces a rather comprehensive legislative agenda  
21 each year. These are the people who are on the  
22 front lines who are administering the elections and  
23 really sometimes come up with something that may  
24 not seem all that important but sometimes could be  
25 very important in given instances. Commissioner



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2 Commissioner of Onondaga County, and Helen Kiggins,  
3 Commissioner of Onondaga County.

4 (Second panel seated)

5 THE CHAIR: Commissioners, good  
6 afternoon. Thank you for being here with us today.

7 COMM. KIGGINS: Thank you for having  
8 us.

9 THE CHAIR: My pleasure.

10 COMM. KIGGINS: Thank you for giving  
11 us this opportunity, we do appreciate it.

12 We came a little late so some of  
13 these topics might have been fleshed out already,  
14 but we'll go on anyway.

15 THE CHAIR: Please.

16 COMM. KIGGINS: Onondaga County  
17 participated in the 2009 pilot project. We  
18 selected thirteen towns with a total voter  
19 enrollment of 110,000 voters. This represents  
20 about 40 percent of our county's registered voters.  
21 We deployed 86 machines in the pilot area. If the  
22 voter enrollment was over two thousand in a  
23 particular site, we sent two machines.

24 The suggested ratio for privacy  
25 booths from the state I believe was one privacy

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2 booth for 250 voters. We felt that ratio was not  
3 adequate, so we went with a one per one hundred  
4 voter ratio, and we still think we need to add more  
5 privacy booths. That seemed to be what the biggest  
6 hold up was in the voting process.

7                   The ImageCast worked very well.  
8 The one big concern we had, and that was discussed,  
9 was the lack of privacy for our voters. We did not  
10 provide a privacy folder for the voters, but we  
11 will do so in the future.

12                   And we also had the overzealous  
13 inspectors who insisted on helping voters scan  
14 their ballots or were simply standing too close to  
15 the scanner. We trained them to stay away from the  
16 scanner, but some of them were trying to be  
17 helpful. This is something we can address training  
18 for in the future.

19                   We also need to put effort into  
20 polling place layout. We have discovered that many  
21 of our sites are no longer large enough to allow us  
22 to set up a large number of voting booths in a  
23 manner to allow this privacy. We are attempting to  
24 find places that will accommodate four or more  
25 election districts. This would allow us to use

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2 fewer inspectors at a time when many of the older  
3 inspectors are quitting as a result of the new  
4 voting system.

5                   One thing that would help us find  
6 these as we call them mega polling sites would be  
7 to make Election Day a school holiday. I believe  
8 it is a holiday already in New York City. This  
9 would allow us to use the schools and their parking  
10 lots and perhaps recruit teachers to act as  
11 inspectors.

12                   COMM. RYAN: After the election we  
13 conducted a three percent audit. Following the  
14 formula outlined in Regulation 6210, we manually  
15 audited all or part of 13,362 ballots. This equals  
16 fifteen percent of all the ballots that were cast.  
17 It took 22 people 20 hours to complete this. We do  
18 believe an audit is necessary, but it truly should  
19 be three percent of the system. The trigger  
20 requiring a full audit if the race is within one  
21 percent also makes sense.

22                   We found that the machines were dead  
23 on. And they, the audit was, the machines did just  
24 what the audit did. They were good. So we had no  
25 problem with the machines.

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Earlier this year we testified at a hearing you held in Syracuse. One of the topics was placing street finders or county-wide map in each election district. At that time we voiced concern over the cost to do this. Also we felt that the inspectors, given some of the ages that we have, would not be able to navigate through the list and maps that sent voters to the appropriate polling place.

As you know, that law was passed and we were informed of this the Thursday before election. I know of only a handful of counties that were able to comply with this. Our county-wide street finder is 320 double-sided pages, which to print and bind this would cost us about \$20,000 annually, which would have to be done annually because they're always changing since the lists are always being updated.

The alternative is to send out 45 large maps to each election district, which costs us again about \$21,000. To print them is seven dollars a piece. And it would be harder for inspectors to use. But on the maps mostly we have had to make sure we had the right map, 45 maps and

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2 459 polling places. That would take someone quite  
3 a long time to make sure that every map was correct  
4 for every polling place. So it was very, very  
5 difficult for us to do that.

6                   We have a polling place locator on  
7 our website. We also provided inspectors with our  
8 card and phone number to give to voters. And we  
9 also encourage the inspectors to call our office to  
10 find out where someone votes. This has worked very  
11 well for us because the inspectors are not sending  
12 the voters to two or three erroneous sites. They  
13 get frustrated, then we get a letter in the paper.  
14 When they call us, we look it up and we send them  
15 to the right place and we have never had a problem,  
16 and it saves us \$20,000 a year plus the time and  
17 effort to put everything together.

18                   The county, our county, I suspect it  
19 doesn't happen in Albany, but our county has  
20 reduced full time staff by four positions or 20  
21 percent. We cannot afford any more of these  
22 unfunded mandates.

23                   They have also reduced our budget.  
24 So as we go forth with the auditing and the  
25 checking and the pre lab, these are taking lots of

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2 hours, which we pay for, and we don't have that  
3 kind of money.

4                   It was talked on, we really, I  
5 want to be serious about this for the voting. We  
6 ran into a significant problem training these  
7 people. We really brought them in, we had 640, we  
8 brought them in 16 at a time because they didn't  
9 get to the primary. And we spent 50 classes at  
10 four instructors per class to instruct 18 in a  
11 class to learn how to operate these machines, and  
12 probably half the people got it. I think as  
13 someone said, after two or three years the  
14 inspector will get it. If you're going to have  
15 1,400 additional ones you're going to have to bring  
16 in at about one hundred twenty-five to thirty  
17 classes, and that's going to be very expensive at a  
18 time when our county is counting our budget. But  
19 that's the only way the polling instructors get to  
20 understand how to use the machine.

21                   We also took on the towns that were  
22 easy for us, quite frankly. They had single  
23 ballot, one count. We are not going to venture  
24 into the city this year where a polling inspector  
25 may be more challenged than they were in the towns

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2 that we had. We fully expect a significant dropout  
3 in that regard. For us to have 225 polling  
4 inspectors to last year's is going to be difficult.

5                   That's why we decided if we were  
6 able to have mega sites, that is what were calling  
7 them, where we have four or five, six places in one  
8 time, we may not have enough Republicans in a  
9 particular district or enough Democrats to field  
10 four people for every district, so we can share  
11 them. And that's the only way we think we can do  
12 this. And if we can get those gymnasiums and those  
13 parking lots, it would go a long way to help us do  
14 what we need to do and comply with the law.

15                   THE CHAIR: Thank you very much.

16                   As I had asked the previous panel,  
17 certain issues are basically common amongst all the  
18 counties throughout the state for us in the board  
19 of elections and again this next generation of  
20 machines. So let me again have you weigh in on the  
21 cost, the security, and again, the common problems  
22 that you had with this past primary and general  
23 election.

24                   COMM. RYAN: Well, the cost  
25 obviously is important. We are meeting with the --

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2 we have got a warehouse because we are not housed  
3 under one building unfortunately, so we are split.  
4 And the other factor we have there is because we  
5 have a reduction of 20 percent staff and we have  
6 got all these additional things that we have to do,  
7 plus the teaching, we are trying to get another two  
8 or three thousand square feet that our county  
9 executive is balking at.

10                               Now, having the additional staff  
11 or the additional square footage would give us the  
12 ability to hold these seminars in our buildings or  
13 in where our machines are so we're not traveling  
14 all over the county. And while it may not seem  
15 like a lot of money down here, it is significant to  
16 them to give us another twenty or thirty thousand  
17 dollars to add additional square footage to our  
18 place. We even had probably twenty grand. They  
19 don't want to do it. And so we don't have the  
20 square footage to do what we need to do, and we  
21 don't have the staff to do what we need to do to  
22 comply with the law. And so it's going to be very  
23 difficult for us. Something is going to give. And  
24 at the end of the day when it doesn't go right,  
25 it's probably going to be on our back because we

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2 were not given the tools or the finances or the  
3 personnel to comply with everything that needs to  
4 be done.

5                   COMM. KIGGINS: The ongoing  
6 possibility, as mentioned before, the ballot was  
7 about right. We are producing it right now for 57  
8 cents apiece. And the 110 percent requirement I  
9 think is overblown. We actually did a little bit  
10 less than that. We took the voter turnout for the  
11 last three elections and ramped it up by 30 percent  
12 and that's what we purchased. We just don't have  
13 the money to spend on all this paper that we are  
14 going to be throwing out. And retention is also  
15 going to take up a lot of space that we don't have,  
16 and we are looking at that right now.

17                   And the pre lab process, we are  
18 going through thermal rolls of paper to do the  
19 opening and closing polls one at a time. I talked  
20 to some counties that had to go out mid day and  
21 change the thermal roll out because they didn't  
22 have enough to get out the results at the end of  
23 the night. And in the districts where we have a  
24 large number of EDs in one site, we are going to  
25 have to do that too because it's just going to go

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2 through that much more paper. We had to take out  
3 thermal roles in every machine before we sent them  
4 out this year. I mean I found are they super  
5 expensive, no. But when we are talking 275  
6 machines that we have to replace those rolls in  
7 every time, it adds up. And our budget keeps going  
8 down, not up. And the county is not looking too  
9 fondly at us spending all this money on paper in  
10 the next year.

11 COMM. RYAN: We never had a  
12 problem, we were always behind making sure the  
13 election is correct. Now it's more about bottom  
14 dollar and we are going to have a difficult time  
15 meeting the standards.

16 THE CHAIR: I want to get to a  
17 couple of other issues that you both raised in your  
18 testimony. I just want to make sure security was  
19 not an issue. You never felt security was an  
20 issue?

21 COMM. KIGGINS: No. I think the  
22 state requirements for all the machines is a little  
23 ridiculous. I think to require a seal on the panel  
24 on the side of the machine, called a CF card, that  
25 is bolted on, and to put a seal over that, I don't

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2 understand the need to do that. Someone would have  
3 to pry it off with a screwdriver on it. So I think  
4 there's too much security, more than enough.

5                   We keep our machines in a  
6 warehouse that has two keys, one Republican and one  
7 Democrat, with a security system so no one can get  
8 in. Our staff goes to lunch at the same time.  
9 They're not allowed to be in there alone. One  
10 Democrat, one Republican always. If someone calls  
11 in sick we either have to come down or we send  
12 another person of that persuasion out there. So I  
13 think security is more than adequate.

14                   COMM. RYAN: I concur.

15                   THE CHAIR: Okay. Just to let you  
16 know, two issues that you have raised both, one on  
17 the polling site and certainly with the change in  
18 configuration of these machines, this can be looked  
19 into the issue of polling sites not only in terms  
20 of space, but a lot of our polling sites were in  
21 old buildings and other facilities and we are  
22 concerned about the electrical demand that's needed  
23 for these next generation machines to make sure  
24 that each polling site is capable of handling the  
25 machines. Obviously the flow of people, you know,

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2 if you want someone not to vote it would make it  
3 hard for them, frustrate them just a little bit and  
4 they will be turned away. We don't want that.

5                   We also looked at and I know we  
6 are looking at the possibility of an increase in  
7 paper ballots and absentee ballots if somebody  
8 doesn't want to go to a polling site because of  
9 possibly long lines or the stupid machine, there  
10 may be an increase in paper ballots, and obviously  
11 we are looking at that issue.

12                   The other issue about Election Day  
13 being a holiday, a school holiday, if I'm not  
14 mistaken there is a bill that has been proposed and  
15 we are looking at that bill. Hopefully we will  
16 move that through. We tend to agree that one day,  
17 Election Day, that it can be a school holiday.  
18 Since many of these polling sites are schools, it  
19 would be a feasible issue for many. If you talk to  
20 school administration sometimes when it is Election  
21 Day it's a headache for them as well. So we are  
22 looking at that. And again, there is a bill, if  
23 I'm not mistaken, in committee. So those are two  
24 issues certainly that we are looking at.

25                   As we go forward, and I think

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2 Commissioner Ryan, you had mentioned it, we need to  
3 obviously have an increased amount of conversation  
4 and dialogue. There will be many issues that we  
5 are going to take up both through this committee  
6 and also budgetary ones. You know,  
7 administratively we have seen throughout the state  
8 where budgets for the boards of elections  
9 throughout the state has been decimated in years  
10 past. And we are coming up on a fiscal year that  
11 that really can't be the story here because of what  
12 we have to do by federal court order. You know,  
13 obviously there's going to need to be an amount of  
14 funds necessarily available to boards of elections  
15 throughout the state so that we are able to comply  
16 in an efficient federal manner.

17 That being said, it's going to be  
18 part of our job as legislators to protect that  
19 portion of the budget with regards to the boards of  
20 elections so that our workers are given the  
21 resources needed to make sure that all qualified  
22 voters have a nice experience when voting and to  
23 make sure, because it's an important year as well  
24 for the state as the governor is one of the  
25 positions that people will be voting on. So that

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2 will be part of our job as legislators and in the  
3 budget process. But certainly we need to have a  
4 conversation, we meaning this committee and the  
5 commissioners, as we go forward on this issue.

6                   Again, if there's any, do you see  
7 a need at this point other than the issues that you  
8 have spoken of for the legislature to be helpful to  
9 the commissioners?

10                   COMM. RYAN: I think what  
11 theoretically happens down here is impractical for  
12 what we need to do, you know, like the street  
13 vendor. And some of those things are  
14 overengineered, overlooked at. I mean they all  
15 make sense down here in a committee room, but the  
16 practicality of implementing them becomes  
17 impossible for us with the tools we have.

18                   I think the dialogue is good. I  
19 was upset that we had to do poll finder books. I  
20 thought that we answered that concretely enough  
21 that it would imply that it just wouldn't work. I  
22 mean, we have people that used to have 320 pages  
23 and they're 80 years old, and you've got a line of  
24 fifteen people and you're telling me where to go  
25 vote, they just went down over to the window and

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2 it's somebody else's problem. We don't want to  
3 turn those voters off by sending them to the wrong  
4 polling place. And you only have to do it once,  
5 you know.

6                   The ballots, I mean I'm new to  
7 that. These fellows all have more time than I do,  
8 I'm newly elected. I guess the thing that I see  
9 that's kind of ironic is there's nothing solid in  
10 here, everything is all adjudicated. We have one  
11 thing, it goes to this court or that judge. You're  
12 always having something. You know, when you get  
13 into these ballots, one thing, you know, we have  
14 these absentee ballots come in, they have got a  
15 coffee stain on them or a jelly mark or something  
16 and we discount them, you know, by law, you know.  
17 So we are going to have more of that. We are going  
18 to have more judicial hearings on this stuff as to  
19 why this one red speck or this blue speck, that got  
20 thrown out, you know. Those are the things that if  
21 you really want to hone in on trying to get the  
22 judicial system out of the way, instead of the  
23 judges determining who's going to win, you really  
24 need to factor in on what you accept and not accept  
25 and not let it go to the judicial board with it,

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2 because everyone is always going to sue someone.  
3 And I find that despicable that we continue to do  
4 that. Every time there's a lawyer running  
5 something is going to be challenged and it's just,  
6 it's crazy.

7 THE CHAIR: Being a former  
8 practicing lawyer --

9 (Laughter)

10 THE CHAIR: -- I will refrain from  
11 making any comments.

12 COMM. RYAN: Present company  
13 excluded, of course.

14 THE CHAIR: I appreciate it. But  
15 I'll take it as it is.

16 With regards to the legislation  
17 pending in this committee, and I am mindful that  
18 what we do in this committee as a legislative body  
19 of the senate, that to implement what we do, the  
20 laws are great but it's obviously the  
21 implementation that's important. Being mindful  
22 that the implementation of what we do, it falls  
23 upon the burden of the workers and the board of  
24 elections workers, and as I mentioned at the  
25 downstate hearing we appreciate the work that they

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2 do all year round. It's not just the two days, the  
3 primary day and general election day. We  
4 appreciate the work that they do all year round.  
5 That being said, what we plan to do as the  
6 committee going forward is look at what's pending  
7 in this committee, look at those items that again  
8 will have to be mentored by the boards of  
9 elections, and have you have a say on this pro or  
10 con or suggestions as far as language, and that  
11 will be taken into consideration before this thing  
12 gets voted on. I think by opening that kind of  
13 dialogue we will have a better system and again,  
14 through the committee process, through the voting  
15 process legislatively and hopefully in the  
16 implementation process as well. So that's  
17 something that we will be planning to do in January  
18 when we see what will be pending in the committee.

19 COMM. RYAN: Bob Brehm, I mean  
20 they're great about getting this information on to  
21 us immediately so we can see what it is, so if you  
22 can --

23 THE CHAIR: Well, that's a good  
24 segue, because he's next.

25 COMM. RYAN: Well, we're done.

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2 THE CHAIR: But I want to thank both  
3 commissioners for your time and testimony and I  
4 appreciate you coming down.

5 COMM. RYAN: And I appreciate it  
6 also.

7 THE CHAIR: So I want to welcome our  
8 next panel. Robert Brehm, co-executive director of  
9 the New York State Board of Elections, and Todd  
10 Valentine, co-executive director of the New York  
11 State Board of Elections.

12 (Third panel seated)

13 THE CHAIR: Gentlemen, good  
14 afternoon. Please take your seats.

15 MR. BREHM: Well, thank you,  
16 Senator. Thank you for very much for this  
17 opportunity. And I also want to applaud your  
18 efforts to hold these sessions throughout New York  
19 state to help us and to help New York better  
20 implement the new voting equipment.

21 As was mentioned by our colleagues  
22 in the election community, we believe the pilot  
23 program this year was very successful in meeting  
24 our goal of learning how best to implement the new  
25 technology after a century of using basically the

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2 same lever machine. And it was successful in  
3 identifying areas that need further review before  
4 we implement this state wide. And I think some of  
5 those issues of training, some of those issues of  
6 procedure, regulation, but also there are some that  
7 will be articulated that reflect on the amended  
8 election law, mostly because the election law was  
9 written from a point of view of running elections  
10 with lever machines and the limitations that these  
11 lever machines brought to the election process.

12 I forgot to mention that Todd was  
13 here earlier. As you can see he is here now, and  
14 John Conklin was sitting in for him with regard to  
15 our public information.

16 We have the written testimony for  
17 you, I won't read the whole thing.

18 I think we want to applaud those  
19 county commissioners who volunteered for our pilot  
20 program. I think they demonstrated a great deal of  
21 perseverance if nothing else, but they brought  
22 their talents and their training and they brought a  
23 focus, especially those counties that did a full  
24 implementation and had a great deal of challenge  
25 and risk to this process. But also the counties

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2 that did the most implementation, like Erie and  
3 Onondaga and Monroe, because juggling two systems  
4 at once in your head and trying to keep track in  
5 this group of districts we do it this way and in  
6 this group of districts we do it another way, and  
7 then bringing it all together at the end, is a  
8 great deal of work.

9 Our staff went out to monitor the  
10 activities on Election Day. In the primary we  
11 visited 17 counties and in the general 18 counties.  
12 And we scattered throughout the state. For those  
13 areas that had, you know, urban, suburban, full  
14 implementation, partial implementation, and I think  
15 we identified a number of issues. Mostly we hear  
16 the issue of privacy. Privacy in how you set up  
17 the polling place. Privacy in how you guarantee  
18 secrecy of the ballot as it moves throughout the  
19 process. Privacy as it relates to the interaction  
20 of the voter and the equipment. And the role that  
21 other people play in those polling sites. And I  
22 think we're seeing, you know, issues that deal with  
23 both layout of polling sites, the evaluation that  
24 we had, whether or not this site is adequate, not  
25 so much for the electricity but also for spacing,

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2 the flow of people through the room. And then how  
3 do you guarantee privacy during this entire  
4 process.

5 I think one of the things we look  
6 at and I know some of our reserves mention at the  
7 polling place is if the inspector puts the ballot  
8 in the privacy sleeve when they hand it to the  
9 voter, that at least starts the process throughout  
10 the room, as opposed to having them on the table  
11 and expecting the voter to take one. How you  
12 position the equipment so that it's not right by  
13 the front door so that a voter can have some  
14 privacy when they're putting the ballot into the  
15 machine. We saw some examples where some of the  
16 counties put, you know, clear labels, insert ballot  
17 here for those areas, because they went through  
18 during their demonstration programs and they  
19 learned from the interaction of the voters coming  
20 to the test or mock election that that would be a  
21 helpful tool. They weren't sure when they got to  
22 that voting machine where to put the ballot.

23 Retraining the workers is a very  
24 important item. I think we looked at a program  
25 that we recommended last year, and we will be

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2 reviewing our legislative program for this year,  
3 and that is the staffing at the polling place.  
4 Right now it's set to staff per election district.  
5 And some of the issues that you heard from the  
6 prior testimony today as it relates to the tapes or  
7 the length of tape, the statute speaks already that  
8 a tape needs to be available for each election  
9 district. So if you have a vote center and there  
10 are five or six election districts at that center,  
11 you have to print that long tape multiple times.  
12 It's an inefficient way of reporting the new  
13 equipment. And those are areas that we will  
14 probably look to clean up as we look forward to  
15 next year's legislative session.

16                   The pilot program did note two  
17 issues that I think had been reported in the media,  
18 and that is the issue of the 23rd Congressional  
19 District, that that special election that was  
20 conducted on Election Day brought a great deal of  
21 attention. Most of those counties were full  
22 implementation counties except for three. So there  
23 was a great deal of interest, needless to say.

24                   But the machines proved to us that  
25 there were issues. The issues that were identified

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2 we noted. Because of the successful pre-election  
3 testing that our regulations require, we learned of  
4 the problem with the new system a week in advance  
5 because of the testing. We developed a solution  
6 that also met with our standards, that are strict  
7 in New York state, and that is, we were not  
8 allowing untested software changes that close to  
9 election. So the only solution was a configurable  
10 file that could be updated, but it needed to be  
11 done in time that those machines were pre-election  
12 tested, and then if they passed they could be used  
13 in the election. There also had to be a master  
14 (sic) requirement so we could tell that the  
15 software was not changed.

16                               So that was done where the manual  
17 review of that software issue manifested itself  
18 that it may replicate. And because it was a manual  
19 review they did not pick up all of the election  
20 districts where that ballot style had that issue.  
21 So there were some sites on Election Day where that  
22 issue froze the voting machine. But it was a paper  
23 ballot, they immediately went to the emergency  
24 procedure and they counted those ballots at the end  
25 of the night as they would have any other emergency

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2 ballot.

3                   We did hear, since it was a pilot  
4 program and we looked at all of the election  
5 activities, there were more issues raised with the  
6 lever machines and their malfunction than with the  
7 optical scan machine. And the difference between  
8 the two is when the lever machine malfunctions  
9 there's no way, there's no paper trail, that's no  
10 way to audit at the end of the night. There's no  
11 way to count that emergency vote if the machine  
12 malfunctions and there's not a reliable number in  
13 the process. So we did have that issue.

14                   The other issue Erie County spoke  
15 about, and that was a successful outcome also.  
16 They treated those ballots as emergency ballots  
17 because the count was not a reliable count. They  
18 corrected the issue, they retested that machine and  
19 did a full display to all required notice, they  
20 counted them accurately and everybody supported the  
21 outcome of that process. So the paper trail gives  
22 us a security level that we never had with the  
23 lever machine when it malfunctioned.

24                   MR. VALENTINE: I'm Todd  
25 Valentine, co-executive director of the State Board

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of Elections. Again, I'm not going to add too much to what Mr. Brehm spoke about other than to echo the same sentiments.

The pilot project, albeit it wasn't necessarily our choice to conduct it in that manner, we have used it to our advantage to learn issues in rolling out a paper base system that the state has not seen in a very long time. And, you know, what we have seen so far is that the system is actually working when there are issues, as pointed out in both the 23rd Congressional District and in Erie County, where we were able to, you know, the system functioned and it has worked. But we do see that there's room for improvement. I mean there's no question on training, particularly dealing with the privacy issues for both the voter and the system in general still remain something that's not a function of the system itself but in how the system is used by inspectors that, you know, quite honestly they're used to dealing with a machine that they could stand literally right next to it. And in retraining or I guess in training anew how to implement an area that requires a different traffic flow as we call it is going to be

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2 a challenge as we move forward.

3 THE CHAIR: Thank you very much.

4 As a question, aside from the privacy issues and  
5 the issues you mentioned regarding the need for a  
6 paper trail, do you foresee any other common  
7 problems or any other similar issues that you have  
8 encountered as you went to the different counties?

9 MR. BREHM: I think, you know, every  
10 county approached their training programs slightly  
11 different. There were some best practices that we  
12 are sharing in our final report. Our staff is busy  
13 doing the final certification of voting equipment  
14 which we are still on track for the middle of  
15 December. So the report has taken a slight delay  
16 because that is a higher priority in meeting that  
17 deadline. But we are sharing best practice ideas  
18 that we did observe at polling places with all of  
19 the counties. And the election commissioners have  
20 a conference at the end of January that we hope to  
21 be part of that discussion. So areas that we all  
22 can improve.

23 The Elections Commissioners  
24 Organization also has a pilot review steering  
25 committee of six counties and we have a regular

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2 dialogue with them. And as soon as they finish  
3 analyzing their election and we finish their voting  
4 equipment we will sit down and go through those  
5 items. And we are looking for their  
6 recommendations to us where we can improve, you  
7 know. Even in the feedback we had during the audit  
8 how can we word things better to make it clear to  
9 people that they're not chasing a loose end and  
10 doing something that they really don't need to do  
11 because they didn't understand what we wrote. It  
12 was perfectly obvious that's what we wrote, but now  
13 we actually have the experience of a process and we  
14 can learn from that where we might recommend doing  
15 something that really was not worthwhile.

16                               But we do believe our chain of  
17 custody requirements that are unique to New York  
18 state and that we made a very high priority, they  
19 worked. And I think from the testimony you heard  
20 from my colleagues today, they work well. And any  
21 port of entry on a voting machine where a person  
22 could, if undetected, alter the programming is an  
23 important point for us to seal and secure. And we  
24 do that from the point that the machine is first  
25 obtained from the vendor to acceptance testing to

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2 the point that that machine is no longer used in  
3 elections in New York. So it's from the point of  
4 origin to the point of destruction. And we make  
5 that an important part of our security procedure.  
6 And everything else centers around that, from how  
7 you train the workers at the board of elections to  
8 how you train the workers on Election Day, and even  
9 how the movers move the equipment. So it's an  
10 important security issue for us and it plays a very  
11 important function.

12                   One other area that we did see a  
13 need for contingency planning, you know, is spare  
14 equipment. And we knew with the lever machine when  
15 it broke what were some of the issues you could or  
16 couldn't fix on Election Day. So spare equipment  
17 is an important item. How you deal with  
18 contingencies was something that we looked at and  
19 we will continue to look at.

20                   But also I think it's an issue  
21 with staffing. You know, we will come with some  
22 recommendations I believe that will look at the  
23 staffing issues.

24                   And there's also issues under the  
25 statute for the storage of the blank ballots. And

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2 that's old, based on the blank absentee ballots,  
3 but it speaks to keeping your blank ballots for a  
4 long period of time. And that might be an area  
5 where we would recommend that the blank ballots  
6 have to be stored for a shorter period of time.  
7 That will allow the counties to have less storage  
8 space but also they could use those blank ballots  
9 as pretesting for the next quarterly material  
10 maintenance series so that they don't have to go  
11 out and buy ballots just to do pre quality testing.

12 So there's a number of issues that  
13 we are looking at where we can improve regulation  
14 procedures and also legislative regulations.

15 THE CHAIR: It seems that you have  
16 highlighted all the critical issues, as there's  
17 many moving parts in this whole machine that we  
18 obviously are taking up as far as, again, the next  
19 generation of machines, and I appreciate that. One  
20 of the things I wanted to confirm with you is the  
21 mid December certification of these machines.  
22 You're still on target date to do that; is that  
23 correct?

24 COMM. BREHM: Yes.

25 THE CHAIR: And prior to that

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2 report, what is the timeline on the report?

3                   COMM. BREHM: Well, we're in the  
4 middle of that process. The testing has been  
5 completed and we are doing our review of the test  
6 reports and meeting with the vendors and the  
7 testing, our two independent testing groups, SISTEK  
8 (sic) and NICETEK (sic). We met last week with  
9 Dominion and we are meeting today and tomorrow with  
10 ES&S to go over the preliminary findings. We have  
11 a Citizens Election Modernization Advisory  
12 Committee is meeting on December 7th. And we hope  
13 to have it all wrapped up and have a recommendation  
14 for the commission at the December 15th meeting.

15                   THE CHAIR: I had asked the question  
16 at the downstate hearing about the cost of the  
17 machines. And although neither would give an exact  
18 dollar figure for the cost of each machine, and I  
19 don't mean to delve into the cost specifically  
20 here, maybe when you file the report, but just if  
21 you could talk generally about the cost, do they  
22 vary, again, if we could talk without specific  
23 dollar amounts, does the cost of the machines vary  
24 between the companies or are they all generally all  
25 the same cost?

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MR. BREHM: They're different.

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Vendors have different solutions so they're not

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exactly apples to apples. They are a public vendor

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subcontract, they're on the OGS website, so anybody

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can see the price of the parts, the consumables.

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Again, I would, they roughly cost in the mid

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\$13,000 for a system. One vendor has a system that

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had a BMD and a scanner together, the other has two

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parts but we put them together. They're roughly in

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that price range.

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How you use the equipment is where

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we are trying to focus, how many ballots can we

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scan in a day, what is an acceptable setting of a

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polling place. How many can you have if you share

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an election district, if you have one machine

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instead of two machines, et cetera. The money,

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roughly out of the money that we receive from the

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Public American Voters Act we have spent somewhere

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around \$135 million, and between interest and any

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moneys that were received in 2008-2009 I believe we

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have approximately a hundred million left.

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THE CHAIR: And just for point of

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clarification, once that hundred million of the

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federal funding is exhausted and used, the balance

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2 of any cost with regards to this next generation of  
3 machines is borne by whom?

4 MR. BREHM: Well, the traditional  
5 method of funding elections is at the local level,  
6 you know, prior to the county boards of elections  
7 having care, custody and control of machines. And  
8 that meant only in New York City and a few counties  
9 that actually the county took over the  
10 responsibility. It largely was borne by the local  
11 property taxpayer. The fact that for the first  
12 time in our country's history the federal  
13 government funded some improvements to elections  
14 and they never fully funded them but they're  
15 working on it, you know, we have this pot of money  
16 available for the implementation of new systems.  
17 So there's money available for, you know, policies,  
18 procedures, training and any new equipment. But at  
19 some point that money will be exhausted and it goes  
20 back to the maintenance of effort at the local  
21 level, unless the state chose to fund it some other  
22 way.

23 THE CHAIR: On that note, what we  
24 want to do with this committee is have an oversight  
25 hearing on the cost when the picture becomes a bit

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2 more clearer so, you know, a provider is certified  
3 mid December, a company is chosen, we know what we  
4 need to work with. Certainly as we go forward  
5 during the months of the next year as we get closer  
6 to our fiscal year we will figure out what we are  
7 looking at as far as how the federal dollars are  
8 spent and what possibly will be a budgetary burden  
9 for our local boards of elections. That's my main  
10 concern. So again, to do the appropriate hearing  
11 at the appropriate time is something to look  
12 forward to.

13                                 But I understand as it stands now,  
14 you mentioned you have two meetings coming up, I  
15 think one was, one was today with?

16                                 COMM. BREHM: Well, we are meeting  
17 with both vendors to review the preliminary report  
18 to make sure that we at least are all on the same  
19 page, that what was tested and what was reported,  
20 that we all agree with the findings. And those  
21 activities, we met with Dominion last Tuesday and  
22 Wednesday, and today we are meeting with ES&S,  
23 today and tomorrow we are meeting with ES&S.

24                                 THE CHAIR: What criteria, again,  
25 I'm not going to talk about specifics, that's part

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2 of the negotiations, but what criteria do you look  
3 for in these companies that you obviously are going  
4 to be dealing with in the future long term, so what  
5 criteria do you speak to them about for, you know,  
6 for our voters, what is important to you when  
7 dealing with these two companies?

8 MR. VALENTINE: Well, the  
9 standards for the voting act to produce is well  
10 established, and there's general principles in our  
11 state statute as well as our regulations which have  
12 adopted the federal voluntary voting system  
13 guidelines for 2005. So those were to speak --  
14 those are what has been tested to.

15 On the company itself, these  
16 companies came to us through on open procurement  
17 process, so they have been analyzed, the contract  
18 that they operate under have all been approved  
19 through the attorney general's office or the office  
20 of the comptroller, looking at the responsibility  
21 of the vendor to make sure that they're financially  
22 viable and that the prices of all of the items that  
23 they offer under that contract are competitive.  
24 They're not competing against each other, they are

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2 machines in total. And those have all been  
3 reviewed by, as I said, the comptroller's office.

4 THE CHAIR: Again --

5 MR. BREHM: Those people are, if I  
6 could.

7 THE CHAIR: Please.

8 MR. BREHM: On that issue I think  
9 it's important to note the difference in New York  
10 state and all of the other states. We, before the  
11 2000 election we have a requirement in New York  
12 state for strong standards both in legislation and  
13 in regulation, and that equipment needed to be  
14 tested before it was implemented in the state.  
15 That clearly from everybody's perspective in this  
16 project was our goal, and it is a main guiding  
17 factor for all of us.

18 It was slightly modified when we  
19 were invited to federal court by the Department of  
20 Justice because of the need to do things a little  
21 quicker. And that's where we came up with some of  
22 the implementation of our key devices and this  
23 pilot program that the counties volunteered in.  
24 And because of that voluntary nature and the fact  
25 that we had not certified the equipment, we added a

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2 few extra requirements to the audit for those  
3 elections that had a full one hundred percent hand  
4 count if the difference between a losing candidate  
5 was within one percent. So we added a few other  
6 items. But I think it is important to note from a  
7 testing point of view no other state in the country  
8 has tested to the 2005 standards, no one has except  
9 New York state.

10 THE CHAIR: Thank you for  
11 reminding me.

12 MR. BREHM: So those two vendors at  
13 least should be recognized that they have gone  
14 through a very stringent process that no one else  
15 has in any other state. So you couldn't very  
16 easily say go take that machine from any other  
17 state and put it in New York. It has not been  
18 tested to the same standard as New York state.

19 THE CHAIR: I was about to say I  
20 appreciate you doing the due diligence in, you  
21 know, reviewing the past performance of these  
22 companies, you know, obviously the machines  
23 themselves as they performed here in our state, you  
24 know, taking the precautions and going step by  
25 step. And again, the due diligence in what is

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2 going to be a very critical decision that is to be  
3 made, you know, again for long term in what is such  
4 a democratic process. Our voting process is again,  
5 the process itself is very critical. So we  
6 appreciate you taking the time to do what needs to  
7 be done. And of course I look forward to a future  
8 conversation, probably post certification, to see  
9 what we need to do as a legislative body to work  
10 with you again in preparing for what lies ahead  
11 next year.

12 So again, thank you for your time  
13 and testimony. I appreciate your time here today.

14 MR. BREHM: Thank you, sir.

15 THE CHAIR: Our last panel is a  
16 panel of three. Aimee Allaud, League of Women  
17 Voters. Bo Lipari, member of the New York State  
18 Citizens Election Modernization Advisory Committee.  
19 And Joan Gibbs, general counsel for the Center for  
20 Law & Social Justice, Medgar Evers College. Thank  
21 you.

22 (Fourth panel seated)

23 THE CHAIR: Thank you very much for  
24 being here. Just please state your name for the  
25 record and then give your testimony.

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MR. LIPARI: Who did you wish to start?

THE CHAIR: Your choice. You can arm wrestle, you can do rock, paper, scissors.

MS. ALLAUD: Go alphabetical?

MR. LIPARI: No, ladies first.

MS. ALLAUD: Okay.

Hi. Good afternoon, members of the Senate Elections Committee and the public. I am Aimee Allaud, election specialist for the League of Women Voters in New York state. Thank you for the opportunity to comment on the pilot programs using the new voting equipment, and to address other issues relating to HAVA implementation.

It's appropriate that the legislature monitor the implementation closely for several reasons. The state's Election Modernization and Reform Act of 2005 went far beyond the federal HAVA of 2002. And the legislature has a statutory responsibility through budget process to adequately fund elections to ensure voter confidence in their accuracy and enforce campaign finance laws. I am very pleased to have heard you essentially reaffirm that in

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2 earlier comments that you made that you hopefully  
3 will not increase this agency's budget, that New  
4 York State's Board of Elections, that they have a  
5 very, very critical role in ensuring that the very  
6 fundamental premise of democracy, which is to  
7 exercise the franchise, that that agency which  
8 enforces and administers elections with the local  
9 boards of elections be given adequate funding.

10                   The League of Women Voters does  
11 not have a position on Instant Runoff Voting so I  
12 won't be able to address that today.

13                   I am going to bypass all the  
14 boilerplate, who we are. You all know who we are,  
15 what we stand for, what we are all about. I do  
16 want to reiterate that the League has supported the  
17 replacement of the lever voting machines for  
18 obvious reasons, and we continue to support that.  
19 The full implementation of HAVA we believe that it  
20 will be an improvement in elections in New York  
21 state too.

22                   As background for our testimony  
23 today I would like to refer you to the subject of a  
24 pilot program for the introduction of new voting  
25 machines. A paper which was submitted by our

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2 colleague, Mr. Bo Lipari, comments on the New York  
3 State Board of Elections proposed pilot plan. Mr.  
4 Lipari is the League representative on the Citizens  
5 Election Modernization Act, and his report that he  
6 produced in June set forth a series of criteria  
7 that our organizations believe would provide a  
8 basis for assessing information and performance of  
9 the machines. It does not describe how an  
10 evaluation of that performance should take place.  
11 I think that the narrative that the board of  
12 elections had said was a broad kind of description.  
13 The board itself has produced an informal report on  
14 the prior election project in September, which I  
15 have read. And it contains summaries of the  
16 findings of the several staff teams which traveled  
17 around the state.

18 I'm glad to hear Mr. Brehm state  
19 that that final report will be forthcoming after  
20 the certification, because that certainly is  
21 critical to all of us who look at the subject to  
22 really to review that thoroughly. And I am  
23 assuming that they will share that with the  
24 legislature and the rest of the public.

25 However, we do have a concern

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2 really resulting more out of the I won't call it  
3 controversy but reports of the problems with the  
4 machines, some of the machines in the 23rd  
5 Congressional District. And again, referring back  
6 to Mr. Lipari's comments on why a hundred percent  
7 hand count audit, which is what we had suggested,  
8 take place in the pilot program. That is to  
9 reassure voters and also to find out, quite  
10 honestly, what might have gone wrong other than  
11 what we know at this point. That perhaps a hundred  
12 percent hand count audit of the districts, of the  
13 jurisdictions that were part of the 23rd  
14 Congressional District, would be advisable. It's  
15 not called for. They have apparently done the  
16 three percent and followed the regulations, but  
17 again, this is to reassure voters' confidence as we  
18 go forth with the machines too.

19                   Now, the League of Women Voters  
20 under, well, several of us in the League decided  
21 that it would be an appropriate time to learn about  
22 the operation of the machines in the pilot program.  
23 So for the 2009 general election the League  
24 conducted an online survey of our members'  
25 experiences in voting on the new equipment. The

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2 survey questions and responses are attached to this  
3 testimony, without the individual text answers to  
4 each question, although those are available for  
5 research, they're not private. One hundred  
6 twenty-one responders from twenty counties, that  
7 list of those representative comments are attached  
8 to the testimony, participated. For the purposes  
9 of this testimony I have summarized the responses  
10 into broad categories corresponding to the 17  
11 questions on the survey. I'm going to broad stoke  
12 at this.

13 Adequacy of instructions, which is  
14 one of our questions. Overall 76 percent of the  
15 respondents indicated satisfaction with the  
16 adequacy of instructions they received on how to  
17 use the voting machines and fill out the ballot.  
18 However, a number of people expressed concern that  
19 they overlooked the reverse side of the ballot  
20 where the propositions were located, and  
21 recommended that either the ballot and/or the  
22 inspectors alert a voter to review both sides of  
23 the ballot.

24 On marking the paper ballot. Many  
25 respondents felt that the ballot print was too

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2 small and fine and the squares and circles to be  
3 filled in were also too small. Some noted that a  
4 square takes more time than a circle to fill in  
5 accurately. And I believe that the distinction  
6 there was that the ES&S machine uses a round circle  
7 and that the Dominion uses a square. Am I correct;  
8 Mr. Brehm? Thank you.

9 I myself voted in a county that  
10 uses the ES&S.

11 The correct type of pens or  
12 pencils with the right kind of tip and a sufficient  
13 supply of these tools in the privacy booth was also  
14 noted as a feature that should be examined. One  
15 person noted that a magnifying lens could also be  
16 provided alternatively to using the BMD and the  
17 provision of that in the voting booth or in the  
18 privacy booth.

19 Some voters noted that there  
20 wasn't adequate lighting in the privacy booth to  
21 mark the ballot and recommended that flashlights be  
22 provided if the physical condition of the room  
23 couldn't be altered.

24 On privacy issues. The single  
25 most frequently expressed comment concerned privacy

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2 issues surrounding the location of the privacy  
3 booths, privacy screen, scanner and BMD so that  
4 privacy is provided in marking and casting the  
5 ballot. Some inspectors as well as voters did not  
6 understand the purpose of the privacy sleeve and  
7 how you use it. In fact, some rejected using it,  
8 didn't seem to think it was important. Inspectors  
9 did not routinely use it with all ballots. Several  
10 voters who spoiled ballots wondered about the  
11 privacy procedures for spoiled ballots. And I  
12 believe Mr. Brehm has already alluded to that too,  
13 or no, one of our, I think it was Mr. Ryan earlier  
14 said that.

15                   On ballot scanning. Very few  
16 voters in the survey cohort had any problems with  
17 the scanning operation. Some Erie County residents  
18 apparently had their ballots rejected several times  
19 due to an unexplained error message which  
20 inspectors said had occurred several times earlier.  
21 In one case, and I don't know whether this was Erie  
22 County or not, although it looks like it is, in one  
23 case after several unsuccessful attempts to scan  
24 the ballot, two election inspectors, one Democrat  
25 and one Republican, opened up the ballot box and

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2 deposited the voter's paper ballot inside. Which I  
3 think is illustrative of what we are hearing today  
4 about the need for more voter training, more  
5 election inspector training. So that was just an  
6 amusing anecdote. I hope Messrs. Mohr and Ward  
7 don't take personal offense here about my  
8 describing that.

9                               On the ballot marking device  
10 generally the survey respondents were unaware of  
11 the location of the ballot marking device in the  
12 polling place and did not observe anyone using  
13 them. Several respondents said they requested  
14 information on how to use it but were discouraged  
15 from using it by the election inspectors who were  
16 uncomfortable with the procedures for the BMD.

17                               The conclusions that I am drawing  
18 from what I read, and I have read all the text  
19 answers, conclusions for improving the voting  
20 process with the new machines.

21                               Number one, increased intensive  
22 voter education on the new voting process from  
23 beginning to end, using the media, printed  
24 materials as well as the web is needed for 2010. I  
25 learned today from commissioners from Erie County

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2 and Monroe County that they had sent information to  
3 each household in their county that was  
4 participating in the pilot plan. Moving ahead to  
5 2010, that is certainly advisable for all  
6 households in the state as we move forward. That  
7 would be money extremely well spent to do that.  
8 New York state has recently received 2008-2009  
9 federal HAVA requirements payments of approximately  
10 \$14 million for voter education and poll worker  
11 training. Counties must access this funding in  
12 time to implement for the 2010 elections. That was  
13 conclusion number one.

14                   Number two. Increase signage in  
15 the entrance to polling places, providing  
16 information and instructions on the ballot marking  
17 devices. All inspectors should be trained on this  
18 equipment and should not discourage its use.

19                   Number three. Revising the paper  
20 ballot for maximum usability for the voter will  
21 reduce the number of spoiled ballots and rejection  
22 by the scanner. Minimum standards for lighting and  
23 usability in the privacy booths should be examined.

24                   Number four. Increased attention  
25 by the New York State Board of Elections and local

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2 boards of elections to issues of privacy in the  
3 polling place and mandating the use of the privacy  
4 sleeve.

5                   And, number five, enlarging the  
6 pool of trained election inspectors should be a top  
7 priority. The Senate should immediately pass two  
8 bills, Senate 1836, Mr. Klein, and Senate 5172,  
9 Mr. Dilan, which have already passed the Assembly.  
10 The Klein bill would permit split shifts for  
11 inspectors, and the Dilan bill would permit 16 and  
12 17 year olds to serve as inspectors.

13                   In addition, the legislature  
14 should consider the recommendations of Marcus  
15 Cederquist, executive director of the New York City  
16 Board of Elections, at the Assembly's October  
17 hearing on the recruitment of election inspectors.  
18 I'm paraphrasing. He said he recommended that  
19 inspectors should receive one hundred dollars per  
20 day to attend training, and that there should be  
21 further incentives to encourage attendance at the  
22 trainings and then subsequently working on election  
23 days.

24                   That scale may be out of -- not  
25 appropriate to upstate, I think it was geared to

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2 New York City, but certainly enhancement of I think  
3 currently most counties pay 25 dollars to go to  
4 training. The commissioners over here can  
5 corroborate that. But making a greater incentive  
6 for inspectors to attend the training and to follow  
7 it was his suggestion, and we would support that.

8                   The League survey was accomplished  
9 by nonpartisan volunteers working under the  
10 provision of New York State Election Law, which  
11 does not allow observers to be present in the  
12 polling place. Only election officials, candidates  
13 and poll watchers are allowed to remain in the  
14 polling place during the course of the election  
15 day. Therefore, obviously these observations were  
16 done under the circumstances in which our  
17 volunteers were there themselves to vote. And very  
18 limited, I just took a glance, so to speak. Media  
19 are allowed at the polls and the voter canvass.

20                   I decided to investigate what the  
21 laws of other states are regarding the  
22 participation or the observation at the polls. And  
23 I refer you to a report that was issued by  
24 electionline.org in May of 2008 entitled "State  
25 Media and Public Access to Polling Places." The

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2 title of the report was actually "Case Studies:  
3 Election Observation Dispatches From The Polls",  
4 indicated that only two states, California and  
5 Wisconsin, had provisions for public access to the  
6 polling place. The report's executive summary  
7 suggests that, quote, "First person observation,  
8 media reports and field research can yield new  
9 insights into the election process, show where  
10 weaknesses might occur in the system, and point to  
11 possible solutions to make voting more efficient,  
12 accurate and convenient." That certainly was the  
13 intention of what our survey and participation was  
14 to prove.

15 A noteworthy example of the  
16 success of nonpartisan observation is that of the  
17 Citizens for Election Integrity of Minnesota, which  
18 produced a report on the post 2008 election audit  
19 and recount, "eyes on the vote" count.

20 Now, my recommendations or rather  
21 our recommendation of the League. If New York  
22 State Election Law permitted access to the polling  
23 place by bona fide observers, there would be much  
24 constructive information gained. The League of  
25 Women Voters of New York State recommends that the

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2     respective election law committees in the Assembly  
3     and the Senate conduct research and public hearings  
4     on the feasibility of legislation to permit  
5     nonpartisan observers.

6                     Lastly, the League recommended  
7     that election inspectors be required by law to wear  
8     identification badges giving their name and  
9     position while they are employed at the polls. My  
10    anecdotal survey through my League colleagues  
11    indicated that that varies from county to county.  
12    Each board of elections is obviously not mandated  
13    in the election law, and some counties can set  
14    their own policies.

15                    We note that the HAVA  
16    administrative complaint procedure requires that  
17    the names of election officials who interacted with  
18    a complainant be documented. Currently if election  
19    inspectors don't have identification that won't be  
20    possible to comply. Lacking a statutory  
21    requirement for such identification, each county  
22    board of elections makes their own policy. This  
23    omission should be corrected in the election law.  
24    Voters have expressed their concern that polling  
25    places seem to have many unidentified people,

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2 perhaps acting in official capacities, perhaps not,  
3 but not identified.

4 That's all of the recommendations.

5 Thank you for the opportunity to give you this  
6 information.

7 THE CHAIR: Thank you, Mrs.

8 Allaud.

9 Hi.

10 MR. LIPARI: Hello. My name is Bo  
11 Lipari. I'm the founder and former director of New  
12 Yorkers for Verified Voting, and a member of the  
13 New York State Citizens Election Modernization  
14 Advisory Committee, created by the legislature to  
15 advise the State Board of Elections on the  
16 selection of new voting systems. I'm speaking  
17 today, however, as a long time election integrity  
18 advocate, not a representative of either of those  
19 groups.

20 New York state in my opinion was  
21 wise to do a pilot for New Yorkers. It provided an  
22 opportunity to work out the kinks and procedures  
23 for managing the new machines. It allows us to  
24 learn from the inevitable mistakes and to apply all  
25 that we learned in the future. In my opinion, New

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2 York's just concluded pilot was extremely valuable  
3 and it revealed some important areas that need  
4 improvement.

5                   Certainly privacy and ballot  
6 design issues often came up, and we have heard a  
7 lot about that today. Given the limited speaking  
8 time I won't talk about those. I have submitted a  
9 little bit on those issues in my written testimony.  
10 Today I'd like to discuss simply another pilot  
11 experience from which important lessons can be  
12 learned, the failure of some of the new voting  
13 machines and how I believe New York can benefit  
14 from this failure.

15                   As we know, the New York 23  
16 Congressional race received national attention.  
17 Nine of 47 pilot counties held elections, were  
18 holding elections in this race. Despite assurances  
19 from the vendor, some of the new machines were  
20 indeed inoperable on Election Day. And in cases  
21 where the machines failed, the paper ballots as we  
22 have heard were treated according to the New York  
23 state emergency ballot rules, which assures that  
24 all votes are counted. And indeed, in my opinion  
25 this is the great strength of New York's new voting

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2 system. Ultimately it relies on the marked paper  
3 ballot which contains a software independent record  
4 of voter intent.

5 I do not agree with those who are  
6 out there claiming impossible results. There  
7 simply is not enough data from the pilot to justify  
8 such sweeping claims. But all of New York voters  
9 do have a stake in knowing exactly what happened,  
10 so why don't we use this opportunity to take a full  
11 look. After all, isn't that exactly the point of  
12 the pilot program, to take a detailed look at what  
13 happened from soup to nuts in full view of the  
14 public.

15 We do know what went wrong which  
16 caused some of the machines to hang up on some  
17 voter combinations. And as a retired software  
18 engineer, as an aside, I seriously question the  
19 vendor's in-house testing, which in my opinion  
20 absolutely should have turned up a simple bug like  
21 this. It also indicates that the state  
22 certification testing has some holes in it and is  
23 something the state ought to be looking at very  
24 closely.

25 But the good news is that our

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2 required pre-election testing was robust enough to  
3 discover the mistake. And, as we heard, the  
4 recovery procedures failed to identify all the  
5 machines that needed this correction attached. The  
6 fact that some counties didn't find the problem in  
7 their pre-election testing, though, while others  
8 did, does indicate that not all counties performed  
9 the required testing. So that's something we  
10 really need to be looking at. But the explanation  
11 given by the state board is very reasonable. I  
12 have no reason to doubt it. But, a much fuller  
13 accounting of the events surrounding the machines'  
14 failures is in order, and it would go a long way  
15 towards silencing the critics.

16 My recommendation is full  
17 disclosure. I think it's the best medicine. Given  
18 that the pilot did reveal this serious equipment  
19 failure, the state board should release a complete  
20 and detailed description of the events surrounding  
21 the failure, including the following.

22 Full details of each county's  
23 pre-election testing, the procedures used to  
24 identify those problem machines, an analysis of why  
25 these procedures failed, the process that would be

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2 used to develop and approve and apply it and patch  
3 the machines, and, finally, the county, state and  
4 vendor personally involved in developing and  
5 improving and applying the patch. Some of this  
6 information has been already released by the board,  
7 but there's a lot more that could be out there that  
8 would help.

9                                 This was a pilot. It was  
10 inevitable there were going to be flaws. And the  
11 whole point of conducting it is to make sure we  
12 identify this problem and correct it. If we are  
13 serious that the purpose of this pilot was to find  
14 flaws in equipment and gaps in our procedures prior  
15 to the state-wide roll out, then we can only do  
16 that with a full collection of data, analysis of  
17 that data and full publication of that data so that  
18 the public can independently review it. This is  
19 how we will gain confidence in the new system in  
20 the general public.

21                                 So I am going to ask the State Board  
22 of Elections to provide a full analysis of the  
23 entire pilot program, just not New York 23, and the  
24 performance of the new system and provide a  
25 complete set of data from all pilot districts to

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2 the public for independent analysis. And in order  
3 to perform a meaningful analysis the state board  
4 should provide the public with the following data.  
5 The state being the districts, and I've got a list  
6 here.

7                   First, the number of voters that  
8 were signed in to each election poll book.

9                   Two, the number of ballots  
10 distributed to voters at each poll site.

11                   The number of absentee ballots  
12 counted at each poll site and local county boards.

13                   The number of emergency ballots  
14 counted at each poll site and local county boards.

15                   Further, for each machine and each  
16 election district, we should have publication of  
17 the totals from the tally tapes from all races.

18                   The public count numbers before the  
19 election opened and after the election closed.

20                   And a view of all images of the  
21 tally tapes so that the public can see them.

22                   Finally, for all races from each  
23 election district we really need to have the  
24 election night totals that were initially reported  
25 from polling places and pollers, then the election

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2 night totals recorded by the election management  
3 system, the software that compiles the votes from  
4 all the machine cards, the certified election  
5 totals, and, finally, the results of the required  
6 three percent audit.

7                                 New York state has worked hard and  
8 done a very good job to make the process of using  
9 the new HAVA compliant voting machine systems the  
10 most rigorous in the nation. As part of that  
11 rigor, the pilot was meant to be a test to help us  
12 learn from mistakes. Now the state Board of  
13 Elections is at a critical juncture and needs to  
14 instill confidence in the new systems. New Yorkers  
15 want and need to know the full details of the  
16 pilot. What went right, what went wrong, what are  
17 we going to do better the next time.

18                                 Thank you.

19                                 THE CHAIR: Thank you, Mr. Lipari.  
20 And Mr. Lipari, Ms. Allaud, let me first thank you  
21 and your respective organizations for the work that  
22 you have done in the past and certainly with your  
23 testimony today, both in your findings and in your  
24 suggestions. I love suggestions. So again, I  
25 appreciate your testimony today.

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2                   A question to you both. Are you  
3 planning, given the importance of next year's  
4 election and obviously the use of the new machines,  
5 are you planning to do a similar survey or a  
6 similar investigation or review with next year's  
7 elections?

8                   MS. ALLAUD: I'd like to think that  
9 we would have the capacity to do so. We learned,  
10 we used a new tool for us, something called  
11 constant contact. So like the pilots we found that  
12 it worked to a large degree but we need to refine  
13 it too. But also just engaging our members to  
14 participate. Well, that's not difficult in the  
15 League because that's what we like to do in the  
16 League is to look at elections and take them very  
17 seriously. But we certainly will give it some  
18 consideration.

19                   THE CHAIR: And both of you, I guess  
20 to be clear for the record, both of you are okay  
21 with the change from lever machines to the next  
22 generation machines?

23                   MR. LIPARI: Yes.

24                   MS. ALLAUD: Yes.

25                   MR. LIPARI: I advocated it for six

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2 or seven years. I may have been one of the first  
3 persons in New York state to. I wanted that system  
4 because I believe it to be a superior system to the  
5 lever machines because of the paper ballot. And I  
6 think it's also clear that HAVA made the  
7 continuance of the lever machines impossible.

8 The system we have I believe is  
9 the best current system available, but we do have  
10 to learn to use it correctly.

11 MS. ALLAUD: And I have attached to  
12 my testimony an earlier statement that the League  
13 of New Yorkers for Verified Voting produced back in  
14 February that Do Lever Machines, let's see what's  
15 the identification of the title, "Do Lever Machines  
16 Provide A Better Voting System For Democracy," and  
17 which we say no, they don't. So we are on record  
18 too as supporting this move to a paper based  
19 system.

20 THE CHAIR: Ms. Allaud, again, I  
21 appreciate your written testimony. Your survey  
22 here is quite useful as well. It just echoes what  
23 has been said today. It looks like most issues  
24 that the residents had were with the privacy  
25 sleeve.

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MS. ALLAUD: Yes.

THE CHAIR: And the privacy issue.

MS. ALLAUD: Yes.

THE CHAIR: Which seems to be a recurring issue. So again, we appreciate having that information. That is the kind of information that's helpful, so we appreciate it. Thank you very much for your time and testimony today.

MS. ALLAUD: Thank you.

MR. LIPARI: Thank you.

THE CHAIR: We appreciate the work and welcome you in the future.

We do have one more. Susan Holland. Is Susan here? Come on down.

MS. HOLLAND: Hi. I'm Susan Holland. I'll be brief. I am a member of the Election Division, New York City Citizens For Clean Elections, and the co-president of the Kingston branch of the American Association of University Women.

My main simple statement today is that given the mess with the Congressional District 23, certification of the optical scanners at this point would be a travesty. Myself as a private

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2 citizen and all of the groups that I just mentioned  
3 are all huge proponents of saving our lever  
4 machines. We have testified at various hearings.  
5 We want to save our levers for many reasons, not  
6 the least of which is the money, which I think is  
7 probably a huge concern as we are going through the  
8 budgetary exercise.

9                                   And levers are green, okay.  
10 Computers are not. I love my computer, I have been  
11 using computers for 25 years. Computing equipment  
12 is not environmentally friendly. Neither is a  
13 paper trail. Not good for the environment.

14                                   I don't know what else to say about  
15 levers other than I really wish we could keep them.  
16 Just my own heartfelt opinion as a private citizen  
17 of the state that I have lived in and voted in  
18 since I could vote. So thank you for listening.

19                                   THE CHAIR: I appreciate your time  
20 and your attendance. Thank you very much.

21                                   Given that, I appreciate, you  
22 know, there are many of those who share your  
23 concerns. You speak for many who want to keep the  
24 levers. There are many legal issues and other  
25 issues why I believe we are going to have to move

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2 forward from the lever machines.

3 MS. HOLLAND: Well, can I just say  
4 something on that?

5 THE CHAIR: Sure.

6 MS. HOLLAND: Our current voting  
7 system is HAVA compliant, as we have expressed in  
8 prior hearings. Now, given that the lever machine  
9 is a metal marking device, in every polling site  
10 New York state is HAVA compliant. The Election  
11 Reform and Modernization Act really needs to be  
12 repealed. It is unconstitutional. So I understand  
13 there are legal issues, but I think that there's,  
14 you know, but go ahead, I'm sorry.

15 THE CHAIR: No, no. That has been  
16 an argument that has been made, that we are already  
17 HAVA compliant and so forth. But, like I said, I  
18 do believe that we are going to be moving forward.  
19 If that is the decision that has to be made, we are  
20 to move forward, and the idea here is how do we  
21 work with this new system, how do we still make it  
22 the most secure, the most dependable system for  
23 qualified voters. That's the bottom line. So if  
24 we have to move forward, Ms. Holland, hopefully you  
25 will join with everyone in still trying to make the

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2 process a good process for our voters.

3 MS. HOLLAND: Oh, definitely.

4 THE CHAIR: Thank you for your time  
5 as well.

6 I want to thank everyone for their  
7 participation today, and I apologize for the delay.  
8 This is obviously a story that has not been told  
9 yet, the end of the story is not here yet. We have  
10 a lot of work to do. And certainly the job of this  
11 committee is to work with everyone as we go forward  
12 to make the process as feasible and as credible and  
13 as dependable for our qualified voters.  
14 Confidence, the voters need to have confidence that  
15 this next generation of machines is going to be  
16 good for them. And we want to encourage people to  
17 vote. We want to see a rise in voters, not to  
18 repel them in any way. So that, again, keeping  
19 that in focus of this committee. And we do look  
20 forward to working with everyone.

21 I do appreciate the executive  
22 directors and the commissioners for staying and  
23 hearing everyone's testimony. Thank you very much.

24 Again, I want to wish everyone a  
25 good day. This meeting is adjourned.

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Thank you very much.

(Time noted: 3:24 p.m.)