NEW YORK STATE SENATE

STANDING COMMITTEE ON ELECTIONS

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            Subject:

Regarding the 2009 Elections and

Instant Runoff Voting

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                              250 Broadway

                              New York, New York

                              November 12, 2009

                              6:13 p.m.

B e f o r e :

            SENATOR JOSEPH P. ADDABBO, JR.

                    Chair

            SENATOR WILLIAM PERKINS

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P R O C E E D I N G S

SENATOR ADDABBO: Good evening,
everybody.

Welcome to tonight's hearing for the
Elections Committee.

My name is Joe Addabbo, State
Senator of the 15th District. And I have the privilege
and honor of chairing this Committee and I welcome you
all here.

Just in terms of a little
housekeeping, I want to thank those who put this
hearing together, the Senate staff who is with us
tonight.

We have Lindsey Scott from our
Senate staff. We thank Lindsey.

To my right here is Legal Counsel
for the Committee, David Kogelman. Thanks, David.

My staff, Tom Delano is here.

Also of my office, Pete Delucia,

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Vicki Clark, Frank Scaduto. I thank them for their efforts as well with this hearing.

Andy, good to have you back. And thank you for your help here as well.

Tonight is the fifth in a series of public hearings, these hearings that we started to take the Elections Committee on the road basically - we started in April and it has taken us to Buffalo, Syracuse, Rochester, Nassau County, Albany and, of course, here in Manhattan - all in an effort to talk about the election process and how we can make the process more feasible for our qualified voters and how we can break down some of the barriers that stop or prevent our voters from voting.

We will continue in this vein trying basically to make this voting process better.

It has been a very progressive Committee and I've enjoyed my time as Chair, and hopefully we can do better or more improved work as we go forward.

So, again, I thank you all for being here and for participating.

At today's hearing we will talk

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about the topics of voter suppression and
intimidation. We will talk about the new optical scan
voting systems and, obviously, the pilot program that
has just recently been done in both the primary and
the general elections. We'll talk about that.

There is a proposed piece of
legislation, Senate Bill 6248, which is prime
sponsored by Senator Bill Perkins and co-sponsored by
myself in the Elections Committee. And this is a piece
of legislation that would propose to do away with the
runoff elections. So we will have a discussion about
that.

And in the alternative, do we
consider instantaneous runoff voting as an alternative
to the runoff primaries and elections.

So, again, I look forward to a good
discussion.

There is no time limit or per se a
buzzer that goes off when people are speaking. But in
an effort to get everyone in who is scheduled to speak
and give time for good conversation of questions and
answers, I ask that most speakers, if we could, try to
limit your testimony to roughly five minutes or so.

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I'll ask you to sum up so that, again, we can continue
a conversation of questions and answers.

So I appreciate indulging me as
Chair with the five minutes. And I appreciate that
very much.

Our first panel, Mr. Douglas
Kellner, Co-Chair, the New York State Board of
Elections.

Our pleasure, Mr. Kellner. Always a
pleasure to have you here before the Committee.

MR. DOUGLAS KELLNER: Well, thank
you, Senator.

And, again, I want to thank you for
the very substantial time commitment that you and your
Committee have put in to holding these hearings and to
really advance the reform of New York's election laws.
And it's certainly a welcomed change to have the
Legislature so interested in these issues.

I apologize that I don't have
written testimony tonight. There are just too many
developments so close to the election to get
everything down in writing.

We will have a detailed preliminary

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report for you at your hearings in Albany on November 30th. Bob Brehm, the Co-Executive Director of the Board of Elections, has committed to prepare a detailed preliminary report.

The report will be preliminary because the State Board still intends to meet with the County Commissioners once they finish the certification process, and those meetings are scheduled to take place in early December. And we would expect to have a final report on the pilot project around the time that we also provide the certification reports on the new machines.

We are on schedule with the certification testing. The testing has actually been completed. The independent testing authority and New York State Technical Enterprise Corporation are in the process of preparing their final reports to the Board which should come on November 18th.

The Board will then be carefully reviewing them and preparing the certification report for our meeting on December 15th. And at that time we will make the final decision on certifying the ES&S DS200 and the Dominion ImageCast.

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I will spend most of my time going
through our reports on the pilot project for the
General Election, and then at the end I'll just spend
a minute or two on the instant runoff voting issue.

The pilot project took place with
respect to about fifteen percent of the voters in the
State. All of the jurisdictions that were
participating were upstate counties.

And we certainly believe the pilot
project was a success and met the objectives that we
had laid out for it, which was to learn at the pace of
the County Commissioners how to introduce the new
ballot scanning equipment to the voters in New York.

In general, the system went very
well. And certainly in comparing the operation of the
scanners to the lever voting machines, we had many
more problems with the lever voting machines, all of
the routine problems that we've come to accept and
anticipate with respect to the lever voting machines.
And there were some problems with the ballot scanning
machines as well.

But the whole point of this exercise
is to learn and, I might add, that with the ballot

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scanning machines, that none of them seriously raise any questions in our minds as to the merits of proceeding with the introduction of ballot scanning in New York as the principal method of voting.

We will say that, with respect to the audits that were conducted during the primary election, the reports are now filtering in from the counties. And, again, as I have been saying, there has not been a single mistake in counting a count by a ballot scanning machine in the primary election nor have there been any reports with the General Election. Although I should add that most of the audits for the General Election are just starting now and will not finished until next week.

In reporting the -- well, what did we learn?

We learned that there are a couple of significant things that we need to emphasize with the counties.

The first is that you cannot underestimate the importance of training the election inspectors in the process.

In general, we think the counties

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were very successful. They put in a lot of hard work into that process and it showed off on election day.

I would also generalize by saying that the larger counties tended to have better training programs and, therefore, fewer problems on election day than the smaller counties. And so certainly at the State Board of Elections we are going to concentrate emphasizing to all of the counties the importance of having an effective poll worker training program. And for those counties downstate, certainly they can learn from the programs that were put in place.

I would rate the two best programs as Erie County's and Onondaga County's, but other counties, like Albany County and Schnectady County also had excellent programs that showed very positive results on election day by inspectors being very comfortable about opening the machines and operating them.

The second thing that we learned is the importance of the pre-election testing process. Just like the lever voting machines, you have to set up the election management system for the machines.

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                    We discovered through the pre-
election testing process in ten counties, discovered a
glitch in the Dominion ImageCast
firm ware. You know, I can get into the technical
issues. It goes into the dynamic memory allocation for
the ballot images. But there was a programming code
error in which the dynamic memory allocation basically
shut down for more complicated races. And that was
discovered in the pre-election testing.

                    I should also add that it's a code
error that was discovered at about the same time in
the certification testing process that the
certification testing process has already led to
Dominion resubmitting a single line of code to correct
the problem. And that code has already gone through
the regression testing and has passed. So it won't be
an issue for certification of the Dominion machine.

                    But it is one example of where, if
we had not -- where, if the certification process had
been completed before starting the pilot, that problem
would have been avoided.

                    In any event, with those ten
counties they did a work-around so that they changed

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the ballot configuration file that goes into the machine so that on election day that problem was avoided in those counties that properly followed the procedure to do that.

Unfortunately, there were -- again in smaller counties, several of the smaller counties did not properly follow the procedure and so they ended up not having their ballots scanned and, in fact, those ballots were all hand counted.

In the case of one county they were able to work up an alternative machine so that after the close of the polls, they brought them to the County Board and scanned them on that machine and got accurate results.

So it is an issue that did not affect the outcome of the election, but it did -- it was a glitch. So I don't want to say that we had a problem-free election on that.

It's interesting in comparing that problem -- well, there is one other scanning issue that had come up with the 9th Legislative District in the Town of Cheektowaga in Erie County where the machine had not been set up properly.

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Good evening, Senator Perkins.

I started out by thanking your

Committee for working so hard and having these

hearings. And I thank you coming tonight also.

SENATOR PERKINS: Thank you.

MR. DOUGLAS KELLNER: So that the

ballot -- the election management system was

improperly programmed so that the scanning results did

not accurately report the results on the ballot.

Because it had set up the election

management system, that even though there were two

different candidates' names, the persons who had

programmed the machine had marked those candidates as

the same candidate so that the votes were counted as

if you were voting twice for the same candidate.

It was easily discovered when they

saw the results that were reported out.

And remarkedly, when they went back

and looked at the pre-election testing, the pre-

election testing showed the same problem and,

obviously, the clerks at the Erie County Board of

Elections, who were responsible for the pre-election

testing, had not properly reviewed the test results to

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do their analysis.

But, again, since the paper ballots
were there, they were able to set up another machine
properly set up and scan those ballots and got
accurate results. And then they also did a hand count
afterwards and confirmed those results.

I contrast that with a very similar
problem that happened with the lever voting machines
in a number of races in Oneida County where the
machines were improperly set up that there were -- it
was a vote for two races, and the machines were set up
so that you could only vote for one in each column
even though you had the right to vote for two
candidates in the same column.

Many hundreds of votes were cast on
those machines before the error was discovered, and
they could go to emergency ballots.

Now, the problem with the lever
voting machine, when you have a set-up error like
that, is that you can't go backwards and find out how
many votes were affected by the error.

There was another machine problem,
lever voting machine problem, in Saratoga County where

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the ballot card had slipped and it was not discovered
until in the afternoon, or at least it wasn't reported
until the afternoon that the ballot card had slipped.

Now, when the ballot card slips,
that means the name of the candidate that appears on
the face of the machine doesn't align with the counter
that records the votes.

That's a problem that has occurred
in the past with the lever voting machines. And,
again, the problem is is that when you discover that,
you don't know how many votes are affected. There is
no audit trail to go back and redo it, unlike any
problems that you discover with the ballot scanning
machines.

All right. So that's one issue where
we emphasize the importance of the pre-election
testing to make sure that they do the testing and to
make sure that they properly review the testing so
that if errors appear on the test results, that they
result in correcting the ballots.

The final comment that we have on
the pilot program is that universally there have been
complaints about the need to protect voter privacy.

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And, again, this is mainly a
shortfalling in our own training program. I don't even
want to blame the counties on this because the
training program that we set up at the State Board of
Elections did not sufficiently emphasize the need for
ballot privacy in the way the poll sites are set up
and conducted.

And there are really two issues on
this.

One is the actual physical layout of
the poll site, that we have to concentrate on
educating the poll workers and the people who set up
poll sites on the need to arrange the poll site in a
way that you don't have people looking over the
shoulder of the voter as they are filling out the
ballots at the privacy booths, that the privacy booths
have to be arranged in a way that the voter really has
privacy.

The second is the need to use the
ballot privacy sleeves, that when -- we have the
privacy sleeves, but we did not emphasize the need to
actually hand the sleeve to every voter. And it's very
clear from the feedback that we've gotten in our

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observations that we really do have to require that
every voter be given the ballot in the privacy sleeve.

And that means that when the voter
is given the blank ballot, it should be put in the
privacy sleeve so the voter can carry the ballot to
the privacy booth, the voter fills it out in the
privacy booth, puts it back in the ballot sleeve.

And then we should also emphasize
that it's the voter who should feed the ballot from
the privacy sleeve into the voting machine and not
just hand the ballot to the voting machine clerk who
puts it in.

So that's certainly a lesson that
we've learned and something that we have to emphasize.

All that being said, to us these are
really minor issues. It's been a very positive
learning experience. And we will provide a much more
detailed report. And certainly it is our intention to
follow up on all of these issues with the County
Boards of Elections, who we think did an outstanding
job in this election.

So, finally, I just wanted to spend
a short time talking about instant runoff voting.

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                    Most of these issues are really
political science issues where it's really an issue
for the Legislature to decide what they think is the
best means to proceed on voting.

                    I would simply add that when --
immediately following World War II when the U.S.
government was faced with introducing democratic
systems to the axis countries in Germany, Italy and
Japan, that the best minds we had working proposed
proportional representation systems based on the
single transferrable vote system, which is the system
that was used to elect the New York City Council from
1936 to 1951 and was also used in our school board
elections from 1979 to 2002.

                    But, as I say, those are really
issues for the Legislature.

                    On the technical side, you should be
aware that there are dozens of jurisdictions in the
country that use instant runoff voting and that have
ballot scanning as New York is introducing, and that
those systems work.

                    Our New York machines, the contract
for the purchase of the new ballot scanning machines

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did not provide that the vendors should incorporate that capability into the firm ware for those machines.

So that if we do introduce instant runoff voting in New York, there will have to be additional software programming in order to make sure that the machines can accommodate that process.

But as I've said, many other jurisdictions have done that and it is doable.

And the Committee may also be interested that the Village of Port Chester in Westchester County is under a court order under the Voting Rights Act that they have proposed that they will be introducing cumulative voting for their village trustee elections. And we will be providing technical assistance to help them be able to use the voting equipment that the Westchester Board of Elections has in order to conduct those elections.

And we do believe that it will be feasible to have cumulative voting where you can -- where you have five votes and you cast all five votes for a single candidate or distribute those five votes among a number of candidates.

So, thank you again.

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SENATOR ADDABBO: Chairman Kellner,
I thank you very much for your time.

We do have a number of questions.

Just on the instantaneous voting,
instantaneous runoff voting, there are two bills
currently in the Senate. Those are Senate bills 3584
and 3489, both prime sponsored by Senator Liz Krueger.
They are in the Committee and, obviously, are being
entertained at this point.

I'd like to introduce to all of you
Senator Bill Perkins. He is the prime sponsor of
Senate Bill 6248, which would eliminate the runoff
primaries.

Senator Perkins.

SENATOR PERKINS: Thank you very
much, Mr. Chairman, and thank you, Commissioner, for
your testimony.

And I can't thank you enough for the
work that you are doing with the Committee and how
important it is that we are having these types of
hearings that allow us, if nothing else, to get some
input from the public, not only on our legislation,
but any other related matters that are important to

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assure the public that this approach to democracy is important for us and we understand how it is important to them.

Too often folks don't know what we are doing. So they think the worst.

And so this type of transparency and visibility and accessibility I think is very important for us as an institution, but also more importantly for our constituents.

Obviously I have a piece of legislation that seeks to end the runoffs. It's obviously very arbitrary what the runoff numbers should be. In fact, it seemed to smell of a political concern when it first was introduced in New York City.

And, frankly, in these times especially, but in times generally, it's a little costly to have a second election, especially from the perspective of the public that assumes you add up the votes, whoever has the most is the winner.

And so I think that would suggest that we really seriously reconsider and change this runoff and end this runoff system for the sake of the credibility of the elections as well as for the cost

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that they incur at any time, but especially in these times of difficulty.

We don't want to just determine democracy by the budget, but when we do have a crisis, it does make us wonder where can we do things better.

And so this is the legislation that we're putting forward, that I'm putting forward with the support of the Chair. And if you have any comments about it, or if anybody has any comments about it, we would like to hear that as well.

SENATOR ADDABBO: Thank you, Senator Perkins, and I thank you and your staff for the work that you've done on this bill.

And we certainly will entertain this bill as we go forward as a Committee.

I agree. You know, obviously, our runoffs, which recently cost the City $15 million, really only pertain to three positions in the entire State, and that's the Mayor, the Comptroller and the Public Advocate. And certainly we can do things differently to save on the fiscal cost to our Board of Elections in our City.

Locally our poll workers, who were

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working this past general election, were not sure if
they were going to get paid because of the cost of
this runoff election that was held in September.

So certainly I think we need to
reallocate our resources in a more efficient way. So I
look forward to working with you on the bill as 6248.

Chairman Kellner, again, I thank you
for being here.

As we move into the issue of the
next generation of voting machines, there has been
obviously a lot of concern over the optical scanners
or ballot marking devices.

And I guess mainly one issue is the
cost of which. Predominantly, the cost is -- you know,
they're Federal dollars. But I understand, and correct
me if I'm wrong, that any shortfall or Federal
dollars, you know, whether we look at the cost of
training people, whether we look at the cost of the
machines or any other costs allocated to the issue of
the next generation of voting machines, is borne by
the local board of elections.

And, again, as Senator Perkins has
pointed out, during times of fiscal need, as we are

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experiencing now, the cost becomes an issue, certainly within the local budgets of our boards of elections.

Is that true? Any shortfall of Federal dollars, the responsibility, the burden, falls on our local boards of elections?

MR. DOUGLAS KELLNER: Yes, that's absolutely true.

There are one or two of the smallest counties that have had a shortfall and that have had to make up that difference.

And I believe that the projections are in New York City that there will also be a shortfall for the City budget.

SENATOR ADDABBO: Now, we obviously -- we need to be in compliance.

I firmly believe that the next generation of machines is a foregone conclusion, and I understand, you know, by December 15th could be the selection.

Based on the fiscal situations, is there any way possible that a stay or an injunction could be done to delay the selection merely based on fiscal situations?

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                    MR. DOUGLAS KELLNER: I don't

believe so, Senator.

                    And as most people in this room

know, that for many years I advocated keeping the

lever voting machines permanently and to stop talking

about trying to go to electronic voting.

                    But Congress passed the Help America

Vote Act. We are under a court order to replace those

machines. We've already gotten several extensions from

the court with very stern warnings that no further

excuses will be tolerated.

                    And we've already taken the money

from the Federal government and spent it for the lever

voting machine replacement.

                    So the only way that I see that you

could postpone this is with an act of Congress.

                    And I spent a considerable amount of

time during the summer of 2007 working with our

Congressional delegation to try to do that. But the

sentiment from outside of New York is so strong

against keeping the lever voting machines that our

members of Congress from New York tell us that that is

completely unrealistic to think that that would be

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possible.

So we're really stuck. We have to do the best we can to comply under the Federal requirements.

SENATOR ADDABBO: Knowing that the selection date is roughly, or probably December 15th, and knowing how quick Congress acts, an act of Congress is highly unlikely at this point.

That being said, there is an argument I guess that was brought to my attention that we've already complied, for instance, with HAVA by having at least one machine at a polling site.

Do you think that kind of argument has any validity to it?

MR. DOUGLAS KELLNER: It's an argument that we put forward prior to 2007, but it has not had any viability in terms of dealing with the Federal Court.

The biggest problem right now is that we are under a Federal court order and that we took the money. So that once we took the $50 million in lever voting machine replacement funds, in effect, we entered into a contract with the Federal government

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to replace those lever voting machines.

And, unfortunately, I don't see any way out of that short of an act of Congress.

SENATOR ADDABBO: Considering then that we have to go forward, let's talk about the next generation of machines, whichever one is selected on the 15th.

Are you --

MR. DOUGLAS KELLNER: And, Senator, just -- December 15th is the date when the State Board will certify one, two or neither of the machines. I think it's very likely that we will be certifying the machines, although it's possible there may be conditional certifications, that there may be some punchlist items that still have to be corrected by the vendors in order to make sure that the machines completely comply with all of the requirements of the State law and regulations.

Following December 15th, I understand that New York City's plan is to make a selection within a very short time after that, by early January.

So I think that that's the target

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date that New York City has for selecting their

machines.

SENATOR ADDABBO: With an eye on

both the December 15th certification and later New

York City, are you confident that these machines,

either of which are being considered, are not only

credible but that we can assure the voters that their

vote counts, that there's some type of tracking system

where, if there is an issue, we can do a paper trail,

you know?

Again, the question we raised to the

credibility of these machines being selected.

MR. DOUGLAS KELLNER: Right, right.

I personally, and I know I speak for

all my colleagues at the State Board of Elections, are

very comfortable that that is the case.

And the pilot projects in the

primary and the General Election have only confirmed

that, that when you have a paper ballot, the

bottomline is that the ballot counts. And it's not the

machine that counts it -- I mean the machine is one

way to count it, but you always have the paper ballot

itself as a backup.

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And, of course, when you have the paper ballot system, then you have to have very robust chain of custody standards to make sure that the ballots that you are actually counting in the audit process are the same as the ballots that the voters actually cast.

And we have put those procedures in place, and as far as we can tell, the counties have been following them.

SENATOR ADDABBO: So based on the pilot program that took place both in September and November of the types of machines that were used, can we go over the audit process. Were there any errors that were consistent in either of the types of the machines, what kinds of errors were determined at that point?

MR. DOUGLAS KELLNER: Well, as I've said, that there -- in the primary election there was not a single ballot that was miscounted by a machine that was located in the audit process.

There were several ballots mismarked by voters where results were changed as a result of the audit.

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                    For example, if the voter just
circles the candidate's name and doesn't put any mark
at all in the voting box, that is not a machine error,
but the voter's intent is clear. And under New York
regulations that vote would still be counted.

                    But the machines acted flawlessly.

                    I did mention this one issue that
came up in Erie County which was an issue not with the
machine but with the programming of the machine, which
was quickly resolved as a result of looking at the
results, and then running those very same paper
ballots through another machine and then hand counting
them, which confirmed an accurate result.

                    So the key issue is to have the
paper available.

                    There have also been a number of
close elections throughout the State where there have
been hand counts of the ballots. And, again, I think
the community of election lawyers and party officials
who get involved in these close races are very
comfortable with that ability to hand count the
ballots and not to get into the kinds of problems that
you have when you don't have an audit trail from the

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lever machines.

SENATOR ADDABBO: Of the total
machines used in the pilot program, what percentage
were audited or checked for credibility?

MR. DOUGLAS KELLNER: Well, it's --
our requirement is three percent of the machines is
the minimum, and the experience is that the real
number is many more than three percent.

And we will give you those precise
statistics in our report on November 30th.

SENATOR ADDABBO: Three percent.

MR. DOUGLAS KELLNER: That's the
minimum in the statute and in our regulations. But
that's a floor, not a ceiling. And in close races the
local boards have conducted full hundred percent hand
counts. And the boards are entitled to audit more
machines.

And sometimes if they -- in order to
make sure that they're auditing at least one machine
for each race, they will exceed that three percent
number in order to make that there is an audit for
every race.

SENATOR ADDABBO: These optical

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scan machines, they're independent of each other;
they're not all connected to a major server somewhere
or hooked up to one major provider. They're all
separate, individual.

So, for instance, if one machine is
tampered with or one machine breaks down, it does not
affect any of the other machines in that particular
race; is that correct?

MR. DOUGLAS KELLNER: That's
correct, Senator.

SENATOR ADDABBO: Question from
Senator Perkins.

SENATOR PERKINS: I have a -- the
voter, what is the voter's experience, how does the
voter feel about this new technology? Are they
embracing it? Are they reluctant? Are they, you know,
avoiding it? What are you seeing?

MR. DOUGLAS KELLNER: Well, I spent
election day in Erie County. I went to twenty-two poll
sites in Erie County. On primary day I went to about a
dozen poll sites in four counties from Schnectady to
Onondaga.

And you can't stereotype it and say

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that every voter has the same response to it.

My experience was that in general it was a positive response. But I'd be lying if I said that that was a universal response, that there is some nostalgia for the lever machines.

And as I mentioned, there were a significant number of complaints about voter privacy. And that certainly is an issue that needs to be addressed.

SENATOR PERKINS: Spell out the voter privacy concern.

MR. DOUGLAS KELLNER: Well, it really comes down to two issues.

One is the layout of the poll site so that the privacy booth is placed in a location where you don't have traffic behind the voter so that you have people who can look over the shoulder of the voter as they're marking their ballot.

And to me that's just educating the poll workers on how to lay it out so that you don't put privacy booths in locations where people are walking behind the voter.

The second thing is the use of the

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privacy sleeves so that nobody can see the ballot
while the voter is transporting it from the privacy
booth to the machine, and that the voter can put it in
the machine from the privacy sleeve without anyone,
including election workers, seeing the ballot.

SENATOR PERKINS: So, essentially,
it's about privacy; the main -- in those two examples
the essence is privacy and being able to --

MR. DOUGLAS KELLNER: By far that's
the greatest complaint that we heard.

SENATOR PERKINS: Any other
complaints worthy of note?

MR. DOUGLAS KELLNER: Yes. I think
there's -- one other issue is that we have heard
people complaining about the size of the ballot and
the size of the print on the ballot and the
readability of the ballot.

So that's -- that would be in second
place of the complaints that we've received.

And there is one proposal that the
State Board will probably be making to the Legislature
which is to remove the requirement of the party emblem
from the voting box because if you have difficult

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eyesight, the party emblem is about the same size as the circle for the voting box. And persons with less than perfect eyesight can be confused by that.

SENATOR PERKINS: The party emblem, how are the party leaders feeling about that?

(Laughter.)

SENATOR PERKINS: Okay. So --

MR. DOUGLAS KELLNER: It would still have the name of the party in typed letters on it. But, you know, the Democrats use a star, the Republicans use an eagle. Those little slugs would no longer appear.

SENATOR PERKINS: It probably has to be bigger so folks will be able to find it so I'm not mistaken.

Are there noteworthy complaints -- I'm looking for complaints. I'm looking for -- what is -- is the voter comfortable? Did the people go in -- sometimes even with the machines, people come out and say, I couldn't find this, I didn't like this, or whatever; not most, but, you know --

MR. DOUGLAS KELLNER: I know you're looking -- I think I've covered the two main

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complaints that I've heard about and read about from news reports as well.

There are a number of positive factors.

We had a number of people saying, ah, this is -- one very tall person, a guy who was six feet eight, came up to me in the Town of Williamsville, or the Village of Williamsville, and he said to me, you know, this is the first time I didn't have to bend down in order to vote, that I could just sit at the table and fill out the ballot. And he thought that was great.

And I also heard from two -- in two different places from voters who were short, who were saying, you know, this is great, because I didn't have to ask for a stool to get up and look at the ballot on the voting machine.

You know, so those are two positive comments.

It's different and people need to adjust to the difference.

And, of course, another complaint, which I don't really take to heart, is people saying

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this is regressive, that we're going back to paper,

and that we're creating all of this paper.

                    And I've heard several people say

that. But to me I don't take that as a serious

compliant because they're not really looking at the

whole voting system, and they're just simply

expressing a nostalgia.

                    SENATOR PERKINS: Well, as a member

of the Environmental Conservation Committee, I would

suggest that I wouldn't consider it just as nostalgia,

paper.

                    But the administrators of the

system, what is their response?

                    MR. DOUGLAS KELLNER: Well, they

had to work hard and did work hard to effectuate these

pilot programs.

                    And our overall evaluation is that

they were very successful in what they did. And we

certainly compliment the county boards on their

efforts.

                    SENATOR PERKINS: Are they happy

with the new system or are they being dragged to it?

Have they finally accepted it? What has been --

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MR. DOUGLAS KELLNER: Well, again, I wouldn't stereotype this. We have a hundred and twenty-four election commissioners in this State and I think each one of them has their own views on this.

SENATOR PERKINS: So it's not unanimous?

MR. DOUGLAS KELLNER: It's certainly not unanimous.

As Commissioner Virginia Martin from Columbia County would give you a long speech on how -- you know, on the negatives of this system.

And there are many commissioners who see it as a positive improvement.

SENATOR PERKINS: New York, obviously, and I guess in other places as well, the multi- -- you know, the various languages.

How does the system accommodate that?

MR. DOUGLAS KELLNER: Well, just as we now do with the paper ballots for absentee and provisional voting, the City would have to design a ballot that complies with the Federal requirements. So it can be done.

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                    SENATOR PERKINS: It can be done.

So there are no -- I don't know. I just make sure that

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                    MR. DOUGLAS KELLNER: Well, it's

certainly a crowded ballot when you have four

languages on the ballot.

                    And sometimes you may have to go to

an extension ballot where there are actually -- where

you'll get two ballots that are joined together with a

perforation and have to be then separated when they're

fed into the machine.

                    SENATOR PERKINS: Was that part of

the counties that --

                    MR. DOUGLAS KELLNER: No. Nobody

has had to do that yet.

                    SENATOR PERKINS: No. I'm saying,

have they only been English.

                    Where you tried it, has it only been

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                    MR. DOUGLAS KELLNER: English and

Spanish.

                    Erie County used Spanish in some of

their poll sites. And I believe there are others in

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the State that use Spanish.

But New York City is the only
jurisdiction that uses Chinese and Korean and New York
City did not participate in the pilot.

SENATOR PERKINS: But you're
confident that we will be able to manage that multi-
language need that --

MR. DOUGLAS KELLNER: Certainly in
our certification testing, that has been part of the
testing process. And we will be getting the test
results on that.

And I haven't heard of any
significant issues with respect to that.

SENATOR PERKINS: Let me just be
clear a little bit more with this.

So when you have to put all of those
different languages, obviously that doesn't affect the
size of the type or anything like that, does it?

MR. DOUGLAS KELLNER: No. There's a
minimum type size which is used.

I would hope that some of the
counties would stop using the minimum when they have
blank space on the ballots. They could make the type

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larger by using the blank real estate on the ballot.

SENATOR PERKINS: We could make the standard size larger too?

MR. DOUGLAS KELLNER: Yes. And you can do that by legislation.

Another issue that I've been promoting for many years is that, instead of the standard eight-and-a-half length on the ballot scanners, that we use larger scanners.

Now, Sequoia/Dominion did offer a seventeen-inch scanner with an extra cost of about $2500 per machine, and no jurisdiction wanted to spend the money for that.

But that would have allowed the ballot size to be twice as big if a jurisdiction would purchase the wider scanner.

SENATOR PERKINS: Now, finally, on the paper -- what happens with the paper after the election and certification?

MR. DOUGLAS KELLNER: All right.

And this is a very important issue because this is the key, if you're using ballot scanning as opposed to direct recording, electronic

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voting, then the chain of custody of the paper is
critically important because if you lose control over
the chain of custody, you've now compromised the
security of the election.

   The procedures established by the
State Board of Elections require, as I say, a very
robust chain of custody requirements.

   To summarize it briefly, is when the
polls close, the box containing the ballots has to be
sealed with a seal recorded by the election
inspectors.

   The inspectors turn that over either
to police officials, which is the procedure that's
always been followed in New York City, for example,
for provisional ballots and emergency ballots, they
have to turn it over either to police officials or to
a bi-partisan team from the county board of elections
for delivery of those ballots to the county board of
elections.

   We require that they be delivered to
the county board of elections within twenty-four
hours.

   And at the county board of elections

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they have to be -- whenever the ballots --

SENATOR PERKINS: Is that what we
do now? Is there twenty-four hours now?

MR. DOUGLAS KELLNER: That's been
the City's practice, yes, Senator.

But it is not the practice
throughout the State. The procedures have been
informal in many of the jurisdictions throughout the
State.

So this has been a change for them
and obviously a number of gripes coming from people
who are being told for the first time you have to have
a bi-partisan team, you can't just send one person to
do it.

And the other thing is that we do
require now that every county store the ballots. When
they are being stored, under bi-partisan lock and key;
in other words, that there has to be dual locks with
each lock controlled by a different party
representative on the board of elections.

And we have been requiring that they
keep detailed logs whenever the ballots are actually
in use so that there are board officials who are

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clearly responsible on the paperwork for the custody
of the ballots when they are unsealed or removed from
their locked storage area.

These are new requirements -- these
are procedures that many of the boards have been
following for their paper ballots for many years. But
there's also a number of counties throughout the State
that have had much more informal procedures. And, you
know, the State Board has been very insistent that
with this new voting system that they must follow
these new procedures.

SENATOR PERKINS: But isn't this a
substantially more amount of paper than what they
normally would be handling?

MR. DOUGLAS KELLNER: Oh, by a
factor of fifteen or twenty times as much paper.

SENATOR PERKINS: So that creates a
challenge in terms of delivery, in terms of storage
and control, would you say? Are we ready in New York
City from that point of view do you know?

I mean, you know, New York City is
the mothership of this stuff. So I just want to --

MR. DOUGLAS KELLNER: I won't speak

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-- I'm not familiar with the City's preparations on that.

But I know that they are aware of that issue.

SENATOR PERKINS: Okay.

Then the other thing is the counting of this paper. How does that happen?

MR. DOUGLAS KELLNER: Well, you have -- the statute requires an audit of three percent of the machines, of the paper counted by three percent of the machines.

So the first step is a random drawing, which takes place after the election, on a date that is publicly announced and the drawing is done in public.

SENATOR PERKINS: It's not that night?

MR. DOUGLAS KELLNER: No.

SENATOR PERKINS: Okay.

MR. DOUGLAS KELLNER: It's --

SENATOR PERKINS: Now let me ask question from that point. I'll apologize for interrupting.

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So there are no preliminary reports,
like election night you --

MR. DOUGLAS KELLNER: No. The
machine -- when the polls close, the machine prints
out --

SENATOR PERKINS: Okay. So that's -
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MR. DOUGLAS KELLNER: -- the --
prints out the returns with as many copies as the
inspectors want to print out.

So that every watcher at the poll
site actually gets a copy of the printed return.

SENATOR PERKINS: Okay. So that's -
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MR. DOUGLAS KELLNER: And it's
broken down by election district because these
scanning machines will have multiple -- can be used
for multiple election districts.

SENATOR PERKINS: And then the
paper -- go back to the paper now.

MR. DOUGLAS KELLNER: Well, the
paper is in a sealed ballot box.

That sealed ballot box is removed by

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the inspectors, resealed and accounted for, and then
that box is then given to whoever -whether it's the
police or the bi-partisan team -that has to transport
the box to the county board of elections.

So that's the -- so the election
night count comes from this paper return.

Now, this year very few -- also
there's a cartridge in the machine that holds the
returns, and that cartridge can also be brought to the
county board of elections, put into the county board
of elections' election management system. And those
automatically transfer the numbers electronically from
the cartridge to the county's election management
system for the election night returns, the unofficial
election night returns.

Relatively few counties used that
system in the pilot project, but some did. And there
were no glitches with it other than what I mentioned
to you from Buffalo -- not from Buffalo, from
Cheektowaga in Erie County.

SENATOR PERKINS: Thank you.

SENATOR ADDABBO: You finished?

SENATOR PERKINS: Yes. I'm good.

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                    SENATOR ADDABBO: You know, I just
wanted to make sure, Chairman Kellner, about - you
mentioned the cartridges. Is that the same as the data
card that stores all the registered voters' votes in
that particular machine?

                    MR. DOUGLAS KELLNER: That's
correct.

                    SENATOR ADDABBO: So similar to the
paper trail that Senator Perkins was concerned about,
is that same security used for the data card or
cartridge?

                    MR. DOUGLAS KELLNER: Yes.

                    The answer is yes. That's the short
answer on it.

                    And I point out that essentially you
have three redundant sources of the returns.

                    You have the ballots themselves,
which is the definitive basis for the result in the
election.

                    You have the machine cartridge, the
portable machine cartridge, which includes both the
totals as well as each ballot image. So each ballot as
it's scanned into the machine is randomly entered into

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the cartridge, and the ballot is watermarked with a
notation to show how the machine actually interpreted
that ballot and counted it.

So you can go back to those ballot
images and also check to see how the machine counted
it by looking at the ballot images.

And then there is an exact duplicate
of that file kept in the machine itself, resident in
the machine, that is retained until the machine is set
up for the next election.

So you have three separate sources
to confirm the results of the election.

SENATOR ADDABBO: Just in a
nutshell, and as we wrap up this panel, would you say
that with the next generation of machines, whichever
one is certified and selected, that between the
increase in the amount of paperwork, the increase in
the amount of custody and security for the data card,
the increased amount of training that's going to have
to be undertaken by many of the poll workers who are
going to work on election day, given all that, there's
many more moving parts to an extent with this process
of the next generation of machines than we currently

have with the level machines; correct?

                    MR. DOUGLAS KELLNER: That is
absolutely the case, Senator.

                    And that the actual annual operating
costs of the county board of elections will be
increased as a result.

                    SENATOR ADDABBO: Interesting.

                    I want to thank Chairman Kellner for
being here.

                    And thank you very much --

                    SENATOR PERKINS: Let me just ask -
- that last one, because that in this climate of
fiscal challenge, it includes costs, it's not to be
ignored.

                    What is your sense of the increased
cost?

                    MR. DOUGLAS KELLNER: It really is
a matter of scale.

                    The increased costs to the small
counties can be very significant, maybe as much as
doubling it.

                    And the increased costs to the
larger jurisdictions will not be insignificant.

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                    I haven't done an actual calculation
of it, but I would suggest that at a minimum for New
York City, for example, it's probably going to be
fifteen or twenty percent.

                    SENATOR PERKINS: That's based on
not personnel per se, but based --

                    MR. DOUGLAS KELLNER: Well, some of
it is personnel, although in the big boards I don't
think personnel is really an issue. In the smaller
boards it is.

                    But in the big boards you have that
long list that Senator Addabbo had. And I would add to
Senator Addabbo's list, which is completely accurate,
the cost of storing electronic machines is greater
than the cost of storing lever machines, because you
have keep them in a controlled environment, and I
believe that the long-term costs of maintaining the
machines will also be greater.

                    Anybody who is familiar with their
office copy machine knows that it's not a simple
process to keep an electronic machine operating at
peak functionality.

                    SENATOR PERKINS: Last but not

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least, just so -- is the administration -- I'm
focusing on the City.

Are they aware of the possibility of
a budget initiative that has to be considered?

I don't want us to be caught in a
situation --

MR. DOUGLAS KELLNER: The City
Board has been speaking about the underfunding of City
Board of Elections' operations for as long as I have
been involved in election administration, and often
those calls go unheeded by the people who have to make
the budget decisions.

SENATOR PERKINS: We have a job
before, Mr. Chairman.

SENATOR ADDABBO: Certainly.

It's been spoken about in this
Committee that we asked the New York State Comptroller
to do an audit on the basic cost to the local board of
elections and the overall cost with this changeover to
the next generation of voting machines.

So that's something that we look
forward to working with the New York State Comptroller
on.

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MR. DOUGLAS KELLNER: I welcome that. I think it will be very helpful.

SENATOR ADDABBO: Again, Chairman Kellner, thank you very much for your time and testimony today.

MR. DOUGLAS KELLNER: Thank you, Senators.

SENATOR ADDABBO: Thank you for kicking off the hearing.

Our next panel, a panel of two, is:

Robert Donovan, who is Co-Chair of the New York Democratic Lawyers Council; and

Doug Keith, Executive Director of New York Democratic Lawyers Council.

Gentlemen, thank you very much for being here and for your time tonight.

Would you state your name for the record, please, and then give your testimony.

MR. ROBERT DONOVAN: My name is Robert Donovan and I'm a Co-Chair of the New York Democratic Lawyers Council.

Senator Addabbo, thank you for having us here tonight.

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I do have prepared remarks.

If it's okay with the panel, maybe what I'll do is I'll dispense with reading them verbatim and I'll walk you through some of the key points to our presentation.

So for the audience and for Senator Perkins and for the record, the New York Democratic Lawyers Council is the voting rights project of the State Democratic Committee and the DNC.

We're basically all the people who went to Florida and Ohio and Pennsylvania in 2004, came back to New York State afterwards and realized that we needed to institutionalize the fight to protect voting rights through the cycle.

Part of what we do is deploy monitors and poll watchers on election day on behalf of candidates.

The other part of what we do is come to hearings like this and present testimony based on what we've observed on election day as well as based on research and advocacy that we conduct the three hundred and sixty-four days when we don't cast ballots.

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                        What I'd like to do is ask the
Senators to turn to page two of my prepared testimony.
And I'm going to walk you through kind of highlights
of our observations from our people in the field this
past election day as well as compare those to
observations from similar sets of people in the field
the year prior.

                        So the chart at the top breaks out
the types of problems, the types of incidents, that
were reported as solved or unsolved by our people in
the field this last time around by broad category and
by region.

                        So moving from left to right across
the top, we have alphabetically broad categories of
problems that can arise on election day:

                        Problems with affidavit ballots;

                        Problems with voters being
challenged at the polls;

                        Problems involving electioneering -
that can be both interference with lawful
electioneering as well as unlawful electioneering;

                        Problems relating to voter
intimidation;

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                    Problems relating to language;

                    Problems relating to long lines;

                    Machines;

                    Materials;

                    Et cetera, et cetera, et cetera.

                    And then all the way to the -- then
top to bottom we look at the regional distribution of
those incidents.

                    So at the far right hand side at the
table you'll see that thirty-eight percent of
incidents reported overall a week ago Tuesday were
reported in New York City, sixteen percent in Long
Island, twenty-four percent in the Lower Hudson
Valley, and twenty-two percent in Western and Central
New York.

                    Clear?

                    SENATOR ADDABBO: Yes.

                    MR. ROBERT DONOVAN: And the chart
below mirrors that same kind of fact pattern for the
year prior.

                    So when I look at this, the first
thing that jumps out at me is kind of the constancy of
machines being an issue.

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And Commissioner Kellner spoke to
that at some length. But it's worth stating that, you
know, for the record every year the single largest
category of problems on election day is machines. And
that's true in New York State, it's true in New York
City, it's true when you look kind of across the
country at patterns of problems. The singlest biggest
thing that happens on election day as problematic is
the machines break down.

And my colleague, Doug Keith, is
going to speak to our own organization's observations
of what happened in the counties that participated in
the pilot program a week ago Tuesday. So I'm going to
kind of leave it there.

Related to -- one of the things that
can happen with machines breaking down is polls don't
open on time. And kind of related to that was
something that you mentioned earlier, the fear that we
might encounter a shortage of poll workers on election
day because of reports that had circulated about the
inability of the City Board of Elections to meet its
obligations to pay people to work because of the
conduct of the runoffs.

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                    So the fear had been that, because
of the runoff, the cost of the runoff, the City Board
of Elections would not have had the money to pay poll
workers on election day. The fear was that en masse
poll workers would not show up and that people would
not be able to vote and democracy would be cast into
crisis.

                    And as we are all aware, that did
not happen.

                    Some of our observations did point
to the fact that we encountered higher levels of
absenteeism, but generally where we encountered higher
levels of absenteeism in the City, poll workers were
able to be reallocated among EDs so that, you know, by
and large, everything opened on time. This wasn't an
issue.

                    You may recall that last election
registration and problems with registration was a very
large problem. That failed to materialize this time
around. We believe that that's largely due to the
differences in the political climate. Last year was an
historic election. It was a presidential year. It was
well-documented the extent to which the various boards

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of elections received tremendous amounts of last-minute registrations.

That did not happen this year because of the difference in the political climate between a presidential election year and a local election year.

That, in turn, led to, you know, a more stable registrant base, a more stable voter base of participants, and that led to a lower rate of problems among people having to cast affidavit ballots.

One of the things that I did want to bring to the panel's attention, the Senator's attention, was the contrast when you look at the number of incidents involving electioneering and intimidation of voters.

The contrast of this campaign, this year, to last year's is really striking. Last year I think we had a total of nine percent of total reported incidents involving electioneering and intimidation. This year it was closer to forty percent.

Places where this was especially remarked were Staten Island, Richmond County, where

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the bulk of the problems reported were relating to electioneering and campaign workers seeking to advocate on behalf of their candidates being told to move, in some cases well beyond what they felt was the hundred foot boundary, you know, beyond which no electioneering can take place. In many cases these were poorly marked or not marked at all.

And the experience of volunteers was somewhat arbitrary, that just depending on who wanted to come around and who wanted to enforce the rule, the rule being interpreted differently.

So lack of consistency in determining the hundred foot line.

Another instance that we saw repeatedly in Nassau County was campaign workers for one of the candidates repeatedly harassing and threatening campaign workers for one of the others.

The most blatant instance of an attempt, or an issue which prohibited voters from exercising their right to vote was something that happened in the Town of Hempstead.

And here I'll just read because the details are, you know, are worth reading.

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                    The most egregious act involved the
physical blocking of access to a poll site. In the
Town of Hempstead in Nassau County, streets
surrounding a poll site were closed for tarring, and
this roadwork prevented voters from leaving their
homes as well as from accessing their voting location.

                    This particular voting place serves
a heavily minority community where enrollment heavily
favored the party of the challenger in a local
election by a margin of 726 to 190.

                    It's important to note that this
roadwork was specifically scheduled for Election Day
by the Town of Hempstead, which is controlled by the
party of the incumbent.

                    The Senators may also be aware of
events in Dutchess County, and the supposedly
emergency lawsuit filed by the Town of Poughkeepsie
Republican Committee last Tuesday morning seeking to
require voters in Dutchess County to vote by affidavit
ballot upon having their residency challenged. This
attempt cited a Vassar College press release advising
students of their right to vote.

                    Any requirement to vote by affidavit

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ballot would be a variance from the legal, statutory rule, but voters who are challenged must be allowed to vote on the machines if they take an oath to verify their residence.

Despite this rule, a judge in Dutchess County granted the order. Immediately thereafter, we received reports of Republican poll workers systematically challenging students on the basis of their residency.

It was not until eight p.m. on election night that attorneys acting on behalf of an affected voter were able to get this ruling heard and reversed by an appellate judge.

This lawsuit represented an attempt by one political party to deny the right to vote to students based on their status as students in direct contravention of applicable statute.

Though completely without merit, the lawsuit was successful. It is unknown how many students left the polling place rather than completing an affidavit ballot or how many did not show up to vote at all because they had heard about the extra hassle of showing up to vote.

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                    This, taken together with attempts
to challenge students' right to vote documented in the
same county during the special election for the 20th
Congressional District this past month, represents a
pattern of attempts to prevent a class of individuals
from exercising their right to vote.

                    We condemn these actions and will be
working with those affected to seek a redress as
appropriate.

                    Threats and the wielding of public
authority to influence the outcome of the electoral
process by suppressing the vote can have no place in
our democracy.

                    Senator Addabbo, Senator Perkins,
thank you for your time and interest and I'd be happy
to address any questions you have.

                    SENATOR ADDABBO: Thank you, Mr.
Donovan.

                    Mr. Keith.

                    MR. DOUGLAS KEITH: Thank you very
much, Senator Addabbo and Senator Perkins, for having
me here and allowing me to speak.

                    As my colleague said, I'm going to

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be speaking to our -- the results of our observation mission in the counties participating in the pilot program.

I'm also happy to hear that most of the concerns and recommendations I have are going to be echoing those of Commissioner Kellner.

On the day of the primary election, we had a focused election observation mission in just one county that was participating, and that was Putnam County. And on November 3rd, the day of the general election, we had a observation mission looking at opening voting and closing processes in ten of the most populated counties participating in the pilot program.

It's also worth noting that all of the counties we observed in were using the Sequoia and -- the Sequoia Dominion ImageCast machines.

Overall, we would agree that the pilot program was a success. There certainly were problems and problems were reported in most polling places, both major and minor.

But none of the problems were large enough to disrupt the election, and the anticipated

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low turnout of this election gives the State enough
time to remedy the situation and better prepare
themselves for the use of the machines.

We would also agree that the
concerns most heard were those of privacy and these
occurred in most steps in the voting process. The
privacy booths were seen as insufficient. Voters
complained that when they were in the booths marking
their ballot, people walking behind them, other poll
workers, other voters could see the markings that they
were making.

We even had observers that witnessed
friends and spouses looking around the borders of the
privacy booths to see how the people they had come
with were voting which is obviously something that
they may have been all right with, but something that
has no place in the polling place.

The privacy sleeve, which was a tool
designed, as Commissioner Kellner explained, to give
the voter more privacy while walking throughout the
polling place, was not used by many voters. In many
places it was because they weren't offered it, in many
places it was because they declined.

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                    The ballot also needs to be, in
order to be entered into machine, practically needs to
be removed from the privacy sleeve. Many voters were
instructed to turn the ballot over when submitting it
to the machine so that their votes could be seen.

                    And voters complained for two
reasons about this:

                    One, either the markers they were
using bled through to the other side of the ballot so
that votes could be seen on either side;

                    Or if these were voters in
jurisdictions that had multiple races, voting occurred
on both sides of the ballot and it didn't matter which
side they flipped over.

                    SENATOR PERKINS: Where do markers
come from? These are the markers that come with the
ballot -- with the equipment or is this some --

                    MR. DOUGLAS KEITH: I actually
can't speak to where the markers came from because I
know our observers witnessed poll workers in several
places switching from fat-tipped to thin-tipped
markers to make voters happier.

                    SENATOR PERKINS: So these are just

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regular markers. These were not specifically designed
for the particular ballot.

MR. DOUGLAS KEITH: And the optical
scan machines are designed to return ballots to voters
for any number of errors to make sure that the
markings on the ballot are intentional. But when this
occurs, it does risk the loss of privacy and does tend
to slow down the vote a little bit though this is an
absolutely necessary procedure.

One of the most common reasons for
the ballots being returned was voters that had,
instead of filling in the square indicating their
candidate, they had checked the box or put an "X" in
the box.

When the ballot was returned, voters
were told that there was an error on the ballot, poll
workers were instructed to identify for them what the
errors might be without looking at the ballot, and
voters would then attempt to remedy it and resubmit
the ballot.

Often if their ballot was returned
more than once, they would ask the poll workers for
more help. The poll workers would handle the ballot

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and actually examine it for extraneous marks or for
any errors in order to help them complete their vote,
which is -- obviously the voter asked for the
assistance, but something again that have no place in
the polling place.

Six percent of polling places we
observed also experienced paper jams at some time
throughout the day in the machines. The machine -- the
ballots are, before they are handed to the voters, are
ripped from a perforated book. Sometimes there are
tears when this occurs and the ballots did get jammed
in the machines, but only in six percent of polling
places.

The problems occurred when voters
became frustrated with this and poll workers
instructed the voters to either wait while they got
the machine fixed instead of switching people to
voting on emergency ballots, or when poll workers
would open up the machine and break the seals without
consulting the board of elections first.

During the primary fifty percent of
polling places we observed opened late, and we can
attribute this to poll workers being accustomed to

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showing up at 5:30 and then finding out at 5:45 that the machine they were going to be using this year took thirty to forty minutes to warm up.

This is obviously a very serious issue. But in the general election this number was down to ten percent which is great and I think just evidence that the Board of Elections worked with their poll workers, and the more training we have and the more time we have with these machines people will grow more comfortable with them.

Sorry. One second.

One other procedure that caused some confusion in the primary was the emergency ballot procedure. Obviously, we're used to using separate paper ballots. When we had the lever machines, we had paper ballots that are specifically designed for emergency and affidavit ballot use.

While using the new machines, we are using paper ballots with those machines so those same paper ballots are used as emergency ballots.

Poll workers in many places in the primary were not aware of this, and after turning several voters away, they then realized that those

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paper ballots doubled as the emergency ballots.

Again, this is not a problem that we saw actually at all on the day of the general election. So this is another issue which we imagine more training between the primary and the general election allowed poll workers to become more comfortable with the system.

With the aforementioned issues in mind, the NYDLC submits the following recommendations, which are also similar to those submitted by Commissioner Kellner.

The training for the poll workers is something that must be a big focus and needs to continue until the comfort level of those poll workers increases.

Instructions on properly tearing ballots, training on the common reasons for ballots being returned to voters, and having coordinators walk through the new setup and closing procedures will help to speed up the process and ensure that the polling places are open on time and that results are reported accurately.

As part of the closing procedure,

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the tape that prints out with the voting machine and gives the results at the end of the day is something that some poll workers expressed they were unfamiliar with.

And I don't know if you're aware of what's going on today in New York's 23rd Congressional District, but there have been some errors in the reporting numbers that came at the end of the day as to what -- and to what the actual vote is in that district.

And particularly we heard complaints from poll workers in Oswego County, which is one of the counties that had those errors. So I imagine it is at least in small part to the fact that poll workers were not sure what numbers they were supposed to report back to the county.

The next step would also be to clarify the instructions and the ballot for the voter themselves.

We heard similar complaints of small font and small spaces in which to indicate your votes, particularly write-in votes, although I imagine write-in voting in the paper ballots is much easier than it

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currently is in the lever machines.

Voters on multiple occasions were confused specifically by the Independent Party's logo on the ballot, which appears as a box that some voters believed they were supposed to cast their vote in.

By making the instructions and the ballot more clear and legible to the voters I think we can have a lot more success, and there would be a lot less mistakes at the optical scan machine and less need for involvement of the poll workers in the process.

With regards to the ballot, we would also argue that the boxes where voters currently are told to fill in to vote should be changed to ovals across the State. This might seem like a small issue, but voters were very intent, no matter the instructions, x'ing or checking the boxes. And we feel as though they have more experience with ovals, they'll be more comfortable with it, and again we'll have less ballots being returned at the optical scan machines.

We would also advise stricter protocol in the setup of the polling place to

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alleviate some of these privacy issues. Reasonable

distances between and orientation of the privacy

booths is important, and a general map of the polling

place should be provided to the poll workers so that

flow of traffic is acceptable to voters, people aren't

crowded behind the privacy booths, and there is a

separate and distinct path from the privacy booths to

the optical scan machines.

Finally, a major concern going

forward will be the chain of custody that you spoke

about. We did not actually have the opportunity to

observe this process on a large scale mainly because

our focus was in the 23rd Congressional District where

there was a district-wide impound order.

Under normal circumstances, as the

Commissioner said, the counties are used to more

informal practices and with some poll workers being

allowed to take the ballots home at night even if they

are sealed.

It's our strong recommendation that

the protocol for the handling of the paper be uniform

and formalized.

These paper ballots really do have a

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great benefit that the lever machines didn't, but this will only be realized if they are secure and accounted for from the moment voting ceases until certification.

While some of these issues may seem minute, thirty-five percent of incidents reported -- and furthermore thirty-five percent of incidents reported across the State involved voting machines, and in just pilot program counties it was an identical thirty-four percent.

But still the voting on these machines on average this year took twice as long for a voter as it did on the lever machines. And that is mostly a comfort issue. But in a high turnout election, like 2008, that's going to exacerbate lines and create more confusion than we could have afforded last year.

But we are happy that this pilot program was done this year because it does give us ample time to fix these problems.

In the end we do think these machines are going to prove a significant and welcomed contribution to the voting process in New York State.

And, again, I want to thank the

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Senators for your time.

SENATOR ADDABBO: Thank you, Mr.
Keith.

I have a question.

It's first for Mr. Donovan.

You had mentioned that the machines
were the largest complaint, both primary and general.

Can we, just to be more specific,
were these the lever machines or the pilot program
machines?

MR. ROBERT DONOVAN: Both.

In comparing this past election to
prior elections as well as to public data sources,
it's a constant that roughly a third to forty percent
of reported issues concern machine breakdowns.

And as Mr. Keith just mentioned,
looking within, you know, our sample size this last
time around, the number -- the percentage of problems
reported on places with lever machines and places
using the new voting technology was fairly identical.

SENATOR ADDABBO: Mr. Donovan, you
also mentioned in your study the rise of voter
intimidation and that has increased.

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                    For the public we should know that
Senator Andrea Stewart-Cousins has a bill, Senate Bill
2554, which is in the Elections Committee, that would
make it a crime to do voter intimidation and voter
suppression or to disseminate misinformation amongst
the voters.

                    So that is a bill currently in this
Committee.

                    You raise a good point about, you
know, large voter turnout. Obviously next year is a
Governor's race and most other races. And with large
voter turnout with these new machines, the next
generation of machines, could have a long line, a wait
list. People get frustrated. If you ever want a voter
not to vote, frustrate them, you know, and they'll be
turned away. We don't want that.

                    Do you see possibly a rise in paper
ballots as somebody would be on line and ultimately
doesn't want to wait, or, you know, finds frustration
at the polling site, you know, possibly they do an
affidavit ballot or something along those lines at the
polling site? Do you see a rise in that kind of
procedure?

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              MR. ROBERT DONOVAN: Let me clarify the question.

              Do I see a rise in people voting by affidavit ballot?

              SENATOR ADDABBO: Either affidavit ballot at the polling site, or, again, mailing their ballots in, certainly not to want to wait on line, not to want to be bothered with the complications possibly of the next generation of machines.

              MR. ROBERT DONOVAN: Well, in any high turn-out election, and this is regardless of voting technology, you know, election day at the poll becomes a bottleneck.

              And many states have chosen to address that through no-fault absentee balloting and through periods of early voting which, you know, we don't have in New York State. We have not a no-fault absentee balloting because in order to cast an absentee ballot, the voter has to represent that he or she will be unable to make it either for reasons of physical illness or incapacity or that they'll have business outside of the county that will prevent them from making it to vote in time.

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        So the short answer is, you know, yes, during high turn-out elections you get longer lines and you run the risk of people being frustrated.

        And, you know, we think, our organization thinks, based on our research and our observations, that a great way to deal with that is no-fault absentee balloting and early voting, as well as election day registration.

        And there are studies that point to election day registration in particular increasing voter turn-out by seven percent, I believe.

        As to what we can expect next year, you know, that's a good question. I personally have to say that from my observation of paper ballot optical scan voting technology in other states, even during high turn-out elections such as during this past year's presidential preference primaries, I had the opportunity to observe voting in New Hampshire and in Rhode Island on behalf of a candidate in my personal capacity.

        And both were higher turn-out than expected. And in neither place did the fact of the technology employed hinder voters.

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You know, actually once voters are familiar with the process, you get bottlenecks at the registration table.

So in high voter turn-out races in New York State not only do we have bottlenecks at the registration table, but then you have people who are waiting for voters at the machine to finish. And paper ballot optical scans really allow for an almost ad hoc increase in the amount -- in the number of places that voters can cast their ballots.

Election administration officials can request additional privacy booths. Additional privacy booths can be set up on an as needed basis. And really once it's properly implemented and understood, the paper ballot optical scan actually speeds up the voting process.

Did I answer your question, Senator?

SENATOR ADDABBO: Yes.

Just so you know, both the early voting and no-fault absentee ballots have been an issue taken up by this Committee and certainly we will continue to do so.

Senator Perkins.

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SENATOR PERKINS: So the experience you are saying has increased the process, has sped up the process, that people were in and out much quicker?

MR. ROBERT DONOVAN: Speaking from my personal experience observing voting with paper ballot optical scans, the bottlenecks tend to form at the registration table.

SENATOR PERKINS: The registration table being -- what is the registration --

MR. ROBERT DONOVAN: Where voters check in.

SENATOR PERKINS: Okay.

MR. ROBERT DONOVAN: Let's think about the --

SENATOR PERKINS: The sign-in sort of when they --

MR. ROBERT DONOVAN: Exactly. Correct.

SENATOR PERKINS: -- check in.

MR. ROBERT DONOVAN: As opposed to at the --

SENATOR PERKINS: Now, is that bottleneck any different than under normal

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circumstances, or under the prior approach to voting?
Does the bottleneck increase or decrease?

     MR. ROBERT DONOVAN: The
bottleneck--

     SENATOR PERKINS: Or does it stay
the same?

     MR. ROBERT DONOVAN: The bottleneck
to cast the ballot in my opinion from my experience
observing elections in which paper ballot optical
scans are used, the time to vote is actually less.

     So the process of taking the ballot
and voting, casting the ballot, is reduced. It's
actually quicker in my opinion with paper ballot
optical scans.

     SENATOR PERKINS: Is there any
measurable evidence to that effect?

     MR. ROBERT DONOVAN: I am -- I can
share with you my personal observations in numerical
form from the primary in Rhode Island. But then,
again, that's not a product of the NYDLC.

     I'm not aware of any formal studies
comparing time to vote in jurisdictions using lever
machines versus jurisdictions using paper ballot

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optical scans.

SENATOR PERKINS: I didn't get the chance to ask the Commissioner that. I wish I did. Because it does make a difference. The lines make a big difference.

Interestingly, the lines that are most problematic are the lines not to sign in, but the lines to actually vote. Those are the lines that people, eh, I ain't got time for this, and that's when they tend to get a little frustrated and walk off.

So I'm just wondering if those lines move faster because of this process.

MR. ROBERT DONOVAN: In my own personal observations -- I'm recalling now particularly Kravat Point Place during the presidential preference primary in Rhode Island.

It was actually a primary all up and down the ballot there I believe. Voters in -- in one particular voting place, it was particularly congested. A line started to form.

And in observing the process, some representatives of one of the local candidates remarked that there was one particular poll worker who

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was having a hard time seeing or reading or checking people in. And once people were checked in properly, they were able to vote and they were able to cast their ballot very quickly.

So when you looked around and asked yourself where is the line forming, it was at this one particular sign-in table, and once the voters got their ballots, they were able to cast them, they were able to vote, to select their choices, and feed them through the machine very quickly.

So there was nobody standing at the machine. The privacy booths were -- I don't want to say that they were empty, but there were numerous empty privacy booths. You know, maybe half of the privacy booths that could have been utilized were being utilized at any one given point in time.

And the part that was really slowing the process down was the process of signing voters in to vote.

So it's a long-winded answer to say I believe that with, you know, a proper emphasis on signing people in quickly, you know, we can alleviate much of the bottlenecks.

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                    In my time observing voting in New
Hampshire and Rhode Island I didn't notice that
privacy booths were an issue, lacking privacy booths
was an issue, or that lines were forming at the
scanner.

                    SENATOR PERKINS: Okay. Good.

                    Again, lines are a problem.

                    MR. ROBERT DONOVAN: Correct.

                    SENATOR PERKINS: I would imagine -
- you know, there's even more of a problem when you
can't sign in.

                    But most -- so I just didn't get a
chance to look into that with the Commissioner from
his study. Maybe he can --

                    So the -- how is the training with
the so-called inspectors, the ones who are signing you
in? Did you notice whether -- how good were they in
signing people in? What was the reason for the
bottleneck in terms -- why didn't the line move?

                    MR. ROBERT DONOVAN: In the
instances where I observed that, I think it relates to
the, you know, perhaps the age and the quality of
eyesight of the poll workers.

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                    The particular instances where I
observed this, I've always noticed that the poll
workers have problems seeing and in some cases are
unable to quickly find a voter's name in the
registration book.

                    And I would submit that that's kind
of a general issue as this country -- you know, thanks
to the greatest generation, the generation of people
returning from World War II took it upon themselves to
volunteer to be poll workers and to, you know, help
make sure that the machinery of our democracy works.

                    As they, you know, get on in years
and decide that they can no longer take the time or no
longer stand the strain of putting in -- it's an
eighteen-hour day?

                    So that's another issue. And I
believe that this Committee is also considering bills
to switch hit or to allow seventeen year olds to be
poll workers.

                    SENATOR ADDABBO: Right.

                    MR. ROBERT DONOVAN: I'll just go
on record as saying we support that.

                    And we also support the bill that

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Senator Stewart-Cousins has before your Committee as well.

SENATOR ADDABBO: I want to thank this panel for their time and testimony for the New York Democratic Lawyers Council. We appreciate their efforts in the voting process.

Thank you very much, gentlemen.

Our next panel, a panel of two:

Todd Urosevich, New York State Regional Account Manager for ES&S; and

John Poulos, President of Dominion Voting Systems.

Gentlemen, thanks for being here today.

MR. TODD UROSEVICH: Thank you.

MR. JOHN POULOS: Thank you, Senator.

SENATOR ADDABBO: Your name for the record, please.

MR. TODD UROSEVICH: Todd Urosevich, Regional Account Manager for the State of New York representing Election Systems & Software.

MR. JOHN POULOS: John Poulos,

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President of Dominion Voting Systems.

SENATOR ADDABBO: Either one.
You start off. Mr. Urosevich, you want to start?

MR. TODD UROSEVICH: Certainly.

Senator Perkins, Senator Addabbo,
thank you for the invitation.

I'll make my comments very brief.

I have no written testimony.

Election Systems & Software, better
known as ES&S, has been extremely pleased to date with
the installation of a part that we refer to as the DS
200, which is our digital-based precinct optical
scanner.

I would like to compliment the State
Board and certainly our clients. It's been stated this
evening how hard they have worked and I would echo
those comments.

Our own experience, the expectations
that we have of our equipment is high and we have met
those expectations, certainly through demonstrating in
the primary in a recount in Erie County. And the
audits that were conducted, the accuracy of our
equipment proved to be typical of what we see.

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And we look forward to continue the installation in the clients that we are serving.

SENATOR ADDABBO: Thank you, sir.

We may have questions for you in a moment.

Mr. Poulos.

MR. JOHN POULOS: I'd like to comment on two things.

One is the pilot project. And I've also been asked to say a few words on IRV as well.

So Dominion Voting Systems had roughly 4100 digital scanning systems in place both in the primary in September and in the General Election across fifty-three counties in New York State.

This past General Election, forty-one of these fifty-three counties participated in the Plan A pilots in some level of counting. Nineteen of those counties were a full county-wide counting.

And just as a clarification on our audits on both primary day and the General Election, it is my understanding that the counties that did go full county-wide counting are doing a hundred percent audit on those ballots.

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On Election Day we were very happy both with the effort that was put forward with the installation across our counties. We had -- roughly about eighty-nine percent of our calls that came in, the trouble tickets as we call them, had to do with general election setup that required no follow-up, things like the power outlet in the room doesn't work, the machines were physically damaged when they were brought to the polling location.

And we've also encountered -- the biggest criticisms that we have come across were having to do with the ballot font size. And a lot of the comments that were echoed with the previous testimony I would echo as well.

We heard the same comments about voter privacy that have more to do with the voting booth and the transport of the ballots from the voting booth to the machine, all the way to the party emblems.

I would also concur with the testimony about the squares and the ovals. We had counties that used both and we did hear the comments about the squares much more frequently than we did

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with the ovals.

On the topic of IRV, I just want to
very briefly talk -- it's obviously a political issue
so I won't comment on the merits on why you would want
to do IRV -- simply just a very brief outline of what
the ImageCast system is currently capable of doing
when it comes to IRV.

Dominion and our employees have
experience in running various forms of IRV elections,
both in various jurisdictions around the world. And we
have the flexibility of a range of parameters,
including the number of rankings, whether to provide
single transferrable vote, running IRV until two
candidates are left, these types of permutations, and
a very useful and flexible way of laying the ballot
out to accommodate these.

So I can -- I've prepared a brief
summary that I've summarized that you can review.

And if you have any questions, I'd
be happy to answer.

SENATOR ADDABBO: All right.

I appreciate both you gentlemen
being here and for your testimony.

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Obviously, in your time in the audience you've heard some of the issues that have come up with the, again, the unit that you are proposing. So if we can go over some of these.

The warm-up issue which seemed to have been on the decrease after the primary pilot program, but nevertheless the warm-up time for either of your units.

Roughly, do we have that time?

MR. TODD UROSEVICH: Go ahead, if you want to go first.

MR. JOHN POULOS: Sure.

The warm-up time in the primary was substantially larger. It was -- I think it's currently around twenty minutes, fifteen-twenty minutes.

The time that it takes to validate the audio files on our accessible voting BMD unit, basically all of the audio files were being checked, the hash codes. So it's a security process that was being proposed, and I believe that is being looked at. And that certainly has the ability of being optimized quite a lot.

MR. TODD UROSEVICH: The start-up

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on our BMD device, which is referred to as the
AuditMark, is approximately about ten minutes, and the
precinct scan device is substantially less.

There are procedures that the poll
workers have to go through, including the printing of
a zero tape, and depending obviously on the complexity
of the election, that would impact that to some
degree.

But if all is well, you know, that
can be accomplished in about five minutes.

SENATOR ADDABBO: Security plays a
large part. Obviously, the testimony you've heard and
many of the voters I've spoken to, their concern about
their vote, you know, the paper trail and what's on
the data card, and obviously post-election when the
polls are closed, the paper trail. And you've heard
some of the testimony.

Is there any unique security
measures that your unit takes that you may want to
mention here today?

MR. TODD UROSEVICH: Well, for the
DS200 and its ballot box we have passed our Federal
certification testing recently. And part of that is

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meeting specifications for being sealed and locked.

I wouldn't disagree with anything I heard this evening in regards to chain of custody, the importance of that.

And most often it's a sharing of best practices from vendor to client.

There are steps that we encourage the counties to take. But as was stated, you do have redundancy, which is important. You have the paper ballots themselves, the memory cards - in our case it's a memory stick - the paper printout itself.

And, you know, bi-partisan transportation is usually the rule of the day.

Post-election is also as critical obviously to retain those records under secure lock and key.

There is no need to comment on motoring. That's not something that takes place in New York State. So, you know, it's pretty much a physical transportation issue.

MR. JOHN POULOS: I would just simply add to that - I agree with all of what Mr. Urosevich has said - and simply add to that that the

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New York State certification process has the most
rigorous security requirements in the United States.

And it's to the 2005 VVS GEAC
standards. And in many cases the security requirements
are above and beyond that 2005 standards which, to my
knowledge, both systems comply to.

SENATOR ADDABBO: Considering that
most -- many of the polling sites throughout the
State, certainly in the City, they take place in older
buildings. Certainly in the City we use public schools
and a lot of these schools are older.

Considering that their electrical
systems are not sometimes up to grade -- when we even
want to put air conditioners in classrooms, which
seems like a nominal thing, you know, the whole
building has to be rewired.

Is there any concern on either of
your point of view here with regards to your unit that
the electrical systems may not be able to maintain the
power needed for your standing machine or voting
machine?

MR. TODD UROSEVICH: Well, you
know, again, going back to best practices prior to any

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county-wide deployment, you know, that's encouraged to
have those outlets tested both -- I guess I should
keep my remarks to our machines, but most all of our
equipment runs off electricity but it has power, or
battery backup capability should that power be
interrupted.

                  SENATOR ADDABBO: How many hours on
your battery backup?

                  MR. TODD UROSEVICH: It's a six to
eight-hour battery backup. Now, that could be
influenced by the number of times the machine is used.

                  But there is on our equipment a
power indicator that indicates that it's receiving
full power. And we have another indicator when power
is being interrupted.

                  So the poll worker is trained
hopefully to make that observance when they plug the
unit in at the beginning of the day.

                  SENATOR ADDABBO: Mr. Poulos.

                  MR. JOHN POULOS: I would, again,
only add to that and point out that this is an actual
rigorous set of the certification standards, power
requirements, and how far off nominal voltage machines

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have to be able to comply to as well as battery-operated time.

And that is something that the certification tests have tested to.

The only thing I would add to that is in our machine, in addition to the LED lights that flash to show battery operation, there is an audible sound as well that notifies the poll staff that they are operating on battery power, and it does give them an indication, a countdown if you will, of how much time they have with the battery.

SENATOR ADDABBO: And your battery life?

MR. JOHN POULOS: Again, it depends on utilization, but I believe the -- I'm fairly certain that the certification process went through four hours of continuous use and eight hours of nominal use.

SENATOR ADDABBO: Questions from Senator Perkins.

SENATOR PERKINS: So what is the largest jurisdiction where you've used your equipment, you know, the population, you know, voters? What's the

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                              MR. JOHN POULOS: It depends on how

you --

                              SENATOR PERKINS: Have you used

your equipment in New York City?

                              MR. JOHN POULOS: Have we? No.

                              In Nassau --

                              SENATOR PERKINS: So New York is

the Big Apple, all right, so-to-speak. This is it.

                              So what is the next largest place

that you -- where is the largest place where you had

the opportunity to employ your equipment? What is the

size? What is the city? What is the --

                              You understand what I'm trying to

say.

                              MR. JOHN POULOS: Yes. Yes.

                              SENATOR PERKINS: Oh! Okay.

                              MR. JOHN POULOS: Yes.

                              Well, for the ImageCast unit, the

collection of the fifty-three counties as a collection

of the same election on the same election day, same

election requirements, that was -- that totals forty-

one hundred units of the ImageCast.

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Our other large installation, our
biggest by far is we're in the middle of deploying
82,500 ImageCasts in the Philippines.

SENATOR PERKINS: Now, that's --
ImageCast are votes?

MR. JOHN POULOS: That's the
digital scan optical tabulator.

SENATOR PERKINS: The largest is
82,000 votes you say?

MR. JOHN POULOS: 82,500 machines.
Machines.

SENATOR PERKINS: How many votes?
How many people have used that machine?

You understand -- wherever you've
employed your machines, people went to vote, where
have you had the largest vote that you can -- you
understand what I'm trying to say? Use in a particular
election that people go vote, one person voted, two
people voted?

MR. JOHN POULOS: Are you talking
per machine or jurisdiction?

SENATOR PERKINS: I'm just trying
to get a sense of what, you know, from -- how well can

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your machine operate in a high vote kind of
environment.

MR. TODD UROSEVICH: The ES&S DS
200, our largest current installation - and we made
this installation in 2006 and it's gone through the
primary/general cycle in Florida - it's Miami/Dade, by
the way, I haven't said the county - registration is
somewhere in the neighborhood of 1.5 million.

It was used again in the 2008
presidential election.

There are several other large
counties in Florida, Broward County, which is Fort
Lauderdale, which is almost a million voters.

And then recently in the general
election we ran our -- probably the third largest is
Cleveland, Ohio, which just ran for their first time
in the general of 2009.

SENATOR PERKINS: So -- one or two
more questions.

So from the perspective of the kinds
of problems we've had, what are the ones the most --
you know, where are you finding your problems?

MR. TODD UROSEVICH: Well, I think

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you've heard -- what I heard tonight sounded familiar.

I think the keys, the remedy for start-up installations was touched on, is training, training, training. Allowing poll workers the opportunity to physically have hands-on training is extremely helpful.

The understanding of the transition you folks are going through from lever to optical scan, and the ability for a poll worker to receive consultation and training on how to properly set up a optical scan precinct is critical to eliminate some of the privacy concerns as you've heard.

I guess our experience --

SENATOR PERKINS: Is this the first time you've heard of these kinds of concerns?

MR. TODD UROSEVICH: No.

SENATOR PERKINS: So when you are contracting to employ your equipment, do you share this with the people who are getting the contract --

MR. TODD UROSEVICH: Yes.

SENATOR PERKINS: -- to make sure that they comply with that kind of secrecy problem; or how do you help them --

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                    MR. TODD UROSEVICH: No.

                    You know, most often in today's
world it's a train-the-trainer approach in that the
vendor will provide qualified trainers to train county
personnel who then extend it out.

                    As far as ensuring compliance, no,
that is not something that we get involved in.

                    MR. JOHN POULOS: I would add that
one of the things that we saw was a problem that was
exacerbated by counties having to warehouse and train
on two separate sets of voting systems. So you had the
lever systems and the optical scan systems. And
oftentimes they didn't have enough physical warehouse
space to do training. They didn't have enough time to
train poll workers on both sets of machines and
oftentimes there was confusion.

                    So that's one thing that I would
definitely add to that equation.

                    SENATOR PERKINS: And other than --
what languages have your machines been -- totally
English? Have you used any other languages?

                    MR. TODD UROSEVICH: Yes.

                    English, Spanish, Tagalog, Madarin,

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French - I know there's a list of about twenty -

Korean, Japanese. I know that I'll miss some. So I can

provide you with a full list.

SENATOR PERKINS: Yes.

So how does that work when you have

-- it's all on one ballot? Is it readable? Is it --

MR. JOHN POULOS: Well, it depends

on the ballot and how a jurisdiction has laid out

their requirements and usually their legislation.

So oftentimes we've only seen two or

three languages simultaneously on one ballot, and then

you would go to a different ballot.

It's just a matter how much

information can you put onto a given piece of real

estate.

SENATOR PERKINS: Do you have sort

of specifications as how that could be done or based

on your experience or based on what you -- you

understand what I'm trying to say? - like --

MR. TODD UROSEVICH: Sure.

It's -- from a technical --

SENATOR PERKINS: -- when your

equipment be best useful, most useful to, you know,

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what languages you recommend?

MR. JOHN POULOS: Well, there are
two aspects from it.

From a technical side the machines
are designed to be very flexible to allow
jurisdictions to do virtually whatever they need to
do.

On the practical side, you compile
information from past election uses that - small
fonts, crowding of information, coupled with
introducing a new system to new voters leads to
confusion.

Now, I would argue this on any
system, including the lever machines, that if you were
to introduce a lever machine to a voter that's only
voted in California, for example, they would be very
confused as to what to do.

So education, voter education
improves with every election of a new technology.

Now, there are obvious rules of
thumb that, you know, you can't make the font too
small and you also can't make the font too large
because then it -- there are some people they can't

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view that, they have problems with their eyes. So these are the kinds of things that are accounted for in the legislation that requires fonts to be within a very specific corridor of size.

MR. TODD UROSEVICH: Yes.

I would add that, you know, we too have the ability of multiple languages. I believe the highest number used in a single voting jurisdiction was seven.

Miami/Dade, which uses the DS 200, again the product that is being evaluated here, had five languages.

But most often if you have just a dual requirement, you can see that on a single document, single ballot.

We have had three languages placed. And, above that, as he said, it then becomes somewhat impractical.

So from an administrator's standpoint you have to plan to have a significant or enough ballots in the languages that you anticipate the voters will request.

SENATOR PERKINS: And final

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question, so what about handicapped? The blind, you
know, folks, you know, not able -- what handicap does
your equipment accommodate?

MR. JOHN POULOS: In short, it's
HAVA compliant. And so the Help America Vote Act had
specific guidelines as to a list of functionality to
meet the needs of people with disabilities.

That also has been part of New York
State certification, the process, and that has been
evaluated and certified, gone through the
certification process.

In addition to that, we have spent
the better half of the last two years working with
various regional NYCIL offices, New York Centers of
Independent Living, doing evaluations with people from
these communities, asking them for their feedback.

And we've -- that's led to a series
of over fifty changes to how the machine operates to
meet the needs of various disabilities.

It's the kind of thing that the
interaction from the voter onto the machine varies
from region to region depending on what the ability of
that particular voter is.

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So we've been doing all we can to
solicit that feedback and incorporate it back into the
workings of the system.

MR. TODD UROSEVICH: Our solution
for the disabled community is already in place in New
York City. It's called the AuditMark.

Nationally we've installed over
40,000 units. And I think our first deployment of
those units was in 2004.

So it's in place. It's in place in
five counties in the State of New York, and the City
being one of them.

SENATOR ADDABBO: I want to thank
Senator Perkins for his time here tonight.

Thank you very much, Senator.

I do have a couple more questions.

A couple of the concerns that again
have been brought to my attention as Chair of this
Committee, first, the cost of each unit.

Do we have an average or a relative
cost for each unit?

MR. TODD UROSEVICH: You know, I
don't this evening, simply because I'm on the -- I'm

not on the sales team.

My job is for client satisfaction, Regional Account Manager. So I couldn't speak to that.

SENATOR ADDABBO: Mr. Poulos?

MR. JOHN POULOS: I have fleeting knowledge. I have my -- the Vice President of Sales from Dominion is here as well. He can speak to it better.

But I would say that the cost of each machine is in the proposals and also on the State contract, which is a public document.

MR. TODD UROSEVICH: That's true, yes.

SENATOR ADDABBO: Certainly we'll have a conversation subsequent to this hearing about that question.

Another issue that has been brought to my attention, you know, if there is maintenance to be done on these machines, you know, where are we looking as far as maintenance? Is the machine built near our State, domestically? Where are these machines coming from?

MR. TODD UROSEVICH: ES&S has

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partnered with Rico Manufacturing. And our equipment, the DS200, is built in California.

We offer warranty obviously on the equipment, and we offer extended warranties. We refer to that as hardware maintenance agreements that are an option for our clients.

Most of our clients are under, and the acronym we use is an HMA. Those -- by doing that, they're insured that, you know, that ES&S will provide all parts, all labor, provide, depending on what program they select, they can have an annual maintenance visit, a semi-annual maintenance visit. That obviously affects the cost.

For larger jurisdictions we also offer a program where their technicians can be trained to service that equipment, and then it's a parts only program, that they got involved in in maintenance.

SENATOR ADDABBO: Mr. Poulos?

MR. JOHN POULOS: Our machines are built -- we have four major locations. They're all in the State of New York, depending on what the components are.

We have a facility in Suffolk

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County, in St. Lawrence County, Owego and in Brooklyn.

So depending on the nature of the work and the support obligation, it happens out of one of these facilities.

SENATOR ADDABBO: Are you being required to offer any more information from those who have to make the certification?

Again, we heard earlier maybe December 15th. Are you required to give any more information, or basically you're done supplying all of your information?

MR. TODD UROSEVICH: I know the functional testing has been completed on the DS200. There continues to be requests that are made for additional information. So I don't think I could honestly tell you that we won't be providing additional information.

But we're responding appropriately to the requests that will continue to come.

MR. JOHN POULOS: I echo the same.

From my knowledge, the -- all the voting and testing activities on the equipment have been completed. We've been told that the equipment has

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been put away.

So now the various entities are
putting together the technical report for the New York
State Board of Elections. And I'm actually unaware if
there are questions coming to us or not.

SENATOR ADDABBO: Well, gentlemen,
I appreciate your time here tonight.

And certainly I may have further
questions subsequent to this hearing after today.

I wish you both the best. Whoever is
chosen, I look forward to working with you for the
sake of our voters and for the benefit of our voters.

So I look forward to, again, a
further conversation and dialogue and work in
cooperation in terms of, I guess, the future of our
voting process.

So thank you very much, gentlemen.

MR. TODD UROSEVICH: Thank you for
having us.

MR. JOHN POULOS: Thank you,
Senator.

SENATOR ADDABBO: Our next panel, a
panel of two:

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                    Robb Richie, Executive Director of

FairVote; and

                    DeNora Getachew, Director of Public

Policy, Citizens Union.

                    Good evening.

                    MR. ROBB RICHIE: Good evening.

                    SENATOR ADDABBO: Good evening.

                    MS. DeNORA GETACHEW: I'm going to

be probably substantially quicker than Robb, so unless

someone objects, I will go first.

                    Thank you, Senator Addabbo, for

holding this important hearing and allowing Citizens

Union to present its views at this hearing.

                    In short -- oh, I'm sorry. DeNora

Getachew. It's G-e-t-a-c-h-e-w. And I'm the Director

of Public Policy and Legislative Counsel at Citizens

Union.

                    I think with respect to the 2009

elections and the pilot program I will keep my

comments brief just because Citizens Union, unlike

some of our other colleagues here this evening, did

not do any comprehensive studying of the pilot

programs and the way that they've been carried out.

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        And we testified in brief at the last hearing of this Committee and stated that we would urge a commitment to advocating for a transparent election process for any new voting systems that are purchased and making sure, I think, as we've learned a lot from this evening's hearing about some of the pitfalls and some of the problems that we want to take away from those, how we can improve best practices going forward when the machines are fully implemented, and also make sure that we educate the voters about what they are going to expect.

        Because I think while, you know, this pilot program was carried out in many counties in upstate New York, counties in New York City are not going to be familiar with it.

        So we need to make sure, in addition to actually putting the machines in place, that there is sufficient funding to have a really far-reaching and comprehensive education program.

        And, again, Citizens Union looks forward to continuing to work with the State Senate and the Board of Elections to make that happen.

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              On the issue of instant runoff voting and getting rid of runoff elections, this is an issue that Citizens Union is still currently working internally to study and finalize its position on.

              So I can't speak specifically in opposition or support of the bills that are on the agenda today.

              But what I would like to note is the historical purpose of the runoff elections was to ensure that candidates for citywide offices in New York City were elected with a strong plurality or majority of voters' support.

              And we think that's an important thing that needs to be continued.

              Again, because we don't have a position on instant runoff voting, I can't say whether that is the best system to ensure that candidates are selected with that plurality or majority. But it is important that we have a system that ensures that.

              We think that, you know, making sure that the candidate who represents voters on a citywide basis must have won, you know -- be a system that has, ensures broad-based support.

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              And it is of the utmost importance

that we keep this provision until we actually find a

system, be it IRV or anything else, that ensures that

someone who is elected to represent the City, you

know, a citywide position, does have that level of

support.

              With respect to S.3584, Citizens

Union is concerned that it leaves too much discretion

to the local governing body to implement instant

runoff voting.

              As well as, I think, while S.3589

might be a little bit better of an alternative in

mandating that the State Board of Elections determine

which counties should participate, we remain concerned

at Citizens Union that the Board of Elections, as it

has consistently done in the past, will try to avoid

any optional pilot programs and, therefore, not have

IRV implemented in New York City.

              And I think the Board of Elections

at the City level has had a track record of not

wanting to implement pilot programs.

              Both if we look back to the example

of 2006 when ballot marking devices were initially

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implemented statewide, the City Board of Elections
came out with a very aggressive plan for how many
ballot marking devices they were going to implement in
each county, and then once they saw what other
counties were going to do, they scaled that back
substantially.

And then again if we look to 2009
and the pilot program itself, it did decide not to opt
in to doing the optical scan system.

And so we should be mindful of that
in determining how, if IRV is ultimately implemented,
how that system would be mandated for New York City's
compliance.

Putting aside the substance of the
2006 BMD instance and the 2009 optical scan pilot
program, again the City Board often raises financial
and logistical concerns with any pilot program and it
is often the first to limit its mandate rather than
expand it, which would leave New York City without an
important voter protection as currently served by
runoff elections.

It is for these reasons that
Citizens Union urges the Committee and the bills'

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sponsors to reconsider passing these bills that
eliminate the current runoff election until there is a
mandatory system in place to ensure that any candidate
who is elected to hold citywide office is elected with
support from a strong plurality or a majority of
voters.

Thank you for allowing us to
testify.

SENATOR ADDABBO: Ms. Getachew,
thank you.

MR. ROBB RICHIE: Thank you.

Robb Richie from FairVote.

And it's a real pleasure to be here
and thanks for having this hearing and pursuing this
conversation about instant runoff voting, which is
something that we work on nationally.

FairVote has an ambitious electoral
reform interest, but this is one that we are
particularly known for and we've been involved in
several of the places that have adopted it and
implemented it, including:

Minneapolis, Minnesota, which used
it for the first time just last week;

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San Francisco, which is a majority
minority city that has used several instant runoff
voting elections now citywide;

Memphis, which passed it; and

A number of other smaller
jurisdictions.

And I'm here to not comment
specifically on the particular elements of the pilot
proposals, but to suggest that that's a good model as
a general one.

And the State of North Carolina
passed a pilot, and cities in North Carolina have been
trying out instant runoff voting.

And Colorado passed a sort of
similar pilot program and they've had cities there
using instant runoff voting.

And it's a good way to try out
something that's new, although it's not as new as we
sometimes think. This is a system that has been around
with us for more than a hundred years. And in recent
years, with the rise of optical scan voting, which has
made it something that more jurisdictions can look at,
there's been a number of major cities that are moving

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in that direction and by wide margins. So voters seem
to like the concept.

And it has a lot of use overseas,
including national elections in some countries, and
the City of London for its mayor's vote.

Just so we are clear on what instant
runoff voting is, I'll just describe that right here.

It's a one person/one vote system
designed to uphold the principle of majority rule in
voting for one seat.

So there are other rank choice
systems that you can use for multi-seat elections.
This is one where you are trying to elect one person.
It's generally done with a majority vote provision,
but it could be used with the current forty percent
threshold of victory in the citywide primaries in New
York City.

With instant runoff voting voters
gain the option to rank candidates in their order of
preference - one, two, three.

Some cities, because of voting
equipment limitations, are only permitting three
rankings. Some provide more than that. It sounds like

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at least some of the voting equipment that New York
City is moving to would permit more than three
rankings.

The three rankings seems to satisfy
most voters and, you know, it's three times more than
what they have now.

If no candidate wins the share of
votes necessary to win on the first count, so a one
person/one vote system, it's going to have a series of
runoffs. Those rankings are used to simulate a runoff
election.

In a traditional runoff, voters
select a single candidate and then are asked to return
to the polls for a second election between the top two
finishers, of course.

With instant runoff voting, voters'
ballots initially count for their first choice
candidate, like in a runoff, but if no one wins a
majority, then the top candidates advance to the next
round, the weak candidates are dropped, and then in
that round every ballot counts once for whichever
candidate is ranked higher on the ballot. So it's
preserving the one person/one vote principle, but some

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people are settling on a backup choice.

And then the simplest way to do it is, which would be the way you would need to do it say in the citywide primary if you had a threshold of victory of less than fifty percent, is you would exactly duplicate a runoff. So only the two top finishers would have a chance to win.

Those would be the candidates that would go to the instant runoff. And then any ballot that hadn't ranked them first would be examined and counted for, whichever of them is ranked next, and then whoever has more votes wins. And that's all there is to it.

When you look at the runoff elections in New York City, it's obviously something that you are familiar with, some of the issues that come with them:

Voter turnout discrepancies and typically lower turnout in the runoff; that's often a pattern with runoff elections, and we actually looked at the last 115 Federal primary runoffs since 1994 and 112 of them had declines in turnout;

The cost of runoff elections to

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taxpayers are large;

The impact on campaign spending -
back in the 1980s when the runoff law in New York City
was challenged, the impact on campaign spending was
one of the key issues raised, say, in New York City,
you know, a two-week turnaround to run a second
citywide campaign and the candidate that can raise
more money more quickly has an advantage;

And when it's a one-on-one race,
there's different incentives for how you can spend
money, and some of the most effective use of money
being spent is negative attack ads, which, you know, a
one-on-one race it's zero sum politics.

And actually in San Francisco in
their pre-instant runoff era there was a study done
and independent expenditures quadrupled in runoff
elections, largely spent on negative attack ads.

My testimony covers a lot of things
that I'm not going to talk about here, but I would
think that -- but there's good material there. So I
hope it's useful.

When you compare it to plurality
voting, one thing that we do in the testimony is just

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go over the citywide races and what those results have been that have gone to runoffs.

And there's been some pretty low, you know, pluralities.

The mayor's race in 1997, twenty percent was the top vote getter in the first round. And other races have been twenty-four percent. And, you know, what triggered the interest in the first place was a race where a candidate had thirty-two percent, which is higher, but even that was seen as an unrepresentative result.

And if you just look at the math of it, even a forty percent winner sometimes can be an unrepresentative winner. And that's, you know, one of the questions to sort of examine about what that threshold should be if you go to instant runoff. Because once you have it, you can keep forty percent, but you also could go up to fifty percent.

And I think one thing about primary elections is that they are nominating someone who was to represent the party, and having someone who is effective at reaching out to gain first choices but also effective at reaching out to be a second or third

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choice of supporters of other candidates is a good
thing for that party. It means there's someone who has
made an effort to sort of expand their base. And I
think that that's one of the values of instant runoff
voting.

And my hometown of Tacoma Park went
to instant runoff. In the first election it had a
three candidate race. And the winner, you know,
pointed out during his walking the town, which they
could do in my town, that even if he saw a yard sign
for his opposition in the yard, he would still go and
knock on the door because getting a second choice
mattered. And he said that was sort of a different way
of running.

There's a number of questions people
have of instant runoff voting, and I go through some
of those in the testimony.

One of the simplest misconceptions
that I wanted to just quickly address is that it is a
one person/one vote system. It's constitutional.

In Minneapolis, this was adopted in
'06, that there was a legal challenge against it
largely based on this thought that, well, some

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people's ballots end up counting for their second

choice, they somehow are getting an edge over the

other people.

And the Minnesota Supreme Court

dismissed that with a 5-0 sort of unanimous ruling.

And it's really based on the fact that at every round

you have one vote counting.

It's also been used in complex

environments for the first time. San Francisco, when

they vote, they have a lot of other things they're

voting on, and then at the end of the ballot they're

doing instant runoff, and a lot of people are voting

by mail. So you don't get error correction.

And there's a lot of good data that

shows that if you have a good ballot design and some

clear voter education work done, that voters handle it

well of all races and backgrounds. And that what might

seem like a difficult challenge can be done.

That's not to say that there's not

sort of important things to do and to learn from

implementations in other places. But I think that the

record is very promising.

When we look at potential

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applications in New York City - and, of course,
localities could be trying it in all parts of the
State, but we looked specifically, mostly at New York
City - one kind of election is the vacancy elections
for City Council which are pretty frequent.

Back when we looked at this last in
2008, nearly ten percent of the City Council had first
won in a special election. That's a single round of
voting. It's often low turnout. And it often has a
pretty low plurality winner.

And because it's a stand-alone
election could be one time to -- one way to try out
instant runoff voting with a good government end as
well to ensure that the winner is representative.

And then one use of instant runoff
ballots - it's not for everyone in the election, but I
wanted to highlight, is that several states, when they
have runoff elections, now send instant runoff ballots
to their overseas voters, their military voters -
South Carolina, Arkansas, Louisiana - and those voters
return a ranked ballot. And then that ranked ballot
can be used in the runoff in the event there is a
runoff. So that they've already cast their runoff

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ballot.

As I'm sure you know, there is a new Federal rule requiring, you know, a gap between rounds of election to ensure overseas voters and military voters have a chance to cast their ballot in a second election. And this is one approach that's been working. And it's also a way to show that -- there's data that suggests the voters are just, are handling that ranked ballot well. And the ballot looks actually just like an instant runoff ballot.

So with the testimony there is some information we provide about ways that we think it actually could be done on optical scan equipment without any software modification. And that's been developed in North Carolina for their State Board of Elections.

Then the representative from Dominion, you know, mentioned that their system could be adapted to it. He didn't clarify how that -- what that would take. But that seems to be true of digital scanners. But that might take certification changes.

But, of course, when you're replacing citywide runoff, that would pay for itself

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quite quickly.

And then our thoughts about security and sort of election integrity issues. And we have some information on our ideas on that.

And then some specific information about how racial minorities have handled instant runoff voting in jurisdictions that have adopted it.

So thanks for having me here.

SENATOR ADDABBO: Mr. Richie, thank you very much.

And I understand, Mr. Richie, you came from the Washington D.C. area.

MR. ROBB RICHIE: That's right.

SENATOR ADDABBO: So we appreciate the long trip up to New York City.

Thank you very much.

I have one quick question for you regarding the IRVs.

Whether we talk about ballot marking device, absentee ballots or the affidavit ballot, you don't see a problem with any of those forms of voting or procedural ways to vote when you're incorporating the IRV, do you?

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MR. ROBB RICHIE: Well, I think
that each of those procedures would need to be looked
at closely.

I know that Commissioner Kellner has
said that he believes that it can be done consistent
with New York State law. And I'm taking his word for
that.

But, obviously, we would want to
look at each element of it. And it might have an
impact on, say, number of rankings or some of the
procedures that are done.

But it sounds like it can be done.

One thing is -- the question has
been raised, is the full-face ballot doesn't need to
apply, I guess, in primary elections. So that if that
were an issue, that at least there might be
flexibility to not have a full-face ballot for the
primary election. But it also might well fit on that
full-face ballot.

SENATOR ADDABBO: All right.

Thank you, Mr. Richie, for your
rather lengthy but very important testimony, the
written testimony. I thank you very much for that

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information.

          Ms. Getachew, thank you always for your testimony and for the work that Citizens Union does. We appreciate the good government work that it does and look forward to working with you as well in the future.

          MS. DeNORA GETACHEW: Thank you.

          SENATOR ADDABBO: Thank you.

          Our next panel:

          Lynne Serpe, 2009 Green Party Candidate for City Council.

          Ms. Serpe, good evening.

          MS. LYNNE SERPE: Good evening.

          I had actually submitted my testimony under a couple of different titles.

          I was a former senior analyst at FairVote. I was Deputy Director of the Political Reform Program of the New America Foundation. I was the Ohio Recount Coordinator in 2005 where the presidential ballots were recounted and observed by over 1300 volunteers in eighty-eight counties, that I oversaw the volunteer effort.

          I also served as the Single

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Transferrable Voting National Coordinator for the New
Zealand Parliament for several years.

And then, yes, I was a candidate in
the most recent election.

In addition, I've also been a poll
worker. Of course, that was in Los Angeles because as
a Green Party member, I am not actually allowed to be
a poll worker in the same way that people who are
members of the top two parties in New York State are
allowed to be. But in Los Angeles they didn't have
that barrier.

So I'm here today primarily to talk
about instant runoff voting and my work through New
America and through FairVote and in my work with New
Zealand and other countries and cities around -- other
countries and cities around this country.

I've had a lot of experience with
it. I have experience in helping getting it passed at
the ballot box, experience in lobbying legislators to
put it on the ballot, and experience in helping voters
understand how this system works.

And so what I wanted to talk about
today a little bit was what it would mean for the

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voter.

So our primary this year, the
turnout for the primary itself wasn't all that high.
It was around eleven percent. So the runoff was really
low. It was seven percent. But the primary wasn't all
that high either.

So when you move to something like
instant runoff voting, it's one election, not two. And
one election not two has a number of advantages that
Doug talked about, that Robb talked about. You save
time, you save money. And it's too bad Senator Perkins
isn't here because it does also save trees because one
election not two means you are only printing one round
of ballots, one round of information that each of the
candidates is producing and mailing all over the City.

And so here in New York City where
we have this runoff system is our citywide primary
elections. So it's when we are talking about millions
of voters. And we're talking about millions of dollars
being spent and we're talking about hundreds of
thousands of dollars in public matching funds being
spent in an election that is held just two weeks
later.

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                    In those two weeks we really don't
learn a lot of new information. I mean personally as a
voter in this most recent election - I mean I couldn't
vote in the primary, even though my taxpayer dollars
are paying for it, but as a third party candidate I
couldn't vote in that primary, so I didn't actually go
vote in it, but I certainly observed what was
happening.

                    And in the course of those two weeks
attacks got nastier and nastier. You can just look at
the headlines in <u>The Daily News</u>, <u>The New York Times</u>,
<u>The New York Post</u>, and you can see that as the
candidates entered that head-to-head race, the
dynamics shifted, and it was either get someone to
vote for you or just not to vote for the other guy.

                    We all know that turnout is not
necessarily the enemy of candidates you want to win.
Sometimes what their goal is is to make sure that
their opponent's supporters just stay home that day.

                    So if you're going to move to
something like instant runoff voting, it's one
election not two, you can maximize your resources.

                    Whether you're a candidate, whether

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you're a union, whether you're just a local civic

organization that wants to let your members know how -

- which candidate you support, you can maximize your

resources on a single election.

Now, sure, you could do that by just

holding one election, which seems to be the idea of,

you know, S.6248. It's just get rid of the runoff

entirely.

But there is a reason that it was

put in. Historically, the reason, as was mentioned, in

1969 Proccacino got elected with 32.8 percent and went

on to lose in the general election. People freaked

out. They didn't want it to happen again. And they put

in the forty percent threshold.

I personally think the forty percent

threshold is too low. Put in a majority threshold.

That's fifty percent of the vote. So it would require

that a candidate gets fifty percent of the vote plus

one.

And the only way to do that in the

past if you were comfortable with was this head-to-

head second runoff election.

Because we heard here today there is

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another alternative. It is a proven tested alternative used in the United States, used around the world.

With the introduction potentially of new voting equipment, it actually would get much easier. With the current lever equipment it would be very difficult for voters to cast their first choice, their second choice and their third choice.

Now, I know there are a lot of people who really like the old lever equipment, and certainly it has worked well for years.

As a third party candidate, I have to say it hasn't served me very well. I was on Row H this year and I was running for City Council, which meant I was all the way over and all the way at the bottom. I had a hundred volunteers out on election day at our nineteen polling sites and they were handing out palm cards and they were saying to voters, Row H, Row H, Row H. That's what I had on our palm card, Row H.

And people left the polls saying thank goodness you told me. Even though you told me and I had the palm card in the hand, it was still

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really hard to find me.

So I actually think there's a lot of
room for improvement with these lever systems in a way
that's going, you know, to help make sure that people
know what kind of choices they have.

And if you are going to look at
changing your system, I think you might as well look
at making it the best system possible.

So if you are going to actually
change the law to eliminate the second runoff, why not
look into something like instant runoff voting, why
not look into something that then will allow voters to
cast their preference for their first choice and their
second choice and even their third choice, allowing
them to have more expression.

And if you move to a single
election, and you don't have that runoff, what's going
happen is all of a sudden this whole spoiler dynamics
is going to come into play. People are going to tell
candidates, don't run, you'll split the X vote. Don't
run, because that will take votes from that candidate.
And that reduces voter choice.

And when you reduce voter choice,

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that also has a turnout on elections. What draws people to the polls is competitive elections.

And so I really feel that instant runoff voting is a good choice for New York City for the citywide primary system.

I like the idea of trying piloting programs. I think that is a smart approach. I do think we could use instant runoff voting as a pilot project to fill vacancies, as already mentioned. And I absolutely think that we need to make sure that our overseas, particularly our military personnel, of which we have now more than we had in most of my lifetime, they deserve to have the opportunity, if they are over there defending democracy, we need to preserve their democracy at home.

And so I absolutely support instant runoff voting and I would be more than happy to answer any questions.

Thank you very much.

SENATOR ADDABBO: Thank you, Ms. Serpe.

Just one question.

Since you were involved with the

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IRVs, you know, in other jurisdictions, the importance of educating our voters.

MS. LYNNE SERPE: Sure. Absolutely.

I mean I think Robb probably touched upon it briefly what they did in San Francisco, the process of educating voters.

I mean ultimately the idea of saying to people give us your first choice, your second choice and your third choice, I mean people are ranking stuff all the time. They use a form of a preferential ballot for the Oscars. People are not unfamiliar with the idea of tell me what your first choice, second choice, third choice is.

What I found that people want to understand is what does that mean politically.

They're kind of used to right now, well, I know how to game this current system. You know, if I'm in a primary and there's four candidates, I don't necessarily think that I'm going to win outright, but I just need to make it into the next round.

You know, and voters can kind of understand that. They understand, well, maybe I have

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to vote for the lesser of two evils because I don't want to spoil the election.

So a lot of education isn't around the ranking, the one, two, three. That's pretty straighforward.

It's really educating people on what does that mean for their vote.

And so it's important for them to know that they can't hurt really a lower-ranked candidate because they're ranking their candidates first choice, second choice, third choice. Their ranking is not going to move on unless their first choice candidate was eliminated.

And that level of education happens I think successfully at the community grassroots level. And it's really at that level where some of that money that you save, some of that $15 million that you save, could go towards voter education.

And if you do the educating people about instant runoff voting, again, you take that opportunity, if you're going to improve the system, to try to educate them around other issues.

And it's just a fact that civics

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instruction is not nearly as good as it was when I was
in high school, much less when my parents were in high
school.

Voter turnout is dropping for a
number of reasons. We're constantly looking for poll
workers for a number of reasons. And the idea of
opening up to people who aren't just in the top two
parties, like those twenty-five percent of people who
are registered as independents, might be a solution.
But that might be a different topic.

I think that voter education, the
money that we save, and that certainly a portion of it
could go towards that.

And we're not going to spend nearly
that amount of money.

SENATOR ADDABBO: Ms. Serpe, I
appreciate your time and testimony tonight.

And thank you very much for being
part of the hearing.

Thank you.

Our last panel for tonight:

Teresa Hommel, Chairwoman of
Community Church Task Force on Election Integrity; and

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                    Howard Stanislevic, Founder of E-
Voter Education Project.

                    Good evening.

                    Ms. Hommel, a pleasure.

                    Would you state your name for the
record, please.

                    MS. TERESA HOMMEL: I'm Teresa
Hommel, Chairwoman of the Task Force on Election
Integrity of Community Church of New York.

                    I've given you written testimony,
but while Commissioner Kellner is here, I wanted to
ask two questions that he might be able to shed some
light on.

                    SENATOR ADDABBO: Well, we could --
Ms. Hommel, what you could do is you can ask the
Committee and subsequent to this hearing, I can get
you an answer.

                    MS. TERESA HOMMEL: Okay.

                    Well, as you know, I'm concerned
with the ability of citizens to provide meaningful
oversight of elections and to observe in a meaningful
manner the handling of votes.

                    And I'm just going to read my

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conclusion.

How can we ensure the accuracy of our vote counts if we don't have sufficient audits?

There were some reports from Upstate newspapers, particularly in Broome County where one of the commissioners was quoted as saying, the Board of Elections says this hand count may be the last. Hand counts are less accurate than voting machines.

The Board expects New York State to change what happens in a close election once the new machines are certified.

And that seems to say that the three percent audit requirement, which we believe is insufficient to cover what's needed to ensure that all contests identify the correct winner. That's insufficient. But this quote seems to indicate some expectation that that three percent is going to go down.

There's also another quote from another newspaper saying because New York State was not able to, before the election, to certify the machines as accurate, that's why they have to hand count.

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            In September, there was also a
resolution passed by the New York State Association of
Counties where they criticized the cost of the new
technology of paper ballots and optical scanners and
demanded some so-called flexibility in the law or in
the regulations, again suggesting that people expect
that the requirement for auditing is going to be
diminished or eliminated based on the idea, the false
idea, that certification somehow guarantees that the
machine will not have a calibration drift during the
election or some other problem that may occur that
can't be identified beforehand during pre-election
testing.

            So that's a question that I have for
you and for the State Board of Elections as to whether
there's an idea of, as a measure of saving cost, to
reduce the amount of auditing required.

            The other question I have has to do
-- I thought your questioning and your comments have
been very interesting and useful during this hearing.

            But there was a question that you
didn't ask that I would like to ask, which is, a plain
reading of the Help America Vote Act seems to say that

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states can return the HAVA money once they have
accepted it.

And it is true that New York State,
of course, has accepted the money and we've also had
an extension of our time to replace the lever machines
twice.

But what about the provision to
return the money and get us off the hook if, of
course, that doesn't affect the State agreement with
the Federal court?

The rest of my testimony I don't
think is saying anything new so I won't force you to
listen to me read it.

SENATOR ADDABBO: Thank you, Ms.
Hommel.

MS. TERESA HOMMEL: Thank you.

Mr. Stanislevic.

MR. HOWARD STANISLEVIC: Yes. Thank
you for the hearing and for the opportunity to
testify.

My name is Howard Stanislevic,
founder of the E-Voter Education Project, a group
dedicated to the demystification of electronic voting.

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The Legislature has asked the State Board of Elections to do what the experts say is impossible.

And I've cited a couple of them in here.

And that is, to test and certify electronic vote counting systems, software-based systems, to high degrees of security and reliability.

And to take a transparent system and replace it with a concealed system of voting and yet to make the concealed system of voting transparent.

They're doing the best they can and I appreciate them showing up at these hearings and so on and testifying and all of the work that they've done on the regulations, et cetera.

But it's not really enough because you have to hand count enough votes to see who won on the paper ballots. I'll talk about that at the end, but before I get there I want to bring up something that happened in the 2008 election and then quickly move to 2009.

There was an election district in Chautauqua County where there were 563 registered

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voters. And one of the State Senate candidates
received 800 phantom votes in a district of 563 voters
registered.

The presidential candidates got
about 375 votes all told.

What happens was that 800 vote
number, of additional votes, was used to create the
total of the ballots cast, which should have been
taken from the public counter of the lever machine,
but instead there's software on the county's website
where a calculation was done that there were 1139
ballots cast in an election district with 563
registered voters.

What this did was it didn't change
the outcome of that State Senate election because it
was a landslide, but it had the effect of grossly
inflating the undervote rates that were recorded for
the lever machines in that election, which then went
into the county numbers, which then went into the
State numbers and may have even been given to the
Election Assistance Commission in Washington, you
know.

And so this basically makes it seem

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like the lever machines were performing poorer than they actually were.

Now, there are activists that knew about this since February '09. And they talked to the State Board. The State Board didn't do anything to correct the error, nor did the County Board.

The only way I found out about it was in April of '09 when some advocates were using this number, this bogus number - it's actually an impossible number - to suggest that the lever machines lose a lot of votes and there are all kinds of lever failures and so on.

So, my point here really for bringing it up is that if we can't rely on our election officials to correct an error of this type, which is clearly an impossible electoral outcome, then how can we expect them to find errors that are more subtle, that might be caused by the computer counts, switching of votes between candidates which would not affect the undervote rates, and so on.

I mean these things have to be detected and corrected.

A couple of other items in my

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testimony about 2009.

First of all, HAVA, Federal law, Section 301(a)(5) has an error rate or an accuracy standard for Federal elections. And it's actually a very high standard.

And what I would like to know is what -- since we just had a Federal election in Congressional District #23, I want to know whether the scanners actually met that requirement; and if they did not meet that requirement of the Help America Vote Act, whether they will still be certified by the State Board of Elections.

And also, more importantly, how will the State Board of Elections make that determination whether the scanners met the standard.

One other one. There have been reports of scanner failure in CD-23 counties. And the specifications in the standards for, it's called reliability, it allows almost ten percent of the scanners to fail in an election in fifteen hours.

And New York never improved upon that. That's a Federal standard. New York said, fine. I doubt you'll find anywhere in a contract with a

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vendor any higher standard than that because the
vendor contracts say we are going to meet the
standards.

Well, that standard is awful.

But what I would like to know is if
the scanners are meeting it anyway and how the State
Board of Elections will determine that, and if they do
not meet it, whether the machines will be certified
anyway.

What else?

Finally, auditing. We have been
trying to -- experts have been talking to the State
Board of Elections for over two years, well over two
years, about how to audit elections counted by
computers.

And we know that the three percent
is not enough. We've come up with solutions. We've
worked on regulations, draft regulations.

I was one of the participants in
that process. And I can tell you that basically they
have ignored most of the advice of the experts.

And in the State Register they've
actually gone on the record as saying no matter how

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close the election is, with the exception of the pilot
- okay, which has a one percent margin for full
recount - but with the exception of the pilot, no
matter how close the elections are, there's only going
to be this three percent, you know, audit.

And the reason they say that is
because that's what the Election Law says in Section
9211.

So my point in bringing that up is
simply to tell you we need a new Election Law and that
way there won't be any more excuses.

SENATOR ADDABBO: Question, Mr.
Stanislevic.

If we -- you would be more
comfortable, so to speak, if that three percent was
increased; is that true?

MR. HOWARD STANISLEVIC: Not in
every contest necessarily.

In the closer contests and in
contests where there aren't a lot of units that
counted the votes, because it depends on the number of
units that are audited. And that depends then, if you
use a percentage, that depends on the total number of

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units.

So when you have smaller contests, you need a higher percentage.

And when you have closer elections, you need a higher percentage, you know, all things being equal.

SENATOR ADDABBO: So, again, if you had your magic wand, and you were, because you say a new Election Law, --

MR. HOWARD STANISLEVIC: Yes.

SENATOR ADDABBO: -- what would your suggestion be if not to increase the three percent audit?

MR. HOWARD STANISLEVIC: Well, I would actually lower the minimum from three percent to a lower number, probably two percent, and take the resources that would be saved by doing that, which would be a full one-third, going from three percent to two percent, and take that and apply it to auditing closer races more rigorously.

And we actually have some draft legislation that actually Ms. Hommel and I have been working on which we would be happy to discuss with

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you.

We've given you a draft but it was very preliminary.

SENATOR ADDABBO: Well, certainly I always feel that elected officials don't have all the answers or all the language for legislation.

Certainly I'll take a look at whatever you submit to the Committee.

But, again, I appreciate your point of view and I appreciate your suggestion.

And certainly to you and to Ms. Hommel, you know, if there are questions, certainly I will take these questions and get you answers back, again subsequent to the hearing tonight.

MS. TERESA HOMMEL: Thank you.

MR. HOWARD STANISLEVIC: All right. Thank you very much.

SENATOR ADDABBO: Once again, I thank you for your time and testimony and for being here tonight.

I thank all of our participants who were here tonight.

This is the Committee's first

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hearing at night. All the other hearings that we've done or previously were in the daytime.

So to give some opportunity to those who might work, this is our first hearing at night and probably won't be our last.

Our next hearing is on November 30th in Albany at 1:00 p.m. on similar topics relating to the election process.

Again, I thank our staff, Andrew and Lindsey, thank you very much.

My staff who is here. David Kogelman, the attorney.

Our stenographer tonight, thank you very much for being a part of this Elections Committee hearing.

And this hearing is now adjourned.

Thank you very much. Everyone have a great night.

Thank you.

(The proceedings were concluded at 8:50 o'clock p.m.)

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