

STATE OF NEW YORK

STATE BOARD OF ELECTIONS

-----x

Public Hearing :

In the Matter of: :

The Draft Plan to implement the Help
America Vote Act ("HAVA") in New York
State. :

-----x

250 Broadway
New York, New York

July 10, 2003
10:10 a.m.

B e f o r e:

PETER S. KOSINSKI
Deputy Executive Director

The Chair

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

For the Task Force:

Keith Wright
 New York State Assembly
 -and-
 Terence Tolbert

Douglas Kellner
 Commissioner, City Board of Elections

John Ravitz

John Haggerty

I N D E X O F S P E A K E R S

<u>SPEAKER</u>	<u>Page</u>
SAYU BOHWANI Commissioner of New York City Mayor's Office of Immigrant Affairs -and-	
MATTHEW SAPOLIN Executive Director of the Mayor's Office for People with Disabilities.....	11
EVELYN AQUILA Commissioner, State Board of Elections -and-	
CAROL BERMAN Commissioner-Designate.....	28
C. VIRGINIA FIELDS Manhattan Borough President.....	44

I N D E X O F S P E A K E R S

<u>SPEAKER</u>	<u>Page</u>
JOHN RAVITZ Executive Director, New York City Board of Elections -and-	
GEORGE GONZALEZ Commissioner -and-	
MARK HERMAN Commissioner.....	53
LIZ KRUEGER New York State Senate.....	67
TOVA WANG Senior Program Officer and Democracy Fellow, The Century Foundation.....	79
LAURA VANN-LARUSSO New York State Systems Advocate Brooklyn Center for Independence of the Disabled.....	94
BILL PERKINS New York City Council Chair, Governmental Operations Committee...	101
ROSEMARY MacLAUGHLIN League of Women Voters of Westchester.....	115
MARGARETTE BERG CASHIN Attorney/advocate, representing Staten Island Center for Independent Living.....	120

I N D E X O F S P E A K E R S

<u>SPEAKER</u>	<u>Page</u>
TERESA SCOTT Volunteer, Queens Independent Living Center.....	128
TERESA HOMMEL Computer technologist.....	138
NEW YORK STATE CITIZENS COALITION ON HAVA IMPLEMENTATION	
NEIL ROSENSTEIN NYPIRG.....	152
-and-	
DENNIS BOYD New York Lawyers for the Public Interest.....	156
-and-	
ROBERTA COOPER Deputy Director of People for the American Way, New York Office.....	159
-and-	
STEVEN CARBO Democracy Program at DEMOS.....	162
-and-	
MARJORIE KELLEHER SHEA Women's City Club of New York City.....	167
-and-	
EMILY MATHIEU Common Cause New York.....	169

I N D E X O F S P E A K E R S

<u>SPEAKER</u>	<u>Page</u>
NEW YORK STATE CITIZENS COALITION ON HAVA IMPLEMENTATION (Continued)	
GLENN MAGPANTAY Asian American Legal Defense and Education Fund.....	176
-and-	
SUMAN RAGHUNATHAN Immigrant Voter Mobilization Coordinator, New York Immigration Coalition.....	180
DR. REBECCA MERCURI Computer Technologist.....	201
ANGELOS KEROMYTIS Assistant Professor, Computer Science Department, Columbia University.....	230
ADRIENNE KIVELSON Co-Chair, New York City League of Women Voters.....	240
LISA SMART Representing Queens Independent Living Center	
-and-	
JOHN STROTHENKE Westchester Disabled on the Move, Inc.....	254
SUZY SANDOR Voter and Activist.....	269

P R O C E E D I N G S

DEP. EXEC. DIR. KOSINSKI: Good morning.

If we could get started, if people could find a seat. I hope there are enough seats.

Good morning.

My name is Peter Kosinski, and this hearing, as I expect you all know, is on the report for New York on the Help America Vote Act.

The Help America Vote Act was passed back in October of 2002, which was a Federal act to help improve elections in the country. Each state is required to put together a Plan for use of these Federal dollars that will be coming available in the next couple of years to improve elections across the country.

Today's hearing is to give the public an opportunity to have input on the Plan that is a Draft Plan. It has been out for public comment. And so today's hearing is for that purpose.

As part of the process of putting this Plan together, a Task Force was formed back in February and there are members of that Task Force here today who I will introduce. There are some up here and there are some in the audience. But obviously they are here as well to hear input from the public and to make any comments they would like to make.

To my far left is John Haggerty, who is on the Task Force.

To my immediate right is Keith Wright, a member of the Assembly and also a member of the Task Force.

And Doug Kellner, who is the Commissioner of the City Board of Elections, also a member of the Task Force.

I notice that John Ravitz is here, who is also on the Task Force.

I don't know if there are other Task Force Members here. But I would give any Task Force Member an opportunity to speak.

Assemblyman Wright, would you like to make any opening statements.

ASSEMBLYMAN WRIGHT: Thank you,

Peter. Very briefly because I actually have to run to a funeral.

But some of you may know, some of you may not know, but I've been a rather vocal dissident to a very large extent of the Task Force and how it has been proceeding and the process that it has undertaken.

I've been talking about how it's been rather exclusive rather than inclusive and how it has been a -- I guess there's been a problem in the Task Force in getting public comment.

I've also talked about the lack of diversity of the Task Force and how it is comprised. Some of you may have heard me say that it has been especially too male and too pale and it has remained that way.

However, I'm glad that the Task Force is having these hearings. On the Assembly side I've had at least four hearings, three or four hearings from around the State. And as far as I'm concerned, you can't have too many hearings on such an important subject.

So I'm glad the Task Force and

Peter have decided that it's important to inform the people of the State of New York.

So I'm just glad to be here and glad that we are taking it to the public.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Assemblyman.

Doug, you have anything to say?

COMM. KELLNER: Not at this time.

DEP. EXEC. DIR. KOSINSKI:

Okay.

Just a couple of pieces of information, sort of updates.

New York has received already about \$66 million of Federal money for the implementation of HAVA in New York and we are in receipt of some of that Federal money at this point.

The purpose of this Plan is to submit this to Washington in order for the State to receive additional Federal money. So it's a big part of why we are going through this process.

The Federal government has

appropriated about \$1.5 billion in this year's fiscal budget for implementation of HAVA across the country. And somewhat over \$100 million of that money is earmarked for New York State.

But part of the process for getting that money into the State is the submission of this Plan to Washington.

I would also add that, while the public hearings we think are important opportunities for the public to have input into this process, there are other opportunities. For example, the website at the State Board of Elections has the Plan up for public review.

We've also sent it out to all the libraries in the State for public review. And if people in the community have comments they would like to make, they can certainly send them directly to our Board, directly to me, and we will obviously read those comments and take those into consideration as well.

The public comment period is open to July 23rd. At that time we will take all of the public comments that have been made and review them. It's the staff of the State Board of

Elections which is reviewing these, actually putting the final Plan together.

So with that said, I see we have quite a few people here today. And with that mind I would like to get started.

I would just ask that the people limit their testimony if you can to ten minutes as we asked as we have a rather long list of people.

And, you know, with that in mind I would just ask that you try to keep your testimony to the ten minutes that we've earmarked.

First, we'll start, we have two members of the staff of the Mayor, Matthew Sapolin and Sayu Bohjwani, who would like to testify.

MS. SAYU BOHJWANI: Good morning, Mr. Chair and Members of the Task Force.

Thank you for the opportunity to testify before you. I'm Sayu Bohjwani, Commissioner of the New York City Mayor's Office of Immigrant Affairs. Matthew Sapolin, Executive Director of the Mayor's Office for People with

Disabilities and I are here today on behalf of Mayor Bloomberg to address the implementation of the Help America Vote Act, with a particular focus on how it impacts immigrant and limited English proficient voters and voters with disabilities.

We commend the Task Force for holding these important hearings and furthering public discussions about voting reform in our City and State.

The Task Force's development of a strong and comprehensive State Plan will fulfill many important goals and requirements of HAVA. Like the Task Force, Mayor Bloomberg believes very strongly in increasing participation in the democratic process by all communities, making the election process accessible to all voters and ensuring integrity and reliability in our voting systems.

Consistent with these goals, for example, the Administration requires City agencies to distribute voter registration forms with all applications and renewals of services. We facilitate relations with the City Board of

Elections to ensure that voter registration materials in English, Spanish, Chinese and Korean are made available when needed.

The Mayor has also supported numerous voting reform measures that would increase voter access and participation, such as modernized voting machines, including touch screen computers, to make voting systems more accessible and reliable.

We believe the State Plan highlights positive recommendations that recognize this unique opportunity to improve the democratic process in our City and State. In our oral testimony we offer additional recommendations to capitalize on this opportunity with further details in our written testimony that has been submitted to you.

The Office of Immigrant Affairs promotes the full participation of immigrant New Yorkers in all aspects of City life. As you know, New York City has the largest immigrant population of any city in the United States with 2.9 million foreign-born persons living in the City. Nearly 1.3 million, or close to half of the

City's foreign-born residents, are naturalized citizens, and 723,000 are registered voters.

In addition, nearly half of all New York City residents speak a language other than English at home. And half of that population is not proficient in English, constituting an increase of thirty percent in the limited English proficient population since 1990.

Ensuring language access and engaging immigrant voters in electoral politics is essential to our democratic process and critical to the political present and future of New York City.

Our recommendations are in six areas: voting machines, voter identification, voter registration information, provisional ballots, voter education and language access. And I'll just highlight a few in each area.

In the area of voting machines we laud the Task Force's decision to set as a measure of success the deployment of accessible voting machines by the 2004 Federal election. We encourage consideration of the full range of new voting technologies available to ensure the best

possible system and the most accessible machines.

This would entail eliminating the State's full-face ballot requirement which greatly limits the machines the State can choose from.

Full-face ballots also frustrate voting in different languages, particularly Asian languages, because of the reduced size of the characters on the crowded ballot.

In the area of voter identification, we are pleased to see that the Task Force is strongly committed to diminishing the number of persons required to provide identification when they vote and has created numerous measures to achieve this.

The State Plan requires a clear list of acceptable forms of voter identification to be included in the instructions for election inspectors. The list should be detailed and expansive and made easily accessible to all voters. It should include things like student identification cards, electronic benefit cards, public housing identification cards, senior citizen discount cards, to name a few.

We also recommend that the State provide a clear definition of what constitutes, quote, registering by mail, to ensure that voters who register by other means will not be asked for identification.

In the verification of voter registration information, we ask that the Board utilize the maximum number of appropriate State databases to identify and match such information and create electronic links between the voter database and databases maintained by public assistance and social service agencies to help prevent verification errors and unnecessary verification of voter identification at the poll.

On provisional ballots as registration forms, we ask that you consider allowing a person who votes by affidavit ballot to use the affidavit and ballot envelope as a voter registration form so that the voter may automatically and efficiently be registered with his or her correct information. This is an especially important measure for immigrant voters, many of whom experience incorrect entries of their registration information on the rolls

and may be unnecessarily disenfranchised unless they are efficiently re-registered.

On voter information and education, we applaud the Task Force for proposing a multifaceted and comprehensive voter outreach and education campaign, a Voter's Bill of Rights, and voters handbook. We recommend that the campaign, Bill of Rights, and handbook specifically provide information on, one, how to use the State complaint procedure, two, how to obtain interpreter assistance and bilingual materials, three, how to obtain assistance for disabled voters, and four, acceptable forms of identification.

And, finally, in the area of language access, we ask that the State consider more specific and explicit measures in the State Plan to ensure that all voters receive the language assistance they need.

We recommend that you create mechanisms to ensure equal access to the voting process by all limited English proficient individuals.

In addition to providing

assistance in Spanish, Chinese and Korean, the languages mandated by the Voting Rights Act, the State should evaluate whether further assistance should be provided for other large limited English proficient language groups such as Russian, Haitian Creole, Bengali and Urdu.

All election materials and processes should be available in multiple languages, including but not limited to Spanish, Chinese and Korean.

You should consider expanding recruitment efforts in hiring of multi-lingual election workers and collaborating with immigrant community-based organizations on voter education and outreach efforts.

Immigrant communities may experience apprehension and lack of awareness about government and political processes. This is often best overcome by working with community-based organizations that are close to the ground and have the trust of their communities.

In closing, I thank you again for your commendable work on the Draft Plan and for the opportunity to testify today.

I also extend the resources of Mayor Bloomberg's Office of Immigrant Affairs to you for assistance in implementing the Plan. We look forward to working with you to ensure the full and active participation of immigrant and limited-English-proficient voters in the political process in upcoming elections.

Thank you.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Sayu.

Sure.

COMM. KELLNER: Commissioner, I am very grateful that you have come and I'm interested to what level the Mayor himself is committed to these policies that you have advocated in your testimony.

MS. SAYU BOHJWANI: Well, I mean I'm testifying on behalf of the Administration and without his support we wouldn't be here.

COMM. KELLNER: Well, that's great.

With respect to the language standards, do you have any specifics in mind as

to what standards we should use and, for example, whether the Board of Elections now in New York City should expand language services for voters beyond Spanish, Chinese and Korean that are provided because of the requirements of the Federal Law?

MS. SAYU BOHJWANI: Well, you know, what we are suggesting is that there is a process -- that we engage in a process of evaluation to determine whether it is useful, necessary, to expand the languages that are used.

Now, for example, in the 2000 census in areas like Rego Park, Queens, we show that twenty percent of the population speaks Russian as the primary language. In Brighton Beach thirty-seven percent of the population speaks Russian.

So I think that factors like that in certain districts of the City should be considered in evaluating whether additional languages should be used.

COMM. KELLNER: Certainly speaking, you know, as just one of ten commissioners in the New York City Board, I would

welcome some concrete proposals from the Administration on expanding that because that's certainly something that the City Board of Elections could do now.

And there have been requests from various language communities to provide voter registration forms in other languages, which, again, I don't see any reason under the statute we couldn't do that if the City Board were willing to do it and that the Mayor were committed to providing the funding necessary to implement it which, of course --

And the second thing is use of the affidavit ballot envelope as a voter registration form. Again, is that an issue that the Mayor is willing to publicly commit to and --

MS. SAYU BOHJWANI: You know, I think that the recommendations that we are offering are possibilities for us to consider, and clearly funding and the logistics involved in implementing the recommendations have to be considered further in dialogue with you.

COMM. KELLNER: The reasons I ask are because the New York City Board became

deadlocked over the issue, that there was a five-to-five vote with all of the Democratic Commissioners in support of changing the current affidavit ballot form to allow the use of it as a voter registration form, and it was blocked by the five Republican Commissioners.

And, you know, perhaps if the Mayor came out publicly in support of this and were to use the suasion of his Office we could get that sixth Republican Commissioner to go along and implement this in New York City now.

And I would certainly call upon him to do that.

Now that I see that City Hall is behind it, is in favor of that proposal, I will reintroduce it before the City Board of Elections next week and hopefully we can get the Republican Commissioners to go along this time.

MS. SAYU BOHJWANI: I should just again say that we are proposing recommendations that need to be further evaluated rather than making definitive statements about what can be done given the funding constraints that the City is facing right now.

So I'll --

COMM. KELLNER: Of course,
there's no funding cost for the envelope.

MS. SAYU BOHWANI: Right.

COMM. KELLNER: That's just a
political --

MS. SAYU BOHWANI: Issue.

COMM. KELLNER: -- issue of
whether we are really going to make it easy to
register voters or whether we are going to add
hurdles.

And as I say, the Democrats on
the City Board of Elections have been advocating
that position for some years now and it has been
blocked by the Republicans.

So maybe the Mayor can help
change that and I would welcome that.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Sayu.

Matt.

MR. MATTHEW SAPOLIN: Good
morning, Mr. Chair, and Members of the Task
Force.

Thank you for this opportunity

to testify today.

My name is Matthew Sapolin. I'm the Executive Director of the Mayor's Office for People with Disabilities.

The Mayor's Office for People with Disabilities, established by Executive Order in 1973 and codified in the Charter, serves as a liaison between individuals with disabilities and organizations representing or serving people with disabilities.

The Office works with City agencies to assure that the particular needs of people with disabilities are included in the development and delivery of City services, policies and programs.

The Office represents the voice of more than 1.6 million people with disabilities living here in New York, making up about twenty percent of the population. These individuals of all ages and all disabilities have often faced obstacles to casting an independent ballot, and the State's implementation of the Help America Vote Act provides an unprecedented opportunity to remove some of those barriers.

People with disabilities form a critical segment of the City's population and their engagement in the electoral process is essential to the City.

In addition to the recommendations made for immigrant accessibility, some of which facilitate access for people with disabilities, I would like to take this opportunity to make eight specific recommendations for your consideration during the implementation of this Help America Vote Act.

First, I recommend applying to the Secretary of Health and Human Services for the maximum Federal funding for making polling places accessible, for providing information about the accessibility of polling places, and for training of election officials and poll workers on promoting access for voters with disabilities.

Second, we would suggest that the adoption of the New York State Human Rights Law's definition of disability be used to determine who is covered by the accessibility mandates of the Help America Vote Act.

Third, the State should establish a timeline by which all polling sites in the State will be accessible to voters with disabilities.

Fourth, the State Plan should ensure that voting systems are accessible to people with all kinds of disabilities, including motor/sensory disabilities, cognitive, mental, developmental and multiple disabilities.

For example, for many people with severe disabilities, voice activation software or "sip and puff" technology is the only type of opportunity they would have to access the voting system.

Five, voting booths should provide privacy for all voters with disabilities who may require mobility devices and/or an assistant of their choice as allowed under New York law. Poll sites should be free of interior and exterior barriers and should be located on accessible routes of transportation and from parking as well.

Six, voting machines need to accommodate voters with visual impairments and

blindness by providing audio readouts and system prompts that offer the same information as to sighted voters, allowing for independent navigation of the entire ballot. Audio software is a way to achieve this objective and it adds the potential of extending its benefits to American voters who may need language assistance.

The State should make accessibility funding available over three years to statewide and local organizations to verify the accessibility of poll sites and voting systems, to develop and implement training for poll site workers and election officials on accommodating voters with disabilities, and to develop educational materials aimed at bringing more people with disabilities into the voting booths and in as poll site workers.

Finally, we recommend that an advisory group be developed to participate in the testing, the evaluation and the recommendation of new voting systems.

I thank you for the opportunity to share these recommendations of the Bloomberg Administration for increasing access for voters

with disabilities.

I also look forward to the opportunity to work closely with you and to engage as many people as possible in New York City in the election process.

Thank you.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Matt.

Thank you very much. We have no other questions. Thank you for coming today.

Next I'd like to have one of our Commissioners of the State Board of Elections, Evelyn Aquila and Carol Berman.

COMM. EVELYN AQUILA: Good morning, Peter and Douglas, Terry, and Jack, I'm sorry. I knew your father.

Good morning. We are Commissioner Evelyn Aquila and Commissioner-Designate Carol Berman. Between us we have twenty-three years of service as Commissioners of the New York State Board of Elections.

Before we comment on the Draft Plan itself, we must make it clear that this Plan had no input from the Commissioners of New York

State Board of Elections who legally are defined as the Board.

An Article 3-100, Section 1 of the State Election Law says, The State Board of Elections is composed of the four Commissioners. Also note J. Emmett Murphy et al against James Walsh, Carol Berman, Evelyn Aquila and Helen O'Donoghue, consisting -- consists of the New York State Board of Elections in 1996.

Both of these clearly define the four Commissioners of the New York State Board of Elections. Nonetheless, we did not -- we were never called upon to participate in any way with the Task Force. We were never informed or asked for permission for the use of the Board's funds, for the use of the staff, time and other resources of the Board on this project.

Mailings were sent, meetings were held and days of our staff's time were used without a vote or consent or proper and necessary involvement of the New York State Board of Elections.

Even the notice of this hearing was sent out on Board stationery indicating that

this is a Board hearing. If that were true, we would be sitting up there not down here.

We feel that it is wrong to give the public the impression and the media and the Federal government that this is a New York State project.

That said, we do, as concerned Commissioners of the State Board of Elections, want to respond to your Draft Plan. We have already submitted to you in writing during your comment period our concerns over serious budget, homerule matters and some other things, insufficiently -- that we felt were insufficiently dealt with in the Plan.

Also these were ignored. And so we will reiterate them at this time by again submitting them to you, our written response.

At the heart of the matter is the large Federal grant available to New York State primarily for two efforts.

One, establishing a statewide voter registration list; and

Two, the purchase of electronic voting machines.

The procurement of over 19,000 voting machines is the most important aspect of the HAVA Bill. As half of the Board of Elections, we believe the four Commissioners should and must play a major role, together with the Legislature and the Governor, in procuring machines, working with the counties, and making HAVA a success in New York.

We iterate our concern about the term New York as the procurer of voting machines. We understand it is used in the report rather than designating an agency or branch of the government.

We refer you to the New York State Constitution, Article III, Section 1 and Article IV, Section 1, also to Clark v Cuomo, 66 New York State, 2nd Department, and Braupoint v Cuomo, 85 New York, 2nd Department, 781, and to Saratoga County Chamber of Commerce v. Pataki, 2003, New York Lexis 1470, decided on June 12, 2003.

All of these cases deal with the separation of powers among the three branches of New York State government.

Once again, the Court of Appeals notes that the Legislature makes policy, the Executive implements policy. Let's not fight this battle again with HAVA.

We are also concerned about the initial cost and continuing cost to the State Board for the implementation of HAVA, including the startup and maintenance of the statewide Voter Registration List.

Oversight of the county boards, state voter education, training of personnel and enforcement of new regulations, et cetera, these will all add to the cost of the Board. The cost of the Board is a real and serious concern.

Unfortunately, we feel it is not treated fully enough in the Report. We would like to see a greater financial analysis and a realistic budget in the Report as that is our fiduciary responsibility.

Homerule is also to us a concern. One county has already voted not to want to be involved or not to want new machines. We must give county and local legislators and other appropriate local officials the respect,

Candyco Transcription Service, Inc.

(518) 371-8910

consideration and input that they always had in the elective process in our State.

The Report seems to forget that in New York local governments do exist and need to be involved in the implementation of HAVA. They are the key to our success. We cannot ignore that.

COMM. DES. CAROL BERMAN:

Speaking of being ignored, I'm going to follow with a few remarks because I'm an expert on being ignored politically as far as my reappointment to this Board is concerned.

However, I'm talking about -- thank you -- I'm talking about the Task Force. Some of the Members of that group themselves felt ignored. The Members were told what the Federal legislation entailed and how HAVA would be implemented. There were no followup meetings after the draft response period so the Task Force could discuss and evaluate the responses.

We also would like to note that, while the Task Force consisted of twenty-four Members, only five were Democrats. This lack of a bipartisan group greatly diminishes the quality

and value of the Report we believe.

We concur with Assemblyman Wright, who you just heard say that the Task Force was too male and too pale. In that regard it fails to reflect the population of New York State.

The basic process used to write the Report is also questionable. No subcommittees were formed and not one vote was taken by the Members as to the content of the Report.

The staff of the New York State Board of Elections really are the authors of this Report and not the Task Force and certainly not the New York State Board of Elections as Commissioner Aquila has said.

There are other parts of the Draft Plan that we have concerns about, including voter identification and outreach and clearly defined timelines how this is all going to be accomplished and when.

We also feel that it is regrettable that these hearings are being held during the time petitions are filed, today being actually the last day for petitions. It's very

difficult for the county commissioners to participate as they cannot leave their respective boards to do so.

We request that you schedule an additional day to give them a full opportunity to respond. We realize they can do it in writing, but it's very difficult for them to take the time out now. They are the front line of voting in our State and we believe that not to give them the fullest opportunity to report is a mistake.

We also request that the Task Force be reconvened to evaluate the testimony given at these hearings and comments written. The Task Force has to have some kind of a vote, some kind of an input, which truly they have not had.

And we believe that if this is done, they're reconvened, if they can evaluate the testimony and they can vote, it will give the Report a greater deal more validity than it certainly seems to have.

So on behalf of Commissioner Aquila and myself, we say thank you for this opportunity.

DEP. EXEC. DIR. KOSINSKI:

Candyco Transcription Service, Inc.

(518) 371-8910

Thank you.

COMM. EVELYN AQUILA: Peter, I just have one brief remark.

I believe we all want HAVA to succeed in New York State and for New York to lead the way in the nation.

HAVA is the most important mandate that the New York State Board of Elections has been entrusted with. To do this properly I believe that the Board must be at full complement. Commissioner Berman has served ten years, most of that time as the Board Chairman. The Commissioner has been redesignated by the Democratic Party in the Legislature and her name was sent to the Governor for appointment three months ago. She still has not been appointed and she cannot serve.

During this most important period in the Board's history, we need her to be with us as we work to implement the Federal mandate.

At this time I ask you to join with me in urging the Governor to immediately reappoint Commissioner Berman for the good of the

Board and for the good of New York State.

Thank you.

DEP. EXEC. DIR. KOSINSKI:

Thank you. We appreciate it.

We should mention, by the way, that, while you are absolutely right that the staff of the State Board was very involved in the writing of this, of this Plan, and I'm very proud of the work they've done, I thought they provided a really bipartisan staff that would be available to us. Both Democrats and Republicans, as you know, work at the State Board of Elections. I think if you look at the list of people that were involved in the writing of this particular Plan, you'll see that both sides of the aisle were very heavily represented here.

And I felt it was very important to make sure that that was part of this process.

So I frankly am very proud of what the State Board staff has done in putting this Plan together.

COMM. EVELYN AQUILA: But the Plan should be the Task Force, Peter. It should belong to the Task Force.

MR. TOLBERT: Peter, can I --

DEP. EXEC. DIR. KOSINSKI:

Absolutely.

MR. TOLBERT: In the hopes of getting on the good side of the Commissioners, as you know, the Assemblyman and the State Assembly passed nine pieces of legislation towards the end of the session. I think that most of it consisted of recommendations that you've made.

Would you like to comment on whether or not we left anything out or if there is anything we haven't addressed that you think that the State Legislature needs to do?

COMM. EVELYN AQUILA:

Unfortunately, I haven't seen the legislation. I was never sent a packet of it.

I heard, you know, through the grapevine that some things were passed but I understand that most of it was not passed by the Senate. I don't know if I'm hearing right or not.

MR. TOLBERT: Well, that part of it is correct.

COMM. EVELYN AQUILA: Terry, I would love to comment on it. If you send me a

packet with them in, I'll give you -- the Board has my address. I'll be glad to look at it and comment in writing.

MR. TOLBERT: We'll make sure that that is done.

COMM. EVELYN AQUILA: All right. Thank you.

COMM. DES. CAROL BERMAN: Thank you.

DEP. EXEC. DIR. KOSINSKI:
Thank you --

COMM. KELLNER: I'm just interested in your role in supervising the Democratic staff at the State Board of Elections. I mean --

COMM. EVELYN AQUILA: We had no --

COMM. KELLNER: Have they been reporting to you or --

COMM. EVELYN AQUILA: No, no, they haven't. But we have never had a heavy-handed supervision because we have a Democratic Executive Director and we have a Republican, which is Peter, Deputy Director, and they really

supervise the staff.

But this is a very strange time. Our Democratic Executive Director is retiring. He will be retired -- at the end of August, is it, Peter, now? The end of August. So he has kind of left, you know. He's got a lot of days off now. He's coming up to the end. And we are seeking a new -- you know, we're going to have new people who we are going to look at for that job.

COMM. KELLNER: Now, I hear reports that the State Board staff is moving ahead to develop the system for the statewide voter registration.

COMM. EVELYN AQUILA: Oh, yes, we know about that, yes.

COMM. KELLNER: Have you been consulted in that process and as those --

COMM. EVELYN AQUILA: Yes.

COMM. KELLNER: -- decisions are being made?

COMM. EVELYN AQUILA: Yes. At our last meeting we had -- at our meetings we have reports from the ITU. They're telling us --

COMM. DES. CAROL BERMAN:

They're telling us what the ITU puts out.

COMM. EVELYN AQUILA: They're telling us, yes.

We do hear from them. It's very technical. They are moving ahead to try to look at everybody, see if they can hook into some of the county boards' plans, and yes, we do.

We haven't had meetings since the end of April, but we do hope to have a meeting next week.

That's been a problem. We haven't been able to get --

COMM. KELLNER: And certainly just as you have indicated that the Commissioners have never been consulted in a formal way on the Task Force Report, I want to reiterate that the same is true for the Members of the Task Force, that the Task Force Report was drafted by Mr. Kosinski and his staff and that the Members of the Task Force have never been asked to vote on it.

And, frankly, I'm concerned that I don't think it's appropriate for me to be sending comments to the Chairman of the Task

Force with him deciding whether they are going to go into the report or not. I think that --

COMM. EVELYN AQUILA: I think I made that point.

COMM. KELLNER: Unless there's going to be a vote of the Task Force, then I'll save my remarks for the public comments because I think that the Task Force ought to be consulted.

COMM. EVELYN AQUILA: I agree.

COMM. KELLNER: And that people ought to go on record on the issues.

And there's no real vehicle for me or any of the other Members of the Task Force to specifically propose language for the Task Force Report and to ask the Members of the Task Force to vote on it up or down.

COMM. DES. CAROL BERMAN: That was the point --

COMM. EVELYN AQUILA: Yes, that was the point.

COMM. DES. CAROL BERMAN: -- of our remarks.

COMM. EVELYN AQUILA: I ask for one more.

I do have to say this. My husband went to the hospital yesterday and I have to get back to him otherwise I would stay. I congratulate the disabled community for their interest and being here.

But I must go because I was in the emergency room for five hours last night. He's in the hospital now and I must get back to him. But we --

COMM. DES. CAROL BERMAN: I will be here.

COMM. EVELYN AQUILA:
Commissioner Berman, Designate Commissioner Berman is going to be here, but --

COMM. DES. CAROL BERMAN: Past and hopefully future.

COMM. EVELYN AQUILA: Future we hope.

And she's going to come outside with me for a few minutes. So she'll be back and we'll talk about this tonight.

Okay.

COMM. DES. CAROL BERMAN: Thank you.

COMM. EVELYN AQUILA: Thank you very much.

DEP. EXEC. DIR. KOSINSKI:
Thank you for coming.

The next speaker is Manhattan Borough President C. Virginia Fields, who, as everybody knows, has been very involved in voter disputes in New York City.

BORO PRES. C. VIRGINIA FIELDS:
Thank you. Good morning.

Mr. Chairman and Members of the Task Force:

First of all, I want to thank you for conducting this hearing here today. And although the hearing I understand clearly is on the entire draft version of a State Implementation Plan, the focus of my comments this morning are going to be primarily on the disability access segments of this Plan. So your comment just prior to my taking the seat was very timely.

I know that there are lots of other issues, important ones, certainly the audit paper trail as well as funding. But as I look out

throughout the audience, I note that these issues will be very well covered.

So let me begin by noting that, first of all, I'm extremely disappointed with the disability access portion of the Draft Plan. Although the Draft Plan states that it will, and I quote, engage in statewide efforts to ensure accessibility to voting systems, end of quote, it does not state in terms of what these efforts will be. It does not specify the steps that it will take to select voting machines that ensure people with disabilities, disabled voters, will have access to a private and independent vote.

And given the fact that so much effort, money, time and work is going into looking at the voting systems, et cetera, I think that it is unconscionable for this not to be a part of the Plan.

Accessibility for voters with disabilities obviously must be a part of the Plan and not an afterthought.

I strongly believe that the State Implementation Plan must define the accessibility standards that must be used to

select new voting machines for New York State. And I would offer the accessibility standards that the Center for Independence of the Disabled in New York, in conjunction with my office, developed. The standards were developed using the feedback of over one hundred individuals with disabilities who tested eight different voting machines at a voting technology fair that I co-hosted this past January.

There are twenty different standards that were developed which can be used as selection criteria for the procurement of a voting machine that is accessible to wheelchair users, the blind and visually impaired, people with limited arm reach or hand dexterity, and the hard of hearing.

The report, which we distributed along with our testimony, outlines the rationale behind each one of these standards as well as the accessibility -- as well as which of the eight machines demonstrated at the fair already meet each one of these standards.

So I will not go through all of the standards. I would just like to point out

that some of the most significant standards include the ability to hold the machine or its controls, requiring tactile controls to be in a single location and requiring the audio ballot to be recorded by human voice.

The most significant conclusion of our analysis, however, is that a full-face ballot machine is not accessible for many disabled voters. Many disabled voters are unable to reach the buttons or switches located on the upper and outer portions of a full-face ballot.

People with cognitive disabilities are oft times unable to process information or discern the different choices in contests when there is too much information on the ballot.

So it is clear that as long as New York State continues to have a full-face ballot, there will continue to be far too many New Yorkers who are unable to cast an independent and private vote.

And I think the representative from the Mayor's Office mentioned that there's roughly about twenty percent of people here with

disabilities who are affected in this manner at one level or another.

I would also like to note that the problems with full-face ballot machines are not limited unfortunately to people with disabilities. Full-face ballots can only accommodate a limited number of languages and each time an additional language is added to the ballot, the font size of the ballot's type face becomes smaller and smaller.

And being the City that we are in New York with so many different languages and many of these people becoming eligible to vote, this is a concern that I think we all must take into consideration in moving forward.

The multi-face ballot machines, however, range from being able to accommodate eight different languages per ballot to being able to accommodate an infinite number of languages. With multi-page ballot machines, if they were legal, I should say, in New York State, all election districts could provide ballots in many more languages than full-face ballot machines could ever realistically accommodate.

Another problem with full-face ballots is that they encourage under-voting in elections. In the general election of 2000 we saw - which was also a presidential election - we saw that 45.8 percent of the people who voted in that presidential election did not vote for the referendum on the Transportation Bond, partly we believe, based on some after-interviews following people who voted, partly because of the location of that Transportation Bond Act which was in the lower right hand corner on the ballot.

Obviously, some people might purposely have skipped it, but I suspect there were many who simply could not find it on the ballot.

Multi-page ballot machines, on the other hand, require voters to view every contest that is part of the election. Many of these machines provide a summary of the voter's selections after he or she has viewed every contest. Most of the machines will highlight contests that have no selection in order to provide an opportunity for the voter to select candidates in races that may have been

overlooked.

And I deliberately took time in reading that statement because as I have learned more about the multi-page ballot machines and in thinking about again the effort and the money that is going into what you are doing as the Commissioners on this Task Force, I think this is an absolutely important time to really be creative and to think forward moving into the future because we probably won't get a chance to do this again for a long, long time. So we need to make the best of it.

In anticipation of the possibility that the State Implementation Plan would not define accessibility standards for the selection of new voting technology, the New York State Assembly passed a bill sponsored by Assemblyman Keith Wright that mandates the formation of a Citizens Voting Machine Selection Advisory Committee.

And I think this is an excellent idea for ensuring that the most accessible machine is selected by the State Board of Elections to replace our antiquated lever

machines.

I, therefore, request that the State Implementation Plan include the formation of such a committee as defined in Assembly Bill A8847 that will develop the accessibility standards used for the selection of a new voting machine for New York State.

And I would also like to ask that this Committee consider the State's full-face ballot requirement and its impact certainly on many people with disabilities who wish to vote so that they too will have access to an independent and private vote.

On a final note, I am encouraging the State HAVA Task Force to review and read the Committee's outline in the "Voting Technology for People with Disabilities" that, again, was issued in March 2003 by the Center for Independence of the Disabled in New York, Inc. along with the Manhattan Borough President, C. Virginia Fields, because I think that many of these recommendations again can be used as standards for certifying new voting machines in New York State.

Candyco Transcription Service, Inc.

(518) 371-8910

I strongly believe that applying these recommendations as some of the standards used for certifying new voting machines will ensure that the maximum number of people with disabilities are able to vote independently, privately and with dignity.

With that I thank you.

DEP. EXEC. DIR. KOSINSKI:

Thank you very much.

Are questions?

(No response.)

DEP. EXEC. DIR. KOSINSKI:

Thank you very much for testifying today. We appreciate it.

BORO PRES. C. VIRGINIA FIELDS:

Thank you.

DEP. EXEC. DIR. KOSINSKI:

Next, I'm very happy to see that some members of the New York City Board of Elections were able to attend today. I know today is the last day to file petitions and I know you're very busy and I really appreciate you all coming today.

John Ravitz is here, the Executive Director, and I'd like to have John

come up.

George Gonzalez is here as well.
George, there you are.

MR. JOHN RAVITZ: And
Commissioner Mark Herman.

DEP. EXEC. DIR. KOSINSKI: And
Commissioner Herman.

EXEC. DIR. JOHN RAVITZ: Mr.
Chairman, thank you very much for allowing me the
opportunity to address you.

I'm, as my other hat, the
Executive Director of the Board of Elections. As
the Executive Director of the Board of Elections,
a top priority for my senior staff and I has been
developing strategies for implementing the Help
America Vote Act, HAVA, for the City of New York.

This landmark legislation will
create a new challenge for both the Board and the
voters of the City. During the past few months we
have begun to develop plans to ensure that as we
look to upgrade the City's voting machines,
provide better access for voters with
disabilities and limited English proficiency,
require additional identification at the poll

sites for first-time New York voters who have registered by mail, we do everything in our power to give the voters as much information as soon as possible.

The purpose of my testimony today is to clearly state to this Task Force that the Board of Elections in the City of New York has identified three recurring areas in the Draft Plan that must be addressed for the City Board to effectively plan and implement HAVA.

We need clarification as to:

One, the specific details for each element of HAVA;

Two, sufficient lead time for orderly implementation; and

Three, the allocation of funds to the City Board for all of HAVA's programs.

I'd like to spend a few minutes discussing in more detail some of the questions the City Board has.

In regards to the implementation of new voting machines, it should be noted that the Board undertook the procurement of new voting machines ten years ago. Although that earlier

effort did not come to fruition, the Board learned essential development and implementation principles that are useful in the current effort and ought not to be ignored.

It is important for the Task Force to understand the magnitude of what the Board will be facing over the next few years. The City has over 6,000 election districts. If a new voting system is required for the City of New York, we would need a minimum of 7,000 voting machines, one for each election district plus doubles and spares.

In addition to the multi-million dollar cost of the machines themselves, an additional twenty to thirty percent must be incurred. Such costs include computer development, vendor support during initial implementation, training of both our staff and at least 30,000 poll workers, and educating the voting public about the new technologies.

We are developing a responsible Plan that provides for a phased implementation of a new voting system over a three-year timeframe.

Starting only in a part of the

City allows us to provide concentrated support and tighter management and control. It also gives us the opportunity to evaluate our experience. We then have the opportunity to adjust procedures, enhance training for Board personnel and provide additional information to the voters.

It is the Board's opinion that to meet the 2006 deadline for full implementation, we need to start in one borough for the September 2004 Primary and the November 2004 General Election, expand to two more boroughs for the 2005 Primary and General Election, and be fully implemented citywide for the 2006 Primary Election.

This means that a new voting system must be selected and the procurement process completed by the end of this year.

Once that is done, we must also begin the development of our training and public information programs, ready our warehouse facilities and complete related computer interfaces during the same time period.

To accomplish this, we need to know as soon as possible the amount of funding

the City Board will receive under HAVA so that we can determine what additional funding will be needed to successfully implement this significant change.

If a voting system is selected for the entire State, it should include explicit provisions that allow the City of New York to specify requirements it needs to be included in the system to allow it to effectively serve the voters of New York City.

However a voting system is selected, the City Board needs to have the flexibility to customize the system to meet the City's needs. Such customizaton may require some supplemental training for the City Board's staff.

The Board believes that following each phase of implementation, if the post-implementation assessment shows that improvements are needed, the contract must allow for changes to be made before additional machines are delivered.

With respect to the creation of the statewide voter registration database, the Board's significant concern is the absence of

specific, detailed information describing how this new database will function and its interaction with the Board's computer systems, including our local voter registration system.

Since New York City already has developed a comprehensive voter registration system encompassing over six million voter files, we believe that the State would be best served by modeling its new structure on a proven, successful and functioning system.

It is imperative that the State give us these details so that we can begin the necessary work to interface our system with the new voter registration database, work that we believe should already have begun in order for us to meet the deadline set forth by HAVA.

HAVA sets forth identification requirements for first-time voters who register to vote by mail as of January 1st of this year. In order to comply with the law, the Board developed new procedures which enable us to identify and track voter registration applications received by mail and registrations received in person.

Between January 1st and June 30th of this year, the Board has received over 53,000 mail registration forms for new voters. It is our intention to reach out to those individuals. We are in the process of sending them a letter asking them to provide the Board's borough offices with their driver's license number, the last four digits of their Social Security number, or a copy of a current valid ID, a copy of a current utility bill, a copy of a bank statement, a copy of a government check, or a copy of a paycheck, a copy of a government document that shows the name and address of the voter.

By being proactive, the Board seeks to minimize confusion and inconvenience at the poll site for those first-time voters who are affected by HAVA's ID requirements.

Now, educating both the City's voters and our employees regarding all of HAVA's requirements will be one of the Board's major tasks over the next few months. It is our responsibility to make sure that all of our poll workers have a clear understanding about the new

identification requirements for first-time voters who have registered by mail, as well as new voting systems that we will be using.

These landmark changes affecting both the City's voters and our poll workers require new training methods to underscore a fundamental change in election day operation. The Board will communicate these changes in numerous mailings to poll workers and voters as well as place the information on the Board's IVR system and website.

We will host multiple town hall meetings in each borough to educate voters on HAVA. The bottomline is that we are committed to doing whatever it takes to make sure that all the City's voters have a clear understanding of these new requirements.

Last year, the Board produced a training video as an additional teaching tool for our poll workers. It is the Board's intention to create a brand new video to educate Board employees and voters on how the new voting machines operate, as well as going over these new identification procedures.

Once again, the basic concern of the Board is when will the monies under HAVA be available to us so that we can undertake these new training and public education initiatives.

The Board of Elections is excited about the potential HAVA offers the voters of our City, but it would be irresponsible for us not to take the opportunity afforded by this hearing to bring the areas of our concerns to your attention and highlight the need for them to be promptly addressed.

We at the Board look forward to working with the Members of this Task Force, the State Board of Elections, the Governor and Members of the State Legislature, as well as the Mayor and the City Council in the coming weeks as we move forward to finalize details in order to successfully implement HAVA.

And, Mr. Chairman, we have our technical staff here as well and certainly would be open to answer any questions that you might have.

DEP. EXEC. DIR. KOSINSKI:

George, do you have anything?

MR. GEORGE GONZALEZ: No.

DEP. EXEC. DIR. KOSINSKI:

Well, I really appreciate your coming. Again, I know it's a busy day for you and I don't want to keep you.

I just would make a couple of comments.

I do -- I think we at the State Board share your concerns about the funding mechanism that is in place in time so that all of our boards, including the City Board, can properly plan and implement HAVA.

As I mentioned earlier, the State has received some of the Federal money already. You know, what -- we are really looking forward and trying to work with the State Legislature to make sure that we get an opportunity to implement it, to actually get the money available so that the counties and the City Board will have the money they need in order to implement that.

We are very hopeful that over the next three years the Federal government will make that money available, and working again with

the State Legislature we will make sure that that money funnels down into the localities so they get their proper funding.

The second issue, on the detail, I realize there are some elements of this Plan that don't have the details some people are looking for regarding implementation, and I understand that.

But understand as well that this is a three-year project and HAVA was passed that way by the Federal government to be a three-year project.

And we certainly anticipate that over the coming months and even years that these details will be worked out. It's going to take time. There are not easy answers to all these questions.

The statewide database, for example, I know we've had many discussions with your staff about that, about how that can work. We are looking at your particular model as something we might use in the State because you do bring the five boroughs together in New York City under one roof.

So we do understand that there are some advantages that you can bring to us.

But, you know, the Plan itself was never intended to be that kind of a detailed Plan for implementation simply because this will take time. This is a three-year project and these details will have to be worked out over time.

So we certainly are anticipating making that information available to you guys and we can and continue to work with you.

And I appreciate your coming.

EXEC. DIR. JOHN RAVITZ: I appreciate that, Peter.

And, again, these are concerns that we felt we needed to bring to your attention now as we move forward. And certainly the implementation of a new voting system is one that we will -- I think in all honesty it would be irresponsible to try to do too much too soon. And that's why a three-year phase-in including different boroughs during these different years I think would make certainly our jobs -- it would be a more responsible way of doing it, and hopefully give us time to educate the voting

public about this new sea change and what it will take.

COMM. KELLNER: Thank you also, John.

I certainly fully subscribe to everything you just said.

And I also want to underscore that what you are talking about is a three-year plan for the City Board, and that plan can't even really start until the Legislature tells us what kind of machine we can buy.

And so it's absolutely critical for good implementation of HAVA that the Legislature make the decision now on the voting machine so that we can start the first step in this three-year plan, because the Federal law requires us to have the new voting machines in place at the absolute latest by the September 2006 Primary.

And as John has said, we're not going to be able to do that in a proper manner unless there is a phase-in. And if the Legislature doesn't make the first step possible, which is selecting the voting machine, or telling

us what kind of voting machines we can select, then we can't even start that process. And then it's going to be more costly and haphazard.

So I, again, thank you for bringing that to everyone's attention and we should focus attention on that.

DEP. EXEC. DIR. KOSINSKI:

Thank you.

COMM. MARK HERMAN: I want to make a brief comment, if I may.

DEP. EXEC. DIR. KOSINSKI:

Sure.

COMM. MARK HERMAN: I appreciate John Ravitz' comments. I think it represents all of us, all of the Commissioners from the City of New York.

But listening to some of the previous testimony, I would like to urge the Task Force to reconvene and to deal with some of the major problems that you've heard here today, especially to try to make your Task Force more bipartisan so that you come out with all of us on the same page and pulling on the rope in the same direction so that it doesn't become a political

thing next year's election or the year after.

So I hope you take that into consideration.

DEP. EXEC. DIR. KOSINSKI:

Absolutely.

Thank you.

Mark, George, John, thank you for coming.

Next we have Senator Liz Krueger.

Senator.

SENATOR LIZ KRUEGER: Good morning, everyone.

How timely of me to be called to testify right after the point was made that the Legislature needs to act in order for us to move forward.

And I have to tell you that I had concerns before I got here today and everything is coming together in an interesting way.

One of my points in my testimony is that this Task Force Report is way too vague without enough public participation for us to go

forward. But having listened to people today, I learned that the State Board of Election Commissioners weren't involved, the City Board of Elections doesn't feel it was really involved and I know the public doesn't feel it was brought in, and, in fact, many Task Force Members themselves apparently feel that they weren't participants.

So I understand the vagueness of the Report. It is truly a very, very draft version of even the role of all of the people who are experts in elections in New York State participating in getting their comments heard.

At the same time I heard from the City Board of Elections that realistically to follow a three-year plan, decisions need to be made about procurement of new machines perhaps by the end of this year.

We heard from Borough President Virginia Fields excellent testimony about the need for specific standards to ensure that the new machines, in fact, are accessible to the broad universe of New Yorkers who need improved access to their right to vote.

And then I hear that the

Legislature must make these decisions. And I would argue as a legislator, we won't make good decisions and we won't make timely decisions unless we have the correct information provided to us by the experts, by the community.

So, to start, we need a better report with more details, with more public input, with more expert opinion, with more standards because, with all due respect to my other colleagues in the Legislature, we're not the experts in this area and we are not prone to making rapid, quick, intelligent decisions.

Therefore, for us to actually move forward in a timely way for a three-year plan, and also in an intelligent way, we need reports that provide us far, far more detail about the road that we should go down in order to do the right job for the people of New York.

Having started out that way, let me just highlight some of the concerns I had from my own testimony after reviewing the Report.

As your Plan says, we need to have an open, competitive bid for selection of voting machines in order to ensure that all New

Yorkers have access to the best available technology. I believe a single voting machine system should be selected for the entire State and there should be meaningful opportunity for public comment during the selection process. I respect the comments of the City of New York that they need to be participants in that decision over a one-state system, one system for the State, because, in fact, New York City does, as we know, often has its own unique needs, unique diversity and you can't have one system for the State of New York that can fit all unless it can fit the needs of New York City.

I believe that we do need to do away with the full-face ballot requirement on our new voting machine technology. It is too limiting on our options for selecting new voting machines.

It currently results in confusing and disorganized ballots, and from my understanding and in listening to also Borough President Fields' testimony, if we stay with the full-face ballot option, we are really writing off most of the modern voter technology to be considered by the State of New York.

It is also my understanding that the cost factor for the full-screen text screen technology is enormously more expensive than our options would be if we went with multi-screen voting technology.

And as a legislator, I am concerned about the fact that we probably won't have enough money, despite the Federal commitment to HAVA, and we have to be extraordinarily cost effective because this is a system that we need to ensure we have adequate machines, that we have machines that will meet everyone's needs, and that we've got the money as was described to implement the new system.

So if a full-face screen is going to be double the cost of a multiple-face screen or a multiple - whatever the terminology is, I'm sorry, I'm not a technical expert on this, it seems to me from a cost factor we also need to ensure that we are maximizing our ability to get the most for our dollars.

I do believe desperately we need from this Task Force, from a broader Task Force of experts, greater details for evaluating the

competing voting systems out there because compliance is so critical both -- for assuring maximum accessibility for people with disabilities. Again, Borough President Fields went through her concerns and I share them about assuring that we've got human voice audio voting options, hand-hand voting device options, sip and puff technology for the extremely disabled among us.

We also need to assure that our voting machine technology improvement assure privacy and independence of all voters.

We heard already -- some people talked about the importance of a diversity of language access for voting machines in the 21st century. I know you are going to be hearing from other people today who are far more expert than myself on these issues.

But it is critical that we ensure that people with limited English skills or no English skills, who are citizens of this country, have a full right to vote and that our modern updated voting machine technology not only can ensure the needs of the language populations

provided for by the Voter Rights Act today, but, again, in the history of New York State we only update our machines every forty or fifty years. Therefore, we want to make sure that we are planning for the future and the future of who New Yorkers are and the needs that they will have not just in the year 2006 but conceivably in the year 2036.

I do think it is extremely critical to ensure that whatever machinery we go forward with we have a system for producing voter verified paper audit trails to ensure the maximum possible level of verifiability of electronic election counts.

It would just take one breach of computer security to undermine voter faith in the democratic electoral process, just one story, just one story out there about somebody hacking into a computer voting system, just one story about unmatchable counts where no one from the Board of Elections could go in or the independent candidates could go in and verify through an audit trail what did or didn't happen, could frankly destroy two hundred years of voter

participation in the democratic process in this country.

I can't emphasize enough how important it is that we have a verifiable audit system in whatever computer technology we go forward with or a non-computer machine technology.

I'm also very concerned that the Draft Plan did not provide enough detail about the concerns about identification requirements included in HAVA. This Board should establish a broad and exhaustive list of acceptable forms of identification and ensure that all Board officials and election day workers are fully educated regarding these acceptable forms of ID.

This is particularly important for us here in New York City where so many people do not have driver's licenses and other more traditional forms of identification.

The Draft Plan should also, when it moves into its final stages, address flaws in New York State's current provisional voting system. HAVA provides that voters who feel they are eligible to vote but who are not cleared to

vote by election officials may cast a provisional vote which will be counted according to procedures set by the State.

Current New York State law governing the counting of provisional votes is impossibly stringent. Provisional votes are counted only if voters are at their exact polling sites and exact election districts and if there are no stray marks on their envelopes.

This Task Force should make specific recommendations to the State Legislature that address these unduly burdensome requirements so that they can be removed.

Current provisional voting standards disenfranchise many eligible voters simply because they are voting at the wrong polling site or election district. Our current standards impose an unnecessary double standard on provisional voters, many of whom are immigrants or first-time voters who are unfamiliar with the administrative procedures governing our elections.

And tying into that, with new voter technology, we must finally address the

inadequacy of our training for and testing of election day workers. We should have statewide uniform testing which would be particularly important as electronic systems replace more traditional machines.

The City Board of Elections testified to the importance of ensuring that a new system is put in place both on a pilot expanding model and also recognizing that an entire universe of thousands of thousands of people -- I think, what? 50,000 here in New York City on Election Day? Is that how many?

DEP. EXEC. DIR. KOSINSKI:

30,000.

SENATOR LIZ KRUEGER: 30,000,

excuse me.

-- 30,000 workers just in New York City who need to be trained on the new technology. And we need to make sure that we've been able to do a better job in training workers for the new technology than we have on the old technology.

So I believe that it is absolutely necessary that the final report make

specific recommendations to the Legislature about the type of training and implementation for workers that will be required statewide with new technology.

In addition, the Draft Implementation Plan mentions a Voter Bill of Rights, but offers little explanation as to what rights would be included or what public review process there would be for the Voter Bill of Rights.

Determining the details of such an important document must be an open process and the failure to provide those details in the Draft Plan once again creates the perception that opportunities for public participation in the drafting of a Voter Bill of Rights will be severely limited.

It is clear not only for myself but I believe from all of the testimony here today that much remains undone to ensure that New York State uses the opportunities presented by HAVA to develop the best voting system possible for the State.

I fear that this Draft

Implementation Plan has squandered at least part of that opportunity by avoiding many of the issues that must be addressed in order to improve our election system.

I urge this Board to correct the deficiencies immediately so there still is an opportunity for the public to have a meaningful role in this process.

And I believe that if we don't move forward with more details, with more specific standards, with more public participation, that, in fact, we will have served to undermine the legitimacy of the electoral process in the eyes of the voters.

And, again, as a State Legislator, I can tell you we need more information, we need more input from the public and from the experts in order to make the right decisions. And apparently we're going to be asked to make those decisions very soon.

So thank you very much for your time and the opportunity to testify.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Senator.

Any questions?

(No response.)

DEP. EXEC. DIR. KOSINSKI: Our next speaker is Julie Hyman from the Center for Independence of the Disabled.

(No response.)

DEP. EXEC. DIR. KOSINSKI: Is Julie here?

(No response.)

DEP. EXEC. DIR. KOSINSKI: We can call her later.

Tova Wang, Ms. Tova Wang. I saw her here.

MS. TOVA WANG: Good morning.

My name is Tova Andrea Wang and I'm a Senior Program Officer and Democracy Fellow at The Century Foundation, a non-partisan research institution.

I'm testifying today on behalf of former Attorney General Robert Abrams, election expert Arthur Fried, Professor Ron Hayduk, myself and others who worked on a Century Foundation report entitled "The Help America Vote Act: Impact and Potential for New York."

Thank you for the opportunity to comment on the Task Force's Draft Plan. The way in which the law is implemented could have profound implications for how New Yorkers register, vote and have their votes counted. Implemented well, the law could mean an expansion of voting rights not seen since 1965. Done poorly, greater disenfranchisement becomes a risk.

Unfortunately, the report fails to provide the guidelines for improving elections that New Yorkers need and deserve. It is vague and almost entirely devoid of specifics as to how election reform will be carried out in New York.

We believe that in producing such a Plan, the Task Force has squandered the opportunity to show New York State how to move into the forefront of leadership in registering new voters, training those who administer elections and providing the citizens of New York with the best voting machines.

In contrast to the Task Force's report, we examined every provision of the Federal legislation, analyzed its legal

implications, and detailed what specific action New York's elected leaders and election administrators should take to best comply with the new law.

I recommend the public review our report as a model for what the Task Force's report could have and should have been.

And I would also recommend the Board of Elections and the Members of the Task Force also just to review the draft plans and the websites of other states. I've been going through them for other projects I'm working on and they provide many details and specifics and very accessible information for voters and the public and I would recommend that we take a look at those.

There are many issues vital to the future of elections that the report fails to address.

First, with the machines.

The Plan refers to three DRE systems that have been certified by the State without describing which ones they are, their features, or the advantages and disadvantages of

any of them. The Plan does not make clear whether the State is limited to those three machines or is open to certifying new technology.

We strongly recommend the Board consider voting machines not currently certified, as some of those are the most accessible and effective of the new voting technologies.

The Plan states that the Board intends to spend \$140 million on new voting machines without detailing how it arrived at that figure, which is higher than it might need be. Every dollar spent on machines is a dollar that cannot be spent on things like voter education and poll workers.

The Plan, as you've heard other people say, makes no recommendation with respect to the State's requirement that all of the races be on one page, the full-face ballot requirement, and you've heard about the limitations that imposes.

Also, while the State Board takes responsibility in the report for machine replacement, it is unclear whether that means that the State is going to choose one machine for

the entire State. We recommend that there be one machine for the entire State.

There is little description of what the procurement process will involve, including whether it will be open and transparent to the public. There is also no discussion of any role for representatives of such groups as the disabled and language minorities and other particularly affected communities in the technology review process.

This is important because it is only through public participation and openness that the public will have confidence in our new voting system and take active part in it. Already, as you've heard, the process has provoked a strong measure of skepticism and cynicism, and it would be helpful to expressly provide for a public element in the process to remedy this and move forward in a more productive manner.

There is nothing in the report about how the Board intends to interpret the requirement that there be a verifiable paper audit trail, whether it means for each vote cast

or whether there's just a final paper vote tally. We recommend that it be an individual paper for each vote cast.

There are no measures for really evaluating the technology's performance. Among the measures we have in our report are convenience for voters, ease of use, accuracy, reliability and so on.

As you've heard also, the Plan only contemplates accessibility for language minorities who reach the threshold provided for in the Voting Rights Act and we think that, given the new technologies, we can go well beyond what's specified by VRA.

With respect to poll workers, commendably the Plan calls for increased funding for training with the curriculum to be devised at the State level and a program that includes dealing with the disabled in a proper manner.

However, all of the elements of the State curriculum that you talk about are voluntary. There's no provision for implementing statewide poll worker training requirements, for example, setting a floor on how many hours the

education has to be or requiring that the election day workers actually pass the test that is legally mandated now.

The Plan for improving poll worker training is very vague. In the Century Foundation Report, we make a number of specific poll worker suggestions including, as we've talked about earlier with John Ravitz, a training video which I was pleased to hear about, but providing more hands-on training, especially with the new machines, focusing on special situations such as when machines break down and emergency ballots are required, and re-writing training manuals in clearer and more accessible language.

I was surprised there's really no discussion at all about the need for more language translators at the polls and how the shortfall in such workers will be addressed. This is a major oversight. In 2001, in New York City we were short 122 Chinese interpreters out of a total of 483 positions, 256 Spanish interpreters out of a total of 779 positions, and 19 Korean interpreters out of a total of 32 positions.

The Report is totally silent on

the critical issue of poll worker recruitment except to say that the Board will, quote, explore new and innovative, unquote, programs and the HAVA college program.

The Century Foundation Report recommends expanding the way in which poll workers are recruited by working more intensively with community groups, re-examining the practice of only hiring poll workers registered as Democrats or Republicans, creating split shifts, and making working the polls a substitute for jury duty.

With respect to voter registration, as you've heard others testify, the Plan states the Board will seek access to other statewide databases for verifying voter registration identification. And we know how important that is. But the Plan does not go into any details as to what other agencies that might include or what types of information they might check to ensure that there are not errors and people are inadvertently disenfranchised.

Again, as others have said, there is no discussion of what the voter ID

requirement will really entail. We have suggested, as others have, that that list of acceptable IDs be broadened.

And as you've heard again, the Plan doesn't specify what will be deemed a "mail-in registration" and, therefore, subject to ID requirements. This was discussed a bunch of times at some of the Task Force meetings and I thought it was actually made pretty clear as to what those were going to be, but it didn't end up in the Plan itself, whether that was going to include applications hand-delivered to the Board by voter registration groups.

We believe that HAVA can and should be interpreted to mean the ID requirement is only applied to those applications actually sent through the U.S. postal system.

With voter education, again, it's very vague, very general. The Plan says the State Board will develop a Voter's Bill of Rights to be posted at the poll sites with other information. This is the bare minimum HAVA requires. The Bill of Rights should not only be available at the site, when actually it's least

useful because the voter is just about to go to the voting booth, but it should be more widely disseminated, especially through direct mail, along with other voter education materials, most importantly studies have shown a sample ballot.

We also suggest television and radio public service announcements. Public service announcements are free. And we could also use HAVA funding to place advertisements in media outlets. These methods have been used in other states and jurisdictions and you can read about that.

Finally, with the administrative complaint procedure, again there are few details as to how this is all going to work, including who will administer and make determinations in the Alternative Dispute Resolution stage, whether the complaint procedure will be made language and disabled accessible, and whether judicial review in state court will be available.

So thank you again for hearing my thoughts and suggestions today. I'm happy to provide you with additional copies of The Century Foundation Report which I know you already have.

It's also available on our website.

Thank you very much.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Tova.

MR. TOLBERT: Tova, hi!

Just a quick question focusing on full-face ballot issues.

Knowing that the Legislature is a slow but hopefully deliberate body that acts in the goodness of time when it sees fit, if it does not pass full-face ballot, would you think that an electronic full-face ballot machine that requires voters to see everything they haven't done or takes advantages of what some of these multi-face machines can do and it's also programmable with multi-languages would be acceptable from your point of view?

MS. TOVA WANG: No. In fact, basically what you're getting if you get a full-faced computerized machine is what you have now just on a huge computer screen. They're much more expensive. They are not accessible to the disabled as we heard C. Virginia Fields say quite explicitly.

The ballot is completely confusing now. I mean I couldn't find a resolution on the ballot and I'm supposed to be an expert at these things.

Everyone finds them confusing. The font is too small. It's still going to be too small whether it's on a computer screen or on a lever machine.

MR. TOLBERT: No. Let me -- sorry to interrupt.

I actually saw an example of a full-face ballot machine which had the ability to enlarge different sections of what you're voting for. It changed in some cases the accessibility issues that people might have with tilt as well as where buttons might be for use. It even went as far as to have as an electronic machine. and not so much a -- and I'm sorry I don't know the technology, the technical terms for these -- but the ability at the end before you can vote to say this is what you haven't voted and bring those particular things up so that people would know that they did not vote for something and could go straight to that section of it, treating it

almost like a multi-face machine but still having the advantages of a full-face ballot that the law requires at the current time.

I don't know if everyone has seen it or if anyone has seen it other than me, but I was wondering if it did all of that, would it then, notwithstanding the cost, which Peter is going to be angry or not about later, that that would be an acceptable device.

MS. TOVA WANG: I haven't seen this machine, but it seems to me it does a lot of issues, but still not all of them. I would say that it still makes life difficult for someone who is in a wheelchair. Some of the other ones that had the multi-face ballots can actually be put on your lap so that people in wheelchairs - you know, I think it's still very difficult for someone using a full-face computerized screen to do that.

I haven't seen this machine so I don't know what the language situation is like in terms of trying to make that more accessible.

And I'm sure this is not a machine that's been certified by the State so

that may present another barrier. I don't know.

But I would be interested in seeing it before I really want to pass any judgments.

MR. TOLBERT: Okay. Thank you.

COMM. KELLNER: I just want to thank Tova for concentrating so much of your remarks on the poll worker issues which I think are often overlooked in this whole process.

Certainly right now I think the biggest problem we have with good, efficient administration of elections in New York City is the training and recruitment of poll workers.

Do you think that's going to get better or more difficult when we shift over to computerized voting?

MS. TOVA WANG: Well, I mean in terms of recruitment? Well, I mean -- well, I suppose you can speculate that since so many of the poll workers are older and may not be as experienced with computers, there may be some trepidation.

I think that whether it succeeds or fails is going to depend how much resources

and how much energy we put into poll worker training and voter education as opposed to machinery.

I think that it's pretty clear that machinery alone, as we saw in Florida in the last elections in the primaries, they were a mess because they had all these great new machines but they didn't have people who knew how to use them.

So I think that the poll worker training issue and the voter education issue have to be not thought of as second to what do we do about the machines. It going to have to really be thought of together.

DEP. EXEC. DIR. KOSINSKI:

Tova, thank you.

We do have a copy of your report. It was a very helpful report that we had on the Board and we have reviewed it and will continue to review it.

We appreciate all the work that The Century Foundation has done in this area --

MS. TOVA WANG: Thank you.

DEP. EXEC. DIR. KOSINSKI: --

and look forward to working with you.

And give my best to the Attorney General.

MS. TOVA WANG: I will

DEP. EXEC. DIR. KOSINSKI:

Thank you.

Next we have Laura Vann-LaRusso from the Brooklyn Center for Independence of the Disabled.

MS. LAURA VANN-LARUSSO: You caught me offguard. I didn't expect you to call my name so quickly.

DEP. EXEC. DIR. KOSINSKI: Oh, I'm sorry.

MS. LAURA VANN-LARUSSO: No problem.

Hello and thank you for allowing me to testify before you today regarding HAVA and the New York State Draft Plan.

My name is Laura Vann-LaRusso and I am the New York State Systems Advocate from the Brooklyn Center for Independence of the Disabled.

BCID is a non-profit community-based consumer-directed center. Our purpose,

along with thirty-seven other Independent Living Centers throughout New York State, is to promote and support the proactive participation and integration of people with disabilities through information, referral, advocacy and education about the civil rights of citizens with disabilities.

With this in mind, I would like to specify some of the problems with the current New York State Draft.

Number one, machine accessibility for voters with disabilities.

Voters with disabilities are guaranteed by the law the right to vote, but what good is that right if the Draft fails to commit to a true action plan that ensures the certification and purchase of accessible voting machines?

What good is the right to vote in the presence and along with the mainstream non-disabled at the local polling sites if accommodations such as "sip puff" switches, touch screens and audio devices are not specifically addressed within the Plan?

May I suggest to you that the disabled community is willing to work with you, and within the Draft there should be a formal statement of how New York State will utilize ongoing communication from the disabled community to act as a sounding board in how the needs of our community can best be addressed as voting citizens of this State.

Number two, election worker training.

A specific statewide training program that includes a train-the-trainer piece whereby Independent Living Centers could be utilized to provide training on disability awareness and HAVA, training videos and standardized tests need to be specified in the Draft.

Voter's Bill of Rights, number three.

In the Draft Plan it is essential that the Voter's Bill of Rights be included. In addition, the Voter's Bill of Rights needs to be disseminated to all registered voters prior to the general election. The distribution

of this document to the public needs to be a requirement that would strengthen our efforts as advocates for the disabled community to continue to promote and educate our constituents about the importance of their full participation in the voting process.

And, finally, in closing, you will notice that I myself have cerebral palsy. I, however, am a professional working voter. My husband is also a working college educated person. We have never not worked, we have never not contributed, we have never not voted.

But despite our mainstream contributions, we have to contend with pre-conceived ideas about what we can and should do on a daily basis. Voting is our right and yet we are escorted into the voting booths or handed an absentee ballot as a consolation to inaccessible machines that lack accommodations.

We are a working family and as advocates a specific plan of action needs to be incorporated into the New York State Draft.

Thank you for allowing me to testify.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Laura.

I'd like to just mention a couple of things.

As you know, Brad Williams from the Independent Living Centers is on our Task Force and continues to be very active in this at our level.

MS. LAURA VANN-LARUSSO: I'm under his jurisdiction as a New York State center.

DEP. EXEC. DIR. KOSINSKI: I understand.

So we are dealing, you know, very specifically with Brad on a lot of these issues.

We are also very cognizant of the intent of HAVA, which was definitely to enhance the voting possibilities and potentials for the disabled community. And it's very much a focus of the whole HAVA bill from Washington and continues to be the focus of the implementation of that bill in New York State. So certainly as we go through this process, we anticipate dealing

with those issues.

Even though the Plan may not have been as specific as we would like, --

MS. LAURA VANN-LARUSSO: Right.

DEP. EXEC. DIR. KOSINSKI: -- some of these questions we are very aware that that is the intent of HAVA and that that's the goal that we have to achieve in implementing HAVA.

And over the next couple of years as we do implement HAVA, that's certainly our intention to achieve those goals.

MS. LAURA VANN-LARUSSO: Thank you.

DEP. EXEC. DIR. KOSINSKI: I appreciate your coming.

MR. TOLBERT: Peter?

DEP. EXEC. DIR. KOSINSKI: Yes.

MR. TOLBERT: Laura, a lot of these things that you talked about are some things that can happen whether they happen with HAVA or not. There are some things that we might need to focus on just plainly with the election law itself.

We're going to have, as soon as I get back, someone from our legislative office in Albany sit down with Brad and maybe think about how we can incorporate some of the things into just plain old regular election law bills that are outside of the jurisdiction of HAVA and see what we can do to address some of these issues.

Okay?

MS. LAURA VANN-LARUSSO: I would appreciate that. And I would appreciate staying in touch. The Brooklyn Center is very interested in establishing a rapport. So if there are people that I need to know about, please feel free to pass my name and number on to them.

MR. TOLBERT: I think your card is here. So I'll take it with me.

MS. LAURA VANN-LARUSSO: Yes.

MR. TOLBERT: Thank you.

MS. LAURA VANN-LARUSSO: Thank you very much.

DEP. EXEC. DIR. KOSINSKI:
Thank you, Laura.

COMM. KELLNER: Mr. Chairman, I

just wanted -- I see that Bronx Commissioner Nero Graham is here, and I just wanted to acknowledge his presence and welcome him.

DEP. EXEC. DIR. KOSINSKI:

Commissioner, thank you for attending.

Next we have Councilman Bill Perkins from the New York City Council.

COUNCILMEMBER BILL PERKINS:

Good morning, everyone.

I am Bill Perkins, Deputy Majority Leader of the New York City Council.

I'd like to begin by thanking Peter Kosinski, Chair of the HAVA Task Force and the State's Chief Election Officer, and the rest of the Task Force and members of the Panel for organizing these meetings and coordinating this effort.

I particularly want to thank you all for making yourselves available to us in the City and here at the City Council, attending the hearing conducted by the Governmental Operations Committee, of which I am the Chair, and generally being responsive to our requests and questions.

The Help America Vote Act is

landmark legislation that offers never-before-seen opportunities for democracy in this country.

The Act finds its genesis in the 2000 presidential elections. The Gore-Bush election, the Florida election in particular, sparked a huge dialogue over the integrity of our elections in America.

Some other nations compared us to dictatorships and accused us, or some of us, of vote rigging and stealing elections. The number of votes lost, that went uncounted, in Miami-Dade County that year was 4.4 percent, enough votes to swing the election either way.

In Brooklyn that same year the number of votes lost was 4 percent, enough to have swung many of our mayoral elections in the last decade either way.

This is appalling in what is supposed to be the best democracy on this planet.

And so HAVA came about. The Act is meant to address many of the deficiencies we witnessed in the 2000 electoral process.

As Chair of the Committee on Governmental Operations, it is my duty to

coordinate the Committee's oversight of the City's democratic process. So in this vein we have held hearings, been in dialogue with the Task Force, and been in dialogue with residents, representatives and advocates of New York City.

I want to be very clear as we discuss this Act today. We are acutely concerned in the City about how HAVA will be implemented in regards to New York City. The City, of course, finds itself with a very unique set of circumstances relative to the other counties and election districts.

The City Board of Elections has by far the most populous jurisdiction out of the fifty-eight local boards. In fact, three out of the five counties within the City are each by themselves larger than any other county outside of New York City, particularly, Brooklyn, Queens and Manhattan in that order.

And so, as the song goes, if you can make it here, you can make it anywhere. And the inverse also holds, if you fail here, you have failed all around the State.

If the Act is not implemented

successfully here, the Act will have failed. New York City, with all due respect to all other voting districts in New York State and around the nation, is a very unique district and which I pridefully declare as a main component of our strength, brilliance and resilience. We are one of the most diverse districts, if not "the" most diverse district in the nation.

So when HAVA speaks to assuring access to voters with disabilities, it speaks to the whole nation, but we may hear it a little more keenly at home to such a large number of citizens with disabilities.

And when HAVA mandates identification requirements, we are particularly offended because we are also home to huge numbers of immigrant communities and economically disadvantaged communities that would be particularly hard struck by such a requirement.

Having stated this, there is concern that the State Implementation Plan is somewhat vague and not detailed in regards to many very legitimate concerns.

I state this fully understanding

that the Plan is not meant to be definitive. It is a work in progress and will be a product of future negotiations as stated.

However, the Plan is utterly silent as to the uniqueness of New York City and this is cause for concern.

The fear with HAVA from Day One has been that it sounds great, but the devil will be in the details. And the details are how HAVA will be effectively implemented. This fear is exacerbated by the vagueness of the State Plan. The worry is that the devil will appear during implementation without the transparency, accountability and uniformity a detailed plan would assure.

I would like to point out a few areas where some more specificity is essential.

As stated, there should be some specific reference to the uniqueness of New York City's situation, particularly in regards to funding. I know that funding can be the most contentious part of any such proposal, and therefore the least likely part to be discussed if it doesn't need to be.

However, I and many City residents feel it does need to be discussed because implementation will be disastrous, especially here in the City, without sufficient Federal and State funds.

New York City is the largest district, the most diverse, the most challenging to manage, the most costly, and it also has a troubling voting history.

Three of New York City's five counties are Preclearance jurisdictions under the Voting Rights Act. We hope all these factors are taken into account when funds for New York City are appropriated.

The Plan should be more detailed as to the types of new voting technology that are under consideration and the vendors of such technology.

The Plan should also be clear about the bidding process for vendors which should explicitly be open, competitive and inclusive of vendors with diverse backgrounds.

There has been a loud cry that the vending opportunities in the process are

being appraised with political motivations and with an eye toward patronage. There is no room in the process for this. The principles guiding this process should be affirmative action, quality and fair competitive bidding, not political alliances, party affiliation and old boy networks.

This section of the Plan should also be clearer on what is meant by "accessibility" for voters with disabilities and should attempt to define "disability" and define such term broadly.

One of the greatest strides of this legislation is to enfranchise a population whose rights have been historically disregarded and discounted, and it has been totally unacceptable.

There should be more description of a voter verifiable audit trail. There has been much debate about this provision of HAVA. Many are calling for a physical record of each vote that the voter can verify.

The provisional voting sections should endorse the idea of provisional ballots

doubling as registration applications. I have endorsed this viewpoint before.

The Voter Registration List section is exceedingly vague. This is the backbone of our process. There should be some specific discussion on dealing with mismatches between databases, noting which databases trump other databases, creating uniformity and allowing for minor variations rather than being excessively strict with a slant toward disenfranchisement.

The voter identification requirements section must be more detailed. This is one of the greatest worries here in the City. We endorse a very liberal interpretation of "forms of ID." There has been legislation passed by the Assembly, sponsored by Assembly Members Destito and Wright, that offers such an exhaustive list. The Plan should reference and endorse such legislation where appropriate.

The voter education and election worker training sections grasp the intricacies of the task and offer a good level of detail regarding the implementation of such programs.

We endorse the idea that many of the advocates have been describing as, quote, a Voter's Bill of Rights, end quote. Such bill should be posted at all poll sites and should boldly go further than addressing the HAVA provisions and state all the freedoms and liberties that New Yorkers are entitled to at the poll.

I have one more generalized criticism that I would like to express. Since the inception of the Task Force, there has been a cry that it has not been diverse enough nor inclusive enough. Diversity is a principle that many have fought and died for. Diversity is one of our City and State's greatest strengths.

Many of the criticisms that resonate with the Plan and its lack of specificity would be assuaged if people felt that sufficient numbers of representatives of all communities were taking part in this process. They would feel that their views were being given expression and that their voice was being heard at the drafting table. It is not too late, and I think that there still should be given ample

consideration to such an attempt to incorporate other voices.

I also want to note that there are many bills that have originated in the Assembly, many sponsored by Assemblymember Keith Wright, and I am fully in support of. The Governmental Operations Committee is currently reviewing them and drafting resolutions in support of these bills.

The proper implementation of HAVA is of paramount importance to the people of this City and State. Elections will depend on how effectively HAVA is implemented in New York City.

We look forward to assisting such implementation in any way we can here at the City Council. Our democracy rests on idealism, not cynicism.

What brought us here was a pervasive sense of cynicism among many citizens in the City and the nation following the 2000 elections. Idealism must carry us forward.

Thank you.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Councilman.

COMM. KELLNER: Councilman, I know your Committee has been very diligent in holding hearings to stay on top of the activities of the Board of Elections and that's something that's relatively new and I think that's a good development.

I'm wondering if you have any views on how much time you and the City Council are going to need to do what the City Council will have to do in terms of appropriations and getting involved in voting machine procurement.

If the State doesn't make a decision on what kind of machine we should be buying soon, what's that going to do in terms of the City Council's ability to do the necessary legislation for the capital funds, even if some of it is going to be reimbursed by the Federal government?

COUNCILMEMBER BILL PERKINS:

Well, clearly timing is everything. And obviously the sooner the better so that we can provide not just our members but the public in general with a clear understanding as to what's at stake in terms of the funding and in terms of the prices

of procuring the necessary equipment depending upon when you decide what that equipment will be.

So clearly that's critical as far as our role, our very important role, in this process.

So, yes, how that is done, when that is done has a very, very direct bearing on how we can fulfill our responsibility.

COMM. KELLNER: How much time realistically do you think it will take from the time that the State Legislature or the State Board of Elections comes up with a voting machine for the actual funding process within City government to take place?

COUNCILMEMBER BILL PERKINS:
Well, that's a good question.

Clearly we are going to have to have a hearing. It depends upon at what point in the year you decide to make that decision. If it's like around this time of the year, it might give us some time because the next voting -- time we start looking at the budget, you know, it gives us enough time to June to kind of get some hearings going and some negotiations going with

the Administration, some back and forth I guess with yourselves and the State.

If it comes at another point in the process of our budget negotiations, it could be -- we may not have enough time.

So it would seem to me that the earlier within the year the better. But it's going to take a few hearings, it's going to take a few months of negotiations.

DEP. EXEC. DIR. KOSINSKI: If I could just comment on that.

As you know, the State Board is really in charge of doing certification of voting machines in the State. So that as voting machines become certified, then the localities will be able to go out and look at those machines for purchasing purposes.

But obviously we need to work with the State Legislature to ensure that any machine that we are certifying meets the mandates of the law. And once we do that certification process, which we hope to be doing with the vendors over the next few months, it's at that point that the machines will become available in

the State that will meet the mandates of HAVA and also meet the demands of the State law.

COUNCILMEMBER BILL PERKINS:

Well, let me just mention one other aspect of this.

I understand that the Board of Elections has a phase-in process, and if I'm not mistaken, I believe they want to try to phase it in over several years and with the first phase being next year, the upcoming elections, in one of the boroughs.

So, clearly, you know, there's some work we will have to do before that first step takes place. And, again, the sooner that we can find out about when this is going to happen, the better it will be for us to review what's going on, get the public involved, get some feedback from the public, get an opportunity to hear from yourselves as to why you chose this and how it works and so forth.

DEP. EXEC. DIR. KOSINSKI:

Anything else?

(No response.)

DEP. EXEC. DIR. KOSINSKI:

Councilman, thank you very much.

COUNCILMEMBER BILL PERKINS:

Thank you very much.

DEP. EXEC. DIR. KOSINSKI: We appreciate it.

Next is Rosemary MacLaughlin from the League of Women Voters.

MS. ROSEMARY MacLAUGHLIN: Good morning.

My name is Rosemary MacLaughlin and I am representing the League of Women Voters of Westchester. The Westchester League is a county organization of thirteen local leagues with more than two thousand members. Although we are a non-partisan organization, we do advocate for policy positions after study and consensus by our membership.

As most of you know, the League of Women Voters has a long-standing interest in the administration of elections and we have been in the lead in advocating that the State of New York update its election system.

Following the November 2000 election, the Westchester League interviewed

members of the Board of Legislators, members of the State Assembly, and Commissioners of the Westchester Board of Elections. Five of our local leagues organized study committees, interviewed town clerks, and examined electoral reform proposals.

From this work we noted the need to replace outdated voting machines, the need for improved recruitment and training of election inspectors, improved implementation of Motor Voter Law provisions, and the need for an inclusive, computerized voter registration list.

Many of the reforms we identified have been addressed in the Help America Vote Act of 2002 which requires all states to meet minimum standards for voting systems and for the administration of the electoral process.

On June 19th of this year, the State Assembly passed a package of nine elections bills which will implement HAVA in New York State. The League of Women Voters is supporting this legislation and is urging that the Assembly and Senate begin negotiations to move toward

improving elections in the State by November 2004 when some of the HAVA mandates will take effect.

Highlighted in this package are:

The adoption of a single voting machine through a competitive bidding process for use in the State after July 2005;

New voting machine standards, including standards designed to ensure that voting machines are accessible to persons with disabilities;

Creation of a State fund to receive Federal HAVA monies;

Updated affidavit ballot procedures and creation of a toll-free access system for discovering whether one's ballot was counted;

An inclusive list of approved forms of voter identification and a statewide voter registration list;

Provision for an administrative complaint procedure;

County ownership and custody of voting machines;

County Boards of Election to be

responsible for training poll workers;

And training of poll workers to be standardized, and compensation of poll workers to be increased.

Absent from this package is legislation to repeal the full-face ballot, a League of Women Voters' legislative priority. We believe it is critical that New York election law be amended to permit voting technologies of all kinds in order to allow the State to consider the full range of voting machines available.

The selection of new machines and the entire contracting process should be done openly with the opportunity for public comment. We support the use of as uniform a voting machine statewide as possible. Standardization would provide both economic and practical benefits.

In addition, the County Boards of Election should continue to be responsible for running all Federal and State elections within their counties, and a comprehensive Voter's Bill of Rights should be displayed at polling places and widely disseminated to each voter and to the media.

In conclusion, we urge that New York State take this opportunity offered by the infusion of Federal funds to not only meet the minimum HAVA requirements, but also to achieve long-needed improvements in the way we vote for the benefit of all the State's citizens.

Thank you for the opportunity to present our views.

DEP. EXEC. DIR. KOSINSKI:

Thank you.

Any questions?

(No response.)

DEP. EXEC. DIR. KOSINSKI: I would just note that the League was represented at the Task Force by Aimee Allaud, --

MS. ROSEMARY MacLAUGHLIN: Yes.

DEP. EXEC. DIR. KOSINSKI: -- who offered us obviously a lot of suggestions, many of which I think you have made here today.

MS. ROSEMARY MacLAUGHLIN:

Thank you very much.

DEP. EXEC. DIR. KOSINSKI:

Thank you again.

We have Margarett Berg Cashin.

I hope I'm pronouncing that correctly. Staten Island.

MS. MARGARETTE BERG CASHIN:

Deputy Executive Director and Members of the Task Force:

Thank you for allowing me to testify today.

My name is Margarett Berg Cashin. I'm an attorney/advocate for the disabled and elderly on Staten Island. I am representing the Staten Island Center for Independent Living. The Center has over two thousand clients that are disabled.

I would like to address the following issues in the State HAVA Plan.

Number one, under replacement of the lever voting machines and punch card devices, page ten, the Plan identifies that all lever machines will be replaced by a deadline of January 1, 2006.

The disabled community cannot wait until that time. It seems in the spirit of HAVA that at least one accessible voting machine should be in place in New York State by election

day 2004 at each polling site.

Right now here in New York City there are broken machines that our local Board of Elections does not want to fix. These broken machines could be replaced by accessible voting machines. Not only would a disabled voter be able to cast an independent, private vote, but the able-bodied community would benefit as well.

New York City and the other counties would then have until 2006 to replace all the other machines.

Number two, under voting equipment accessibility, page eleven, HAVA Title II funds should be directed through the New York State Office of Advocate for Persons with Disabilities and the Independent Living Center statewide network.

Our center on Staten Island has been working with our local Board of Elections for years in accessing new voting machines that would service the disabled.

The funds should be at least matched by the Title I HAVA monies. Both the Office of the Advocate for Persons with

Disabilities and the Independent Living Center network must be provided sufficient funds to effectuate the goal of the New York State Board of Elections and counties to be successful in this endeavor.

Three, under physical accessibility, page twenty-seven, it is a wonderful concept that funds will be made available to counties that are having difficulty making certain polling sites accessible.

However, there could be abuse in this program with the need to provide funds for public and private entities that are already required under the Americans with Disabilities Act to make their locations accessible.

If this program moves forward, disability advocates must be involved to define the guidelines to avoid favoritism. It would be a shame if private businesses or public schools that had resources received these funds to make accessible accommodations.

Some of the guidelines we as advocates support are:

One, documentation of what

accommodations need to be made, including cost;

Two, documentation of what alternative sites were explored without success;

Three, documentation that the modifications would be an undue hardship on the public or private entity that stands to benefit from these accommodations; and

Four, a set limit per application and site.

Under Section 3, Voter Education, Election Official and Poll Worker Training, pages eighteen and nineteen, people with disabilities must be involved in both the public education campaign and poll worker training.

Independent Living Centers have been involved in disability sensitivity training for years. The education materials must be able to meet the criteria of all disabilities, be it blind, deaf, physically challenged, et cetera.

The Independent Living Centers could advise the New York State Board of Elections and carry out poll worker training if HAVA Title I and Title II funds should be

directed through the Office of the Advocate of Persons with Disabilities and to the Independent Living Centers statewide network.

Only a disabled person can train people to understand disabilities.

We also need poll workers who come from the disability community. This is very important. Several years ago, when I was using a cane, I was turned away from my polling site. I was told that I didn't vote there even though I had a card from the Board of Elections.

I asked to speak to the person in charge and the poll worker would not call the person in charge. Instead, she insisted I did not vote there and that I should walk two avenues and nine blocks to vote at another school.

We started to have a confrontation and a police officer intervened. He looked at my card and he called the supervisor who mysteriously found my voting information. I was then allowed to vote.

If I were not persistent, I would have walked a half-a-mile out of my way on a cane to vote at a facility that did not have my

information. The whole experience left me with a negative view of the Board of Elections, as to the way they treat the disabled. However, it did not discourage me from voting.

I live in Richmond County now. This did not happen in Richmond for the record. This happened when I was still living in Kings County.

Number five, under C. Computerized Statewide List, Voters Who Register by Mail and Voter Identification, page nine, with the Medicaid Buy-In Program, the New York State Board of Elections statewide database must include people with disabilities that receive Medicaid but not Social Security.

And, number six, finally, disability advocates want to be involved in the process of certifying new voting machines and technologies. Throughout the HAVA State Draft Plan it makes mention of the state certification process to approve the use of new voting machines in New York State.

Thank you for allowing me this testimony.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Margarete.

I just wanted to mention on the issue of poll site accessibility, there was a separate pot of funds that was made available under HAVA that can run through the Health and Human Resources Agency out of Washington. And that money is available directly to the Office of the Advocate.

In New York State I know they have applied for that. It's about \$800,000 which is available for New York State.

That's this year's money. Again, that is in this fiscal year. We are hoping that there will be more money made available under HAVA for this particular purpose.

I think originally the anticipated amount of money was \$100 million nationwide that would be made available through the HAVA program. Only \$13 million of that was actually appropriated by Washington for this year.

So we are hopeful that over the next two years additional money will become

available. Again, this money goes directly to the Office for the Advocate but it's specifically for the purpose of making polling sites more accessible to the disabled.

So we are hoping that New York can enhance that ability through the use of that money.

MS. MARGARETTE BERG CASHIN: I have to say in Richmond County we have like eighty-five polling sites give or take like two. And to be quite honest, most of the polling sites, actually almost of all them out in Richmond County, are accessible to the disabled.

But once you get in sometimes there's problems with bathrooms and little things like that. But actually entering into and out in Richmond is very good.

DEP. EXEC. DIR. KOSINSKI: Well, there's no question this has been an issue, you know, statewide. I think we have around six thousand polling sites in the State that the boards have to identify each year for use by voters. And, you know, making each one of those sites accessible to the disabled has been a

challenge. There's no question about it.

But we are very hopeful that with some additional funding that we will be able to improve upon that in the State.

Thanks again.

Next I have Teresa Scott.

MS. TERESA SCOTT: Hi! Good afternoon.

DEP. EXEC. DIR. KOSINSKI: Good afternoon.

MS. TERESA SCOTT: Mr. Chair and to the Members of the HAVA Task Force, my name is Teresa Scott. I am a person with a disability and I have several disabilities.

I don't call it disability anymore. I call it challenge, challenging, physical challenges.

I'm representing myself but I'm also a volunteer at Queens Independent Living Center. And I have to fight my body everyday in order to just get out of the bed and to function.

And the reason why I'm here is because I had the pleasure of going to five polling sites last year when they were voting and

there were only two that were ADA compliant.

The walking that we had to do -- and there was a gentleman that was in a wheelchair who went with us. And if he had to go up a hill, they said that was ADA compliance. The gentleman could have easily broken his neck because the hill was so steep in order for him to get into the building. He could have easily fallen out of the wheelchair.

On days when my body isn't functioning and my hands are not working, to use that full-face ballot machine would be very treacherous for me. I'm having a pain attack right about now sitting in this cold. So to go to a polling booth where you can't, where the signage is terrible -- when we went that particular day, the signage that was out, there were signs saying to go up this way. When we got there, that was the wrong building. We were escorted through a kitchen then through another corridor. And all that walking caused some of the members that were with us to just shut down. They literally could not finish the polling booths.

There was one woman who was

saying that she's been doing this for training like whatever amount of years. I really don't remember. She said that -- what happened was that we were trying to get a person who was blind. We wanted to know what was the procedure for a blind person when he comes. And there was no one there to assist us.

The main reason why I'm here is that we don't want to be babied as people with a disability. We want to be treated like everyone else. We want to just vote in privacy. We want to vote private and we want to vote as U.S. citizens. We want to be able to walk into polling places that have properly trained people and proper equipment for us to walk into the building.

I have fibromyalgia and when you have fibromyalgia your body shuts down, your muscles don't work. And if you don't -- some of the doors -- I'm going too fast -- some of the doors that we had to open were so heavy, if a person whose hands are bent over or don't even actually have fingers to pull them open, they would not have been able to get into that

building. There was no one there saying, well, we will assist you.

Some people were outside. It was just not prepared. And I only did -- we only did five. We couldn't do anymore. Our bodies just shut down because of all the walking that we had to do. And these were so-called ADA compliance places that we went to.

They are not -- they don't have us on the mind from the five places that we visited. Maybe that's a bad scene, but if I was a person who had to walk, I would have went back home. If I didn't have the determination like I have to fight to do system advocacy, I wouldn't even be here today. I would stay in my bed because I'm hurting. From when I woke up this morning I was hurting. But I was determined to come here in spite of how my body is feeling.

I want to make sure that when I leave here that we are not treated like slaves who couldn't work during slavery time. I know we live in a modern time. But as a person with a disability, if you can't vote, we are treated just like those slaves who couldn't vote who lost

all their rights.

I want to know what you're going to do to make sure that our rights are, you know, that our rights are -- that we as disabled people have the proper rights, the proper machines where if we want to vote, we can vote. We don't have to try to pull a lever that is very difficult to pull if that machine isn't working. Or if I'm not mentally together, I can't read what's on that full-face ballot.

If I'm in a wheelchair, the machine can't tilt to let me vote in. We just want to be able to go in and vote privately. We don't want everyone knowing who we are voting for.

So there's a lot of information that we are dealing with. And I came down as one of the members of the disabled community that's fighting for our rights.

And I hope that you all -- I'm not familiar with all the computer technology or the ratio or all that. I'm just a regular citizen who wants to be able to vote when my body is not working. That's the main thing that I came here

to say.

Thank you for listening.

DEP. EXEC. DIR. KOSINSKI:

Thank you.

Let me just say that I think that the issue of disabled voting, that fight really has been won in the sense that the whole HAVA legislation that was adopted in Washington, that was a major component of this whole program across the country, is to assure that the voting systems in this country are accessible to the disabled and to ensure that the states do come into compliance with that and that the Federal money is available so the states have the necessary resources to make sure that they can provide those kinds of opportunities.

So in my mind that fight has already been won.

It's now just a matter of the states actually implementing what Washington has already decided, and that the mandates from HAVA, which have received Federal funding, will force, in essence, the states to make sure that this sort of compliance issue is dealt with in the

next couple of years.

So I really feel that that will happen.

MS. TERESA SCOTT: One thing what I also wanted to say is the gentleman was saying that one borough should be, you know, put first. But what if there's 100,000 disabled people in Queens where I live at? Who is to say what borough should be put first?

I think that we should make sure that the disabled community or the language barrier community or whatever particular community that has the most problems in should be dealt with first, not what borough you live in. Well, if I live -- I don't live in Manhattan. What if Manhattan comes first? I live in Queens.

DEP. EXEC. DIR. KOSINSKI: I understand.

I think the issue that the boards - and I'm just going to say this - I think the issue that the boards are dealing with, and as a Board of Elections person I'm sympathetic with that as well, is, you know, rolling out 20,000 machines potentially across the State all

at once is a massive undertaking.

And so there is some concern that the boards do it in some systematic way and in a way that can be managed so that it's not done in a way that is just overwhelming to the mechanism that is in place in this State actually implementing the voting system.

So we are concerned and we share the concerns of the City Board as well as other boards that whatever machine we put out there, that we put it out there in a manner that allows the citizenry as well as the poll workers to absorb it. And maybe doing it all at once is too much and maybe doing it over time will actually provide a better method.

So that's the issue we're dealing with. I understand your issue that --

MS. TERESA SCOTT: Right.

DEP. EXEC. DIR. KOSINSKI: -- you would like these machines out there as soon as possible. And I think we share that.

But we also have a management issue we are dealing with. I think that's where the City Board is coming from as far as how they

are going to roll these things out.

Terence.

MR. TOLBERT: Ms. Scott, one of the things that Assemblyman Wright has been concerned about, one of the things that ties the hands of the State Board of Elections is going to be what the Legislature does and do not -- does or do not -- my grandmother says I can't say this -- does or do not do --

MR. HAGGERTY: Does or doesn't.

MR. TOLBERT: Does or doesn't.

Right. All right.

One of the things that worries us with the full-face ballot issue and what the disabled community will have to be stuck with is whether -- if we do not actually properly or appropriately or quickly - so I think, Peter, I'm going to offer - is that we've been asked on a number of occasions, because we've seen the Borough President's report, Councilman Perkins held a hearing where he held machines, but one of the things that we've had is not being able to get the State Legislature, who has to ultimately vote on this issue, to take a look at what this

new technology is.

So we are going to try to convene a machine day, in effect, where we show our colleagues what we have or what's out there to offer.

But, most importantly, if we cannot get some kind of agreement on how we get the disabled community to deal with the Task Force, we're going to ask you to be with us when we do a state-level review of these machines.

I think it's important because the issue of full-face and much of this process is going to be political. That's the reality of how government works.

But I think if we can get the experts, as Senator Kreuger said, there to talk to us who have to make the final decision, maybe that might move us a certain way.

So that's what I'm going to promise and what I'm going to offer on behalf of Assemblyman Wright and we are going to try to do it with all speed here so that we can get some action from the Legislature whether it's a recall when we go back to deal with other business we

didn't do or just because HAVA is something we need to act upon at least from a budgetary concern as soon as possible.

So we'll try and move this along. And for those who are present who have spoken before, we will extend the invitation to all of you.

But I think we need to convince as many people as possible that your concerns are not addressed even in the legislation that we passed for the most part at the end of session, that we need to take a second look at some of the issues, especially full-face ballot.

So we'll make that offer and we'll follow up on that as quickly as possible.

MS. TERESA SCOTT: Thank you very much. I really appreciate it.

DEP. EXEC. DIR. KOSINSKI:
Thank you for coming.

Teresa Hommel.

MS. TERESA HOMMEL: I brought a voting machine. I thought the font would be big enough for everybody to see, but I realize now that it's way too small.

This voting machine, which I programmed Sunday, works in two modes. We can do a machine test or you can run a real election.

When you do a machine test, you always get the correct vote count, but when you run a real election, my candidate always wins.

(Laughter.)

MS. TERESA HOMMEL: So I'll ask one of the members of the State Board Task Force to run a real election.

So this is the mass.

MR. TOLBERT: Which one do I do? Real.

MS. TERESA HOMMEL: Do a real election.

MR. TOLBERT: Real election, okay.

MS. TERESA HOMMEL: He clicked on real election.

He's now voting for president. His choices are John Doe and Mary Smith.

MR. TOLBERT: Note that I picked Mary Smith.

(Laughter.)

MR. TOLBERT: Okay.

MS. TERESA HOMMEL: He's now verifying his ballot.

MR. TOLBERT: Correct.

MS. TERESA HOMMEL: He says it's correct. He voted for Mary Smith.

Now he's the next voter. The next voter is going to enter the voting booth.

MR. TOLBERT: It's your turn next.

MS. TERESA HOMMEL: Try to get a majority for Joe Doe because he's going to be the loser.

A VOICE: There we go. So you want me to vote for John Doe.

MS. TERESA HOMMEL: So he's voting for John Doe.

COMM. BERMAN: Your vote is being influenced.

MS. TERESA HOMMEL: Now he's going to verify his ballot.

A VOICE: I've verified it. Okay.

Who wants to do it, next?

DEP. EXEC. DIR. KOSINSKI:

Commissioner, why don't you take the next crack.

COMM. KELLNER: I'm going to
vote twice.

All right. John Doe. So I've
voted for John Doe twice now.

MS. TERESA HOMMEL: So far
we've observed two votes for John Doe, one for
Mary Smith. But we should keep John Doe in the
majority so we can see that he's losing anyway.

Both of you can change your
mind. If you click on John Doe, you can then
click on Mary Smith, you can go back and forth,
just like regular voters do when they are pulling
the lever and they change their mind and pull a
different lever.

When he goes to verify, he also
can change his mind.

So now he's in the verify
stream. He can say wrong and start over.

Now he's verifying John Doe.

So what do we have? Three for
John Doe and one for Mary Smith.

So now I'll close the voting

machine and see what our total count is.

MR. TOLBERT: Well, I'm happy with this outcome.

A VOICE: How did that happen?

MS. TERESA HOMMEL: Well, the question is how did that happen.

It actually took me a long time to get my voting machine to work and during that time I got all kinds of results. I even had people winning who weren't on the ballot.

They say that the programming in voting machines, computerized voting machines, runs over 200,000 lines of programming. This program is only a few hundred lines of programming. And it was difficult to do.

Computers are inherently subject to errors. And the focus of my testimony is on the need for a paper ballot, that is to say a voter verified paper trail.

Thank you, gentlemen.

My name is Teresa Hommel, and I thank you for the opportunity to speak before you today and to show you my voting machine.

My expertise is in computers and

so my comments will deal primarily with issues concerning the issue of computerized voting machines.

My credentials are that I started working with computers in 1967. I began teaching programming in 1969. And I have taught in schools, colleges and universities, including NYU, Baruch College, and The New School, and many others.

And I published two books, computer books, with John Wiley & Sons. For the last twenty years I have been a consultant and corporate trainer, teaching the technical employees of many Fortune 500 companies in every industry, as well as Federal, State and local governments. I also did a large number of programmers in one of the departments in New York City government. I also have sold computers for IBM.

I will briefly address the following topics, and at the end of my testimony there is a list of resources with additional information on these topics.

First, the need for a voter

verified paper trail.

Second, the need for publicly available software.

Third, the need for computerized voting machines to go through at least the same security procedures and testing that computer systems go through before they are put into production in business and industry.

And I think the gentleman from the New York City Board of Elections talked about the need for time to do that.

Fourth, the need for adequate time to get computers to work correctly.

Fifth, the need for remedies when computerized voting machines do not work properly and election results are corrupted.

And last I'm going to mention but not speak in depth on the need for accessibility.

My main topic is the need for a voter verified paper trail. All computers are inherently subject to programming errors, equipment malfunction, and malicious tampering. Computer professionals know this, but we aren't

the only ones.

Casual users of computers also know that computers don't work right all the time. Just ask yourself how often does your PC crash or lock or lose a document.

The same kinds of problems have already occurred with voting machines in various states around our country and we would be prudent to be forewarned by those experiences and not duplicate them.

That is why we need a voter verified paper trail of each vote. Without that paper trail there is no way to count the votes when the computers malfunction. And notice I'm saying "when," not "if," because it's guaranteed that if it's a computer, it will have problems.

Banks give paper receipts, cash registers do, ATM machines do, even gas pumps give paper receipts. There are computer kiosks at train stations to sell you a train ticket on paper, and at the airport you can print your boarding pass.

So printing a receipt is not a big deal. And without that piece of paper, when

election results are challenged, a recount is not possible and our democracy is in danger.

Democracy can't survive if we let a bunch of people count our votes in secret behind closed doors. A computer is the same as a bunch of people behind closed doors. American citizens should not be forced to accept the results of a computer in running our democracy.

To bring home what I am talking about, I brought in my laptop with the little voting machine. In this demonstration we saw what was going on so all knew that the results were incorrect. What if the individual votes were being cast in private in voting booths? How would anyone know that the total counts were correct? They wouldn't.

My second topic is the need for publicly-available software.

Some computerized voting machines use proprietary secret programming. If the programming is not publicly available at all times, it is harder to maintain security.

However, it is a mistake to think that publicly available software can

guarantee security. Only a voter verified paper trail can do that.

The problem with software is you never know what software is loaded in a computer. Here are two diskettes and two CDs. I can tell you that they contain the same program. But how do you know? You don't. Even I might not. I might have made a mistake either accidentally or intentionally.

My third topic is the need for computerized voting machines to go through at least the same security procedures and testings that computer systems go through before they are put into production in business and industry.

Purchasing new computer equipment is a buyer-beware situation. That's why in business companies do exhaustive testing of computer systems before they go live in production.

The old system and the new one run in parallel for at least one complete accounting cycle so the results of the old system and the new one can be compared. Businesses that rely on computers know that if they get the wrong

results, they could go out of business.

But around our great country we see voting and elections treated with shocking disrespect. And when corruption of the results occur, the public is supposed to accept the results anyway. This is wrong.

If we're going to get computerized voting machines, these machines should be subject to the same security testing as computers that are used in business and industry. Security means not only that there are no hackers in the system, but also that the results of normal operation are correct.

Like businesses that hope to stay in business, we should not rely on new systems until they are shown to work and until they consistently provide a voter verified paper trail by which their accurate operation can be continuously spot-checked and verified, because that's what businesses do.

Even when there's no challenge to the election results, they need to be checked. For example, my bank sends me a statement every month even though I haven't challenged their

accounting.

My fourth topic is the need for adequate time to get computers to work correctly.

It takes months or years to get a new computer system to work correctly. I've worked in hundreds of companies, the largest ones. No company expects to take several hundred or thousand very specialized computers out of their boxes, turn them on and think they are going to work correctly.

It's unreasonable to expect to hold an election using all new computerized voting equipment and get anything other than bedlam. There needs to be a gradual introduction of these machines over a long period of many years.

There is another problem. Voting machines are only used for short periods of time so you don't have the opportunity to correct the problems on a day-by-day basis over time. So this is why these machines need to be introduced very slowly, and again, this is why they need a voter verified paper trail.

My fifth topic is the need for

adequate remedies when computerized voting machines do not work properly and election results are corrupted.

I am hoping that New York can learn from the experience of other states where computerized voting machines have malfunctioned and where the election results were challenged but there was no paper trail to verify the results. I hope that we don't have to duplicate those experiences.

As an American citizen, I am outraged to see our democracy and elections being treated like worthless formalities.

I suggest that New York State require companies that sell equipment to us to post bonds, and if elections are corrupted due to malfunction of the equipment, these companies should pay the cost of holding a new election.

There needs to be some accountability. Either the machines work and provide the paper trail to prove it, or we shouldn't use them, and the company that gets our money has to take responsibility.

My last comment is on the need

for accessibility of voting machines.

As we've heard this morning, the disabled community has been working for years to get accessible voting machines so that they can vote in private, without the need for assistance, so they can have the secret ballot that every eligible voter is supposed to have.

With the amount of money that the Help America Vote Act has allocated, we should be able to afford voting machines that are accessible as well as secure, machines that provide both accessibility and a voter verified physical record of each vote.

And there shouldn't be any financial or technological excuse for saying it can't be done.

Thank you very much.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Teresa.

Questions?

Terry.

MR. TOLBERT: I just want to thank her for the show.

If I wasn't scared before --

MS. TERESA HOMMEL: You didn't see all the different ways of malfunctions.

DEP. EXEC. DIR. KOSINSKI:

Thank you.

MR. NEIL ROSENSTEIN: We have a number of groups, a number who have signed up on the thing. And don't worry. We will not be reading the entire testimony. For the folks here, well, we split it up in individual segments for each topic we do want to address and we are hoping to do that in two panels.

DEP. EXEC. DIR. KOSINSKI: Is everybody going --

MR. NEIL ROSENSTEIN: About ten minutes each as opposed to I guess eight or nine panels.

DEP. EXEC. DIR. KOSINSKI:

Okay.

MR. NEIL ROSENSTEIN: We will introduce ourselves.

Good morning.

My name is Neil Rosenstein. We are here today as the New York State Citizens Coalition on HAVA Implementation. We are an ad

hoc and diverse coalition of the government voting rights, racial justice, disability and language rights organizations and academics, who are concerned about the way in which New York implements HAVA.

I'll allow each of the speakers to introduce themselves before they give their individual presentations. A number of our other folks had to leave but they are mentioned in the testimony, the written comments, which you have.

HAVA holds great promise to improve election administration in New York, but also holds great peril that decades of long fought-for reforms to enfranchise the State's diverse populations will end up being thwarted at the polls.

The Task Force's Draft Plan includes many encouraging statements of intent to improve New York State's elections. Unfortunately, the Plan includes very few specifics, and even more disturbingly, no recommendations for important legislative changes that would facilitate the best results from the implementation of HAVA.

In short, many of us find it to be a profound disappointment.

Prior to commenting on the substance of the Plan, the Coalition must first note what we believe to be the primary reason for the Plan's substantive deficiencies: a deeply flawed planning process.

The composition of the Task Force fails to represent adequately the diverse citizens of New York, especially those racial, ethnic and language minority communities protected under the Voting Rights Act, nor is the Task Force sufficiently diverse in terms of gender, geography or age groups.

The Task Force meetings were also deeply flawed. With few exceptions, the Chairman did not distribute briefing papers on relevant topics to members, did not form working groups or subcommittees, and never sought a single vote on a single substantive issue.

Indeed, there was a vocal dispute as to whether Task Force Members would be able to review and revise the Draft Plan prior to its release and no meetings of the Task Force

were or had been scheduled after Members received the Draft, clear signs that the Task Force is viewed by the Governor and the Chairman as a rubber stamp rather than true authors and contributors to the plan.

The Plan's principal problem is the lack of specificity that pervades the document. While the Plan frequently speaks laudably of New York's commitment to comply with HAVA requirements, the Plan includes few details about how New York will, in fact, implement these requirements and improve our election process.

This essential failure to articulate a true plan of action threatens to leave important goals unmet, or at the very least, to leave too many items to the sole discretion of the staff of the State Board of Elections without public comment or public participation.

In essence, you reap what you sow. We have a rotten planning process and we have a rotten planning document.

I'll now turn it over to individual members to talk about their specific

concerns about the plan.

MR. DENNIS BOYD: Good morning.

My name is Dennis Boyd. I'm with New York Lawyers for the Public Interest and a member of the Coalition.

I wanted to start by saying that I actually wish that a comment you made earlier, Mr. Kosinski, is correct, that, in fact, the battle over accessibility is already won. I think you've probably heard and I've certainly heard for many years the concerns with implementation that are always again the devil in the details for people with disabilities who have sought for generations to be able to vote independently and reliably without the assistance of others.

While HAVA causes and presents a good opportunity for us to ensure that people with disabilities are, in fact, allowed to vote independently and to have their votes counted, I think the problem really is that the need is to really focus on the specifics.

And, again, one of the problems with the Plan really is that with regard to the whole replacement of the lever voting machines

process, there's an awful lack of specificity in the Plan, even in terms of who's ultimately responsible. The Plan says that, quote, each county board of elections is responsible for implementing the replacement voting system in their county. However, the State Board is leading the statewide effort for replacement and is, therefore, ultimately responsible for meeting this performance measure.

I think while the Plan makes clear that there is a goal of trying to establish and facilitate coordination of a single, uniform system statewide, what's needed, and I think a lot of people who have come before me have made clear, what's needed is guidance and expertise.

And I think that the State Senator indicated that really what would have been beneficial to the legislators would be to have specificity in the Draft Plan or certainly in the State Implementation Plan once finalized.

There certainly have been a whole series of reports on the kinds of accessibility provisions that are needed in order to ensure access for people with disabilities.

There have been surveys conducted. In addition to the one by CIDNY and C. Virginia Fields, there was one by the New York State Independent Living Council which provided a lot of guidance.

And my biggest concern really about the Plan with regard to the machine purchases, that it really doesn't specify what kind of specific accessibility devices would be needed. It doesn't specify what role individuals with disabilities might and should play in the certification and qualification and purchase process. It doesn't define disability and it doesn't suggest ways in which the State law has to be amended in order to effectively implement the Help America Vote Act.

And, in conclusion, I think it's also unfortunate that the Draft Plan didn't discuss the issue of audit trails produced by the new voting machine technologies which were just addressed by the previous speaker.

Some have called for a physical record of each vote to diminish security concerns over electronic election counts and help to ensure the integrity of elections by allowing

officials to doublecheck results if discrepancies or other concerns arise.

Other advocates have expressed serious concerns about any requirement of a voter verified paper trail based on concerns about cost and potential fraud if, in fact, the paper ballots are produced to individual voters.

There is concern also that it may create a dual system for people who have limited vision or who are blind.

But I think the citizens of New York essentially are entitled to a planning document that addresses all of these complex and thorny issues.

And, obviously, not only is the devil in the details, but the time is -- the clock is ticking. And I think that specific guidance in this Plan will be extremely helpful to the legislators and to developing a final process that actually implements HAVA effectively in New York State.

MS. ROBERTA COOPER: My name is Roberta Cooper. I'm Deputy Director of People For the American Way's New York Office and I am here

today on behalf of our more than 65,000 members and activists across the State.

State implementation of HAVA offers us enormous opportunity. It provides money to make electoral improvements that the State has wanted to make for years - such as the purchase of new voting machines. It further provides us with the opportunity to rethink outdated electoral practices and laws. And I am thinking specifically of New York's full-face ballot requirement.

The full-face ballot mandate dates back to 1909. If left on the books, this requirement threatens to prevent today's New Yorkers and those of the future from taking advantage of the tremendous new voting machine technologies that the plurality of other states are already purchasing.

Because the finest new Direct Recording Electronic or DRE machines feature scrolling screens that show the voter each race separately and consecutively, these machines do not comply with New York's requirement that all information on the ballot be printed within a

single ballot frame.

Unless the law and State Board regulations are changed, New Yorkers will have to vote on machines that are neither user-friendly nor accessible to the disabled as those in other states.

In addition, maintaining this century-old full-face ballot requirement will hurt us in the future. Only a very small number of vendors manufacture voting machines that can accommodate this requirement, severely limiting the variety of computerized voting machines that can be considered for use in New York.

We need to be able to purchase machines that allow us to avail ourselves of a range of new technology and provide the versatility to accommodate such future needs, for example, as instant runoff voting or cumulative voting or additional languages on the ballot.

New York State must not find itself once again in the position of being confined by outmoded machines.

Virtually all observers and elected representatives from across the political

spectrum agree that this requirement should be repealed, including Governor Pataki. The Task Force should make clear its support for such repeal in the final State Implementation Plan.

Anything less than such a statement of support would render the Task Force and the Plan virtually irrelevant to any real and lasting improvement of elections in New York State.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Roberta.

MR. STEVEN CARBO: Good afternoon.

My name is Steven Carbo and I direct the Democracy Program at DEMOS, which is a national research and advocacy organization headquartered here in New York.

And I will address my comments to the computerized statewide voter registration list and related voter identification requirements.

As you know, HAVA calls for the creation of an official, uniform and non-discriminatory statewide computerized voter

registration list that is centralized and interactive, marking a major departure from established voter registration procedures now in place in New York's sixty-two counties.

HAVA also passes to the state responsibility that had historically been held by county boards of elections.

Unfortunately, the Draft Plan is distressingly vague as to how the State Board will meet these substantial new responsibilities. The final plan must, therefore, provide a detailed blueprint that incorporates the following elements.

First, the responsibility and authority for accepting, verifying, updating and purging voter registration lies with the state alone. The State Board must issue sufficiently clear statewide standards for county election officials to follow as they interact with the statewide list in order to avoid non-uniform treatment of voter registration applications or inconsistent list maintenance procedures.

The State Board must also ensure that the list contains the names and registration

information of every legally registered voter in the State and that no voter be removed from the list without full compliance with the "Notice and Opportunity to Correct" provisions mandated by the National Voter Registration Act.

To that end, the final Plan should include specific guidance to county boards of elections to ensure that voters are not purged from the statewide list without such notice and opportunity to correct their voter registration information.

Second, the final Plan must designate a broad and specific network of State databases that the State Board will access to verify a registrant's identity and eligibility to vote in a certain jurisdiction.

The document should call on the State Board to design a computerized statewide registration system that can access data from the Department of Motor Vehicles and other agencies where voter registration is offered under the National Voter Registration Act, Medicaid and Medicare offices, other social service agencies, judicial and correctional agencies, and public

education, financial aid, small business and disability services offices.

A system of this reach can best accomplish HAVA's goal of producing clean and accurate voter lists without creating new and unjustifiable barriers for eligible voters.

HAVA also requires that the new registrants provide a driver's license or the last four digits of their Social Security numbers, and directs the State Board to access the databases of the DMV and the Social Security Administration in order to verify voter registration identification.

Regrettably, the Plan offers no guidance to county boards of elections or notice to the public as to the treatment of voter registration forms with erroneous or missing driver's license or Social Security numbers. Such guidance and notice is essential given the fact that such data are vulnerable to errors either in transmission or through a failure to integrate these data sufficiently with the relevant registered voter databases.

This may produce difficulties in

matching database records and thus leave many new voters unregistered.

As a final matter, the final Plan must make clear that a registrant's failure to provide a driver's license or partial Social Security number will not cause a rejection of the registration application.

Indeed, the State will be required to assign the registrant a unique identifying number that will be used in the statewide voter registration database. The State must in unequivocal terms direct the county boards of election follow the proper procedure and disenfranchise no citizen for failure to provide a driver's license or partial Social Security number.

The Plan should also provide guidance as to how county boards of elections are to use this broad network of databases. Where, for example, a registrant provides her name and date of birth but only a partial or incorrect driver's license number, the county board should access the DMV database, and all other additional databases integrated into the statewide system,

to correct the driver's license number and continue processing the application for voter registration.

Under most circumstances, rejecting a registration without a valid driver's license or Social Security number will be a violation of HAVA.

Last, and in conclusion, the ultimate Plan must clearly state that responsibility over the design and implementation of the new computerized statewide voter registration system rests with the State Board. The State must ensure that county and local officials do not misinterpret the law's requirements and have sufficient access to an extensive pool of State databases such that voter information can be properly matched and voters registered.

Thank you.

MS. MARJORIE KELLEHER SHEA:

Good afternoon.

My name is Marjorie Kelleher Shea. I'm with the Women's City Club of New York City. And I'll be very brief because we've been

here a long time.

You have our written testimony from the Coalition.

I want to emphasize two points from that.

The Plan calls for a statewide comprehensive education program for the voters. And I beg you to make some plain language information available to the voters and use the video.

Now, you heard John Ravitz this morning say that New York City had produced a training video. Indeed it did. It was a very good video. I've seen it. Except it was not used. There may be a few copies kicking around, but that video was never distributed because, why, you know, dollars. We don't have enough dollars to distribute that video.

Why can't that video be done or something similar throughout the whole State and use public TV?

Second point is on the training of poll workers. The present law requires that poll workers pass an exam, a closed-book exam.

Section 3, I think 314 of the State Election Law requires a closed-book exam.

I think that if poll workers are getting paid \$200 a day plus, that they ought to be able to pass a written closed-book exam, and that ought to be in the State report when you are doing qualifications for poll workers. If they can't pass that exam, they don't get hired.

Thank you.

MS. EMILY MATHIEU: Good
afternoon.

I am Emily Mathieu from Common Cause New York, a citizens lobby with 15,000 members across the State. And I'd like to speak briefly about the Voter's Bill of Rights.

HAVA recognizes that voters' rights at the polls are often unclear to the voters and sometimes, in fact, to the poll workers. This has been true in New York State under our current voting laws, even those that have been in effect for many years, and would be even more true when HAVA takes effect and presents a range of new rights and responsibilities unfamiliar to even the most

educated voter.

A typical voter may be unaware of his or her rights regarding many common issues including identification, provisional voting, assistance in the voting booth, translation, voting outside the booth of disabled and many others.

The voter has no resource at the polls to explain his or her rights except for the poll worker who may be uninformed or incorrect or who the voter may simply distrust or question.

A Voter's Bill of Rights posted at the polls and publicized before election day would provide a clear, accessible, unbiased source of information. It can prevent disputes between poll workers and voters and, most importantly, it can ensure that many more voters are fully enfranchised by explaining what their rights are and how they can fully exercise these rights.

A Voter's Bill of Rights presents a simple solution to many election problems and is an essential component of proper HAVA implementation.

However, the Task Force's Draft Plan does not include a draft Bill of Rights nor does it address how this Bill of Rights should be publicized to greatest effect. In this regard the Draft Plan fails to ensure that the State will take its responsibility for the Bill of Rights seriously.

The final Plan should include a detailed and expansive Voter's Bill of Rights. But even before the final Plan is released, the Task Force should immediately release a draft of the Bill of Rights and should publish it on its website so that the public can comment.

We have included in our written testimony a draft of a Voter's Bill of Rights that could be a starting place for this process.

The Plan should also indicate that at minimum the following methods will be used to make the public as knowledgeable as possible about the Voter's Bill of Rights:

Mailing the Bill of Rights to all voters before election day;

Publishing the Bill of Rights prominently on all Board of Election websites,

including versions in Spanish, Chinese, Korean and other languages spoken by many New Yorkers; and

Promoting the Bill of Rights to the media and requesting that they include it in their election coverage.

Thank you.

COMM. KELLNER: On just that issue, may I ask you a question.

Are you familiar with the bill that the Legislature passed this year which was one of -- I think three of the nine bills of the Assembly package passed the Senate as well. And one of them was this new signage requirement with the posting of a long laundry list of election information, that some people have been calling the Bill of Rights.

Is there anything that's left out of that bill that you think should be incorporated or added to the legislation?

MS. EMILY MATHIEU: Let me just see if anyone here has given that a little more thought, what's in the legislation.

In general --

MR. DENNIS BOYD: I'm sorry. Essentially we've analyzed what the Assembly passed and are in full concurrence with the language involved in the Assembly bill.

COMM. KELLNER: There was a Bill of Rights posting -- I mean some people called it a Bill of Rights. It didn't say Bill of Rights. It had a long laundry list of items that had to be publicly and prominently posted at each poll site.

And the Senate passed that as well this year.

MR. DENNIS BOYD: The Senate's bill --

COMM. KELLNER: I don't know if the Governor signed it yet.

MR. DENNIS BOYD: I don't think it has been signed yet.

But the Senate bill was less specific than the Assembly bill. And I believe it wasn't one and the same as --

COMM. KELLNER: They passed the same bill.

MR. DENNIS BOYD: Was it one

and the same legislation?

MR. TOLBERT: I thought it was.

MR. DENNIS BOYD: Okay. I'll doublecheck that.

MR. NEIL ROSENSTEIN: If I might, I think there are one or two other things that are maybe waiting for the Task Force.

The Bill of Rights, we thought it would be very useful for voters at the polls to have finally that definitive list of what all the acceptable forms of ID are because that's going to be one of the most contentious issues and troubling issues there.

So when that issue is decided upon by both the Assembly and the Senate, it might be good to revisit the Voter's Bill of Rights to include things so that everyone has and everyone knows what those acceptable forms of ID will be.

So there are some things based on the legislation we think that it might need some update.

COMM. KELLNER: My recollection is the new law is that the State Board of

Elections is given the job of actually determining the text of what goes on this new signage.

And so I would urge everyone to take a look at that and make sure they get their comments to the State Board because I think the bill is in effect for the September Primary.

So they are going to have -- if the Governor does sign it, they are going to move very quickly.

MR. STEVEN CARBO: If I might, I would add, I think there is another important provision that I know is very important to Chairman Wright, a piece of information which concerns the voting rights of citizens who may have been incarcerated for felony convictions.

Under State Law those who are on probation or have completed their sentence and parole are fully restored. Their voting rights are fully restored. That is information which is not commonly understood by either voters or poll workers and it would be very important to include as well.

MR. GLENN MAGPANTAY: My name

is Glenn Magpantay, M-a-g-p-a-n-t-a-y.

I am a staff attorney at the Asian American Legal Defense and Education Fund. I'm going to be talking about provisional ballots, affidavit ballots.

A word about AALDEF, the Asian American Legal Defense Fund. We -- AALDEF protects and defends the civil rights of Asian Americans. We engage in legal advocacy and community education. We monitor the elections for compliance with the Voting Rights Act, State Election Law.

We also review the database of registered voters when we do voter registration. And we found a number of errors in reviewing that.

The Board -- we brought these to the attention of the City Board and they have been -- actually at the State Board as well, about these errors and they've been corrected.

But what we seek are remedial mechanisms to make sure that when voters have done everything that is legally required to vote, but someone lost their ballot, lost their voter

registration form or they inputted it incorrectly, then those ballots will be discarded, we seek a way to make sure that those voters can -- that those voters are registered.

When we reviewed the database of registered voters, what we found is that some voter registration forms submitted by voters, submitted by us, were never inputted in at all. They were lost. Names, addresses and dates of birth were wrong. 1948 and 1968 are two different years. And that will affect your ability to vote in certain elections.

Some voters were not enrolled into the correct political party. Republicans were put into the Democratic party, Democratic voters were put into the Republican party.

Some voters were not put into any party at all even when they had asked.

So that's a problem.

We started reviewing different counties in New York State. Allegany County, Cortland County - who else do we have? - Cayuga County, use affidavit ballot envelopes - here we go, and this is my exhibit so that we have one

copy, but you'll be getting more - have an affidavit ballot on one side, a voter registration form on the other side. And see, the other side is blank which could easily be translated into the Chinese language or Korean.

So we will be sharing our findings.

We have reviewed twenty-seven counties so far. We have a few more to go in New York State.

We found that nineteen of them use double-sided perforated affidavit envelopes where the voter registration form accompanies the affidavit ballot.

We understand that the Board - the City Board of Election's policy is to give voter registration forms to voters who must complete affidavit ballots. You know, my experience with elections, we found very, very few voters, very few poll workers, who knew to do this or actually did this.

We sat in on poll inspector, site coordinator and interpreter training, never have been, the ones that we've sat in for about

the past two or three years, have ever covered affidavit ballots and voter registration forms at the same time.

All counties not only in upstate New York but also in Maryland, Georgia and all other states have instituted affidavit ballots after the 2000 presidential election debacle, use the process of voting by provisional ballot as opportunities to register voters.

Again, our concern is that when a voter has done everything that is legally required to vote - they have registered, they have filled out the affidavit, and it was lost, it was mishandled or there was some mistake in the inputting, that corrective measures must be put into place.

The one other point that I just wanted to make, also a point earlier, is around voter education in the State Plan. There is no mention of any voter education in languages other than English. And we would read Section 203 of the Voting Rights Act would require any voter education that the Board of Elections - that the State Board of Elections does in covered counties

to be multi-lingual, in Chinese in Brooklyn, Manhattan and Queens, and in Korean in Queens and in Spanish in the covered counties as well.

There is no mention of that in the Plan. And we do think that voter education, if there's a way to incorporate that, that would be very good.

Last point, I believe the State bills require Preclearance before they are put into effect. So we will be reviewing those as well.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Glenn.

MS. SUMAN RAGHUNATHAN: My name is Suman Raghunathan. I'm the Immigrant Voter Mobilization Coordinator with the New York Immigration Coalition. We are also a member of the New York State Citizens Coalition on HAVA Implementation.

And I would like to thank you now it's afternoon to address you.

The New York Immigration Coalition is an umbrella policy and advocacy organization for over a hundred and fifty groups

in New York State that work with immigrants and refugees.

Among other activities, we coordinate New York State's largest voter registration project with over 210,000 new citizens being registered to vote through our project over the past several years.

In addition, we work with our network of over a hundred and fifty groups and specifically thirty different community-based organizations and board of elections to recruit bilingual poll workers as well as to conduct voter education and voter mobilization work.

We have also for the past several years conducted exit polls with Columbia University that looked for the first time at how immigrant voters voted and what their experience was like on election day to vote.

The NYC is particularly eager to comment on the Draft Plan on HAVA Implementation provisions which we've actually been awaiting for several months.

We know that HAVA requires certain first-time voters registering by mail to

show ID at the polls. And I would like to actually first note that HAVA's sweeping changes to voter registration and election procedures stand to impact new citizen voters substantially.

New York's electorate is increasingly immigrant. Tens of thousands of the newest New Yorkers are registering to vote annually. And these folks are eager to participate in the electoral franchise, a source of great pride for many who overcame difficult obstacles to come to the United States, let alone become United States citizens.

In fact, one of three New York City voters was born outside the United States amounting to nearly 1.2 million immigrant voters in New York City alone.

Forty percent of the City's foreign-born population is eligible to vote and there are nearly 1.8 million eligible immigrant voters statewide.

Exit polls conducted by us and Columbia University have consistently found that two-thirds of first-time voters in the City were immigrants. This means that, while my comments on

voter identification requirements relating to the Draft Plan this morning are the same as reflected in the State Coalition's draft or compendium Task Force testimony on the HAVA Plan, I must admit that the lack of detail and recommendations in the State's Draft Plan means that I will continue to reiterate our set of recommendations from the past several months to mitigate the impact of HAVA's regressive proof of identification requirements on new voters.

We remain extremely concerned that, while it provides states with much needed funding to establish national voting system standards, buy new voting machines and computerize voter registration rolls, HAVA will significantly disenfranchise and place a disproportionate burden on new citizen and other voters by imposing the photo identification and Social Security number requirement on first-time voters registering by mail.

The final Plan must outline a detailed plan to reduce the onerous impact of the new identification requirements on new citizen, urban and working class voters.

And my points are going to fall under three main areas.

Number one, the final State Implementation Plan must clarify that registration forms collected in person from new voters and then hand-delivered to election officials should not be subject to ID requirements included under HAVA.

This should also apply if groups mail in groups of voter registration forms that were again collected in person from new voters.

As the coordinator of a non-partisan voter registration project that does voter registration almost daily, I know that requiring new voters to furnish personal information, such as a driver's license, statistically less likely to be held by immigrants, young people and other urban and communities of color, or/and Social Security numbers which the Social Security Administration is on record for acknowledging their database was not designed for cross-referencing this type of information, will actually suppress voter registration and voter turnout in immigrant

communities.

In fact, these measures are reminiscent of the past when poll taxes and literacy tests were used to deny individuals their right to vote.

And a stop-gap measure would allow voters who do not provide or do not have driver's license numbers or whose last four Social Security number digits don't match, to provide other documents and forms of identification to verify their identities so that they may vote.

Secondly, poll worker training on the ID provision. On a practical level distinguishing between new and long-time voters will only create more poll worker misinformation, widespread confusion at the polls and ultimately result in the disenfranchisement of more first-time and overwhelmingly immigrant voters.

New citizen voters and voters of color already encounter disproportionately higher incidents of intimidation and harassment at the hands of poll workers. Based on our past experience, we can expect increased

discrimination by the poll workers against immigrants and voters of color by only asking certain voters for photo identification based on whether they, quote, look or sound foreign, not based on whether they are actually required to present identification under HAVA.

The Asian American Legal Defense and Education Fund has consistently surveyed voters and more recently or most recently found one in six Asian voters was at the time illegally asked for proof of identification by poll workers, a theme which is recurring among many new citizen voter communities.

The final State Implementation Plan must make judicious use of available poll worker training monies to conduct widespread poll worker education on exactly who is subject to these ID requirements, and it must follow through on its promise to reduce the number of new voters subject to the ID requirement by conducting widespread poll worker training to not only assure new voters, only new voters who register through mail are subject to the ID requirement, but also a failure to do so will risk massive and

statewide disenfranchisement of new citizens, youth and voters of color at the hands of poll workers who implement the ID requirement based on race or ethnicity, not the time of registration.

Lastly, the Draft Plan fails to provide a sufficiently-inclusive list of acceptable photo or government-issued ID that voters may present when registering or voting for the first time.

I would like to direct you to our joint testimony that has been submitted this morning for an inclusive and exhaustive list of the forms of identification that HAVA should include. I don't have time to read the whole list, but I should say that the final State Plan again must clarify and enlarge the list of acceptable forms of identification for county election officials and others to adopt in order to comply with HAVA.

And, in addition, this list of acceptable forms of ID must be clearly listed and available to voters before and on election day in Spanish, Chinese, Korean, Haitian-Creole and Russian at a minimum, and sent to all new voters

registering by mail prior to election day.

Narrowly identifying or defining forms of identification new voters must present to register and vote will erase the impact of Federal measures like the Civil Rights and the Voting Rights Acts which were designed to stop, not continue, decades of communities being excluded from the franchise.

If New York State does not develop the broadest possible list of acceptable identification or documents voters can present at the polls when they first vote, the result will be a Pandora's Box of election day problems and can erect a barrier to vote for hundreds of thousands of the State's newest voters.

Thank you.

DEP. EXEC. DIR. KOSINSKI:

Thank you.

Is that everybody on the panel?

Thank you very much.

I just had a comment I guess I wanted to make with respect to your testimony about the voter identification because that's something we very much share. And I think it was

reflected in the Plan, that we are hoping that New York can reduce the number of people who need to present identification either at the polling place or even at all by putting together a statewide voter registration database that we can use which will help to verify voters, first-time voters, who registered by mail so that we can reduce that number significantly.

I would just say that, you know, we're anxious at the State Board to get moving on that. We are hoping to work with the Legislature so we can quickly free up the money that the State Board needs in order to create this statewide database.

Right now there is no money that's been available for us to do that, and that is delaying some of this. And there is no question that if we could get that statewide voter registration system up and running, that it will help very much New York to identify people in a way that won't require them to present identification.

But until we can get that statewide database up, it just provides us with

some sort of, you know, an issue as to how quickly we can get that going and how successful we're going to be to reduce those number of people.

MS. SUMAN RAGHUNATHAN: My main response would be just to, again, reiterate our request that voter registration groups like ours that do in-person voter registration and then hand-deliver the voter registration forms of people who in good faith fill out their forms should not be subject to the identification requirement.

DEP. EXEC. DIR. KOSINSKI: No, we understand the law. The law says mail.

MS. SUMAN RAGHUNATHAN: Great.

DEP. EXEC. DIR. KOSINSKI: No question. That's the legal requirement.

MS. SUMAN RAGHUNATHAN: Great. Excellent.

COMM. KELLNER: Put it in the report, Peter.

DEP. EXEC. DIR. KOSINSKI: I think it is. I think it is very clearly in the report that we have --

COMM. KELLNER: I think what they're asking --

DEP. EXEC. DIR. KOSINSKI: No, Doug, let me just finish.

I think it is very clearly in the report that we have interpreted the law as it's written, and as the law is written, it only applies to mail registration forms. I think it's very clearly stated in the report. It's very clearly stated in the Federal law.

And I don't think there is any argument certainly at our level about how that needs to be interpreted, what the legal requirement of that is.

MS. SUMAN RAGHUNATHAN:
Excellent.

DEP. EXEC. DIR. KOSINSKI: So I don't really think there's an issue there as far as I'm concerned and I think it's very clear in the Plan.

COMM. KELLNER: But, Peter, if it's not an issue, why don't we put in the sentence that says exactly what she's asked for, which is that if a group conducts in-person voter

registration and hand-delivers the forms, that that's --

DEP. EXEC. DIR. KOSINSKI:

Well, I just don't think the Plan was trying to identify every single possible circumstance where you might get in-person registration. But I think we do understand that - I'll let you talk in just a second - that mail is mail and we did say very clearly in the Plan that it's mail registration forms. So I think that's pretty clear.

But go ahead.

MS. SUMAN RAGHUNATHAN: I mean we look forward to that clarification being actually made pretty clear in the final Plan given that we are New York State's largest voter registration project and it's actually not a small matter, or the number of forms that we bring in annually is not. It is a pretty large percentage of those people that do register to vote annually.

So that clarification for the hundreds of thousands of people that we have registered will make a big, big difference.

Thank you.

DEP. EXEC. DIR. KOSINSKI: Go ahead.

COMM. KELLNER: Glenn, I guess this is for you and for anyone else who wants to come in.

Are you aware of any legal impediment now that can stop the New York City Board of Elections from putting the affidavit ballot on the envelope, or any reason why these boards are acting improperly by including the registration form on the envelope?

MR. GLENN MAGPANTAY: No, they are not acting improperly at all.

There is -- they have taken an affidavit ballot and just attached the voter registration form. It's two forms. They are instructed to fill out both. And it's on -- there is no legal impediment to doing it -- to doing it except for the Commissioners themselves.

One issue that I should raise is we're curious as to if you do not do this in New York City, whether that is a violation of Bush v Gore. Why are voters upstate allowed to do this and correct errors and voters in New York City

are not allowed to do this?

And that is -- AALDEF counsels the other way, Bush v Gore says that voter registration has to be uniform across a state. If there is a state disparity, of which corresponds to race, that might present complicated legal questions.

COMM. KELLNER: Now, let me open up this for everybody, that if there is no state legislation on the ID requirements, have you thought through what the significance of that will be for the conduct of elections?

I mean some people have said, well, then the Federal law will apply without any further implementation. Do you agree that that's the case? Or in view of the fact that there are no identification requirements for the right to vote for state office, will there be other implications if the Legislature does not pass legislation conforming the two standards?

MR. NEIL ROSENSTEIN: Well, I think part of our concern is that if the Legislature fails to act, that the State Board as well can issue guidelines for local boards of

elections and try and make sure that there is equal representation across the state.

Fortunately, the State Board's Plan currently makes it's clear that counties are going to be left to control the registration process. And to us, as advocates, that also raises the troubling possibility that it's going to be left up to individual counties to also determine, well, this is -- the registration process, whether or not something counts as valid ID for the purpose of registering that person or having to produce ID at the polls.

So it will be very, very useful if the Plan did a number of things, in the absence of legislation, which would really clarify the ID requirement, actually saying it's not mail registration forms, but forms -- mail registration forms sent in by mail, that the State define either through legislation or the State Board the definition of jurisdiction so we make sure that a first-time voter is really only a first-time voter and not someone who has been voting in Albany County for twenty years and then moves to Cayuga. Right now the State Board leaves

it up in the air and would consider that person potentially a new first-time voter and they will be subject to ID requirements yet again.

And also the State Board should fill in and list, similar to the suggestions that we've made or the Assembly legislation and perhaps there are others out there, what all the acceptable forms of ID are.

So that in the absence of legislation, the Plan and the State Board should identify and put all those things in print or else we'll have an uneven implementation across the State, and then you'll be opening yourselves up to lawsuits on the basis of disenfranchising populations in different parts of the State.

It just makes common legal sense. And if you're serious about the statement to try and lessen the impact of the ID requirement, those are the very kind of simple things that we think should be incorporated into the State Plan that would really show that that's a good faith statement in the final version.

DEP. EXEC. DIR. KOSINSKI:

Well, let me just say this.

I am serious about that statement that I made.

But I also say to you I think that highlights again the importance of getting this statewide registration database up and running. That is the way the State can identify voters who have been registered in one county and are registered in another country.

And, frankly, the problem the State has and the reason this Federal plan went into place is because every state has had this problem for so many years, that you cannot identify voters as they move across your state.

And the one very important aspect of getting this statewide registration database up and running is so that we can identify when a voter moves from Cayuga County to Albany County, that we can track them, that we can find that is the same person who moved from here to here, they're not a first-time voter anymore, they are a voter who has lived in New York State, they are a voter who has voted before in New York State.

But, frankly, until we get that

statewide database up and running, we cannot and do not have a mechanism to do that. And it's critically important that this State get the money up and running and get that program moving because that's the way we're going to be able to identify.

MR. NEIL ROSENSTEIN: So it sounds as if your definition of jurisdiction would be for New York State as a whole and that the ID requirements would not be subject on folks who are from Westchester to the Bronx or from --

DEP. EXEC. DIR. KOSINSKI: Because you can track these people. Once you can identify those people, then I think that that would be the way you could use that.

MR. NEIL ROSENSTEIN: So that would be State jurisdiction. That would be great also to have in the Plan in absence of agreement by the Legislature.

MR. TOLBERT: Peter?

DEP. EXEC. DIR. KOSINSKI: Sure.

MR. TOLBERT: Since this is on the record, everyone has made a number of

statements about action by the Legislature to deal with most of these issues.

I think I should point out, it's been said a number of times and I just want to say it again, the State Assembly has done what is thought to be a comprehensive plan on how to implement HAVA.

We are waiting for the finalization and discussion with the New York State Senate on what they think we need to do, and hopefully before we run out of time for using monies for this year, we should have something that is concrete that everyone can agree to.

But we on the Assembly side have done our due diligence in dealing with this issue. And I think we took into account everyone's statements and everyone's ideas with the exception of one item.

I think we have a pretty good plan on how to deal with HAVA. And I have hope that in short order we will have agreement from the State Senate on what we need to move forward with.

MR. STEVEN CARBO: If I may

respond to Commissioner Kellner's earlier question.

If New York State's current signature ID requirement is a matter of state law and the Senate acts not to act on the new bill that has new ID requirements passed by the Assembly, then I would question under what legal authority a county would ask for further ID which was at variance with the legal requirement for ID that's on the book now, i.e., the signature requirement.

I don't know that there would be any legal authority or it seems to be in conflict with current state law if the Legislature does act, how could a county ask for other ID when the state law says something to the contrary.

MR. TOLBERT: That's going to be a interesting problem.

But I think we are very clear in understanding that with new registrants that it is a requirement that they do not have -- if they do not provide at least two forms of ID, being your driver's license or your last four Social Security, in a Federal election they must ask.

And I don't know how we are going to deal with that if the State does not act.

I believe that that is a concern that we all have and that's why we acted quickly and we hope that we will be able to get agreement from our partners on the other -- from the other house.

DEP. EXEC. DIR. KOSINSKI:

Thank you very much for coming.

I promised our reporter a break now.

(At 1:40 o'clock p.m. there was a recess in the proceedings.)

(At 1:55 o'clock p.m. the proceedings were resumed.)

DEP. EXEC. DIR. KOSINSKI:

Could we reconvene.

I guess we took a longer break than I expected already.

I understand we have five more speakers.

Rebecca Mercuri, is she here?

Why don't you come up.

DR. REBECCA MERCURI: Here are

copies of my testimony for distribution.

Well, thank you very much for the opportunity to speak on this important legislation and changes for New York City and New York State.

As some of you know, I have been heavily involved in voting systems, understanding them, how you set standards, writing and studying them for about fourteen years now.

I was also involved in the New York City procurement process back in the 1990s and had the opportunity as well to work with members of Congress and provide congressional testimony in bills leading up to the HAVA and working with members of the Congress in actually trying to pass the HAVA Act.

As many of you know, the present bill is really the result of the legislation that was introduced following the Florida presidential election recount. And what actually happened in Florida is sometimes misunderstood or, you know, thought of in a variety of different ways. But in terms of the voting systems, what we discovered from Florida 2000 was that the voters really

wanted some assurance that the ballots that they cast accurately reflected the voter's intentions.

They didn't want to leave the polls having any doubt in their mind that they may have crossed the wrong thing or punched the wrong hole.

And then the second part about what happened in Florida 2000 was that -- it would not have been so bad necessarily if there were questions about in the minds of the voters - I mean certainly that's bad -- but then there was no ability to perform a recount that was both unambiguous and unimpeachable. The fact that there was chad, and there was hanging chad and there were all sorts of weird chad made it possible for people to speculate, you know, are these things even legitimate and all sorts of questions were raised.

And so out of these two primary issues for the voting machines, the components of HAVA that pertain to voting systems were actually derived.

And, in fact, the entire HAVA bill and the legislation that preceded it

actually was stalled. It was stalled in Congress. I was told by a number of congressional aides and even some members of Congress that the bill was never actually going to pass, there was too much dispute over it and was never going to make it through to actually become a bill.

And then Florida had another election. They had a primary election in the fall of 2002. And what they found was that the brand new voting machines that, in particular, Miami-Dade and Broward, and had spent each in their counties, each another \$24 million on, close to \$50 million in total, that those machines did not function as specified or as they thought they were going to function.

And so, again, questions as to where were the votes, did the votes disappear, what happened to votes. All of these types of questions were raised in people's minds and in the minds of again the communities and the state and there was even a state emergency declared and the election was extended.

So all of these issues led to finally the passing of the HAVA Act. And it was

hoped by myself and other people who were extremely involved in the HAVA legislation that this would correct or at least be able to address these two issues: that voters should know what their intentions were and that their ballot was cast correctly, and that these recounts would be able to be performed.

But, unfortunately, all we find is that HAVA does not address these things at all. And in terms of the voting machines, what we saw in the earlier demonstration is rather frightening, but, in fact, it is unfortunately true.

Now I have to say that any vendor or any election official who would see that voting system would say, oh, forget that, that was not a certified voting machine, it was not certified by any state authority, it was not certified by NASED, doesn't conform to the Federal Election Commission regulations.

But what I want to tell you right now is that neither do the voting machines that you are looking at, the voting machines that are being considered, neither do those conform to

any HAVA regulations.

Now, I know that in your book you said that you want these new voting systems to conform to the HAVA regulations and the HAVA standards. The HAVA standards don't exist.

One important component of HAVA was to establish standards. What standards are being used are the standards that came from the Federal Election Commission in 2002 when they revised their obsolete standards that they deemed obsolete from 1990.

These standards are not the HAVA standards. The HAVA standards were supposed to be created in conjunction with a committee that would be appointed as well as include members of the Federal Election Commission and also members of NIST, the National Institute of Standards in Technology, which is responsible for many of the standards we have in this country and, in particular, NIST is responsible for the standards that involve all of the computer security for the Department of Defense computers and other defense-related systems.

So NIST is supposed to be

involved with this. NIST is not involved with the FEC standards, nor are they involved with any of the certification processes. And so any of these systems that you are purchasing are not to HAVA standards because, in fact, those standards do not exist.

This is rather a frightening statement, but it is actually true.

What standards are being created, there is a standards committee, that's really an excellent standards committee, which is the International -- I'm sorry, the Institute for Electrical and Electronic Engineers, of which I am actually a member. This standards committee is looking in great detail about the security, the reliability, the authentication, the auditability, all of these different types of aspects with regard to voting systems, and creating an extraordinarily detailed and much more elaborate set of standards that would be applied to voting systems of the future.

Unfortunately, the whole idea of HAVA was to place the cart before the horse. We authorize the expenditure of billions of dollars

for new voting equipment and then we say, oops, we don't have a standard, so just use the old standard that you have.

And, in fact, that's actually what's going on.

All of the equipment that was purchased by states with, you know, full intention of buying new machines, all that equipment that was purchased up to the end of this past year, all of that equipment was certified to the 1990 obsolete Federal Election Commission standards.

Now, the new equipment that is being purchased now is being certified to the 2002 Federal Election Commission standards, but again these are not the HAVA standards because the HAVA standards don't exist.

There are serious flaws with the Federal Election Commission standards.

For example, as I said, the level of security appropriate to government computer products, such as the common criteria certification, which already is a standard in place for government products in the United

States, that is not being used. It's not in the standard.

Confusing layouts, like the butterfly ballot, all sorts of other, you know, accessibility and concerns like this, these are not addressed in the 2002 standards.

There is not any way to ensure that the devices are appropriate for all types of disabled populations, not just certain types of disabled populations we're talking about, large groups, you know, a variety of different groups.

There is no prohibition on the use of proprietary or trade secret products, reconfigurable components, transmission and reception devices. Some of these devices, some of the voting systems that are being certified for use are actually connected to the Internet, which we know to be wholly insecure and a great way to disseminate all sorts of viruses and bugs and nefarious code. Some of these are connected up to that.

Some of them may even have modems inside of them to be used to transmit data supposedly at the end of the election, but we

really have no way of knowing whether that will also affect the program code.

So all of these types of things.

And as well the 2002 Federal Election Commission standards do not demand that voting products be independently auditable.

So all of these issues are not addressed in that set of standards that is being used to certify the voting machines that we are looking at.

This is really unfortunate. I feel that we are experimenting right now with our own democracy. It's throwing caution to the wind saying we need new voting products, but we are not even being prudent in, you know, our allocation of these systems, how we're going to deploy them, all of the types of things that we normally do in government, in banking, any of these types of things. None of this is being done in the deployment of our voting systems.

And I am speaking not only for myself, but there is also a petition that David Dill of Standard University wrote in conjunction with myself, Peter Norman, who also has examined

machines for the New York City procurement back in the 1990s, and the three of us worked with David Dill to create this petition that has been up on his website.

Over four hundred of the leading computer scientists, engineers, technologists and computer security experts in the country and some around the world have signed on to this petition stating that the voting systems that are out there, the ones that are self-contained and self-auditing are not independently auditable and are thus not secure.

Some of the signors included people who were some of the fathers of modern cryptography, including Ron Rivest of the Massachusetts Institute of Technology. This is a very frightening thing and we are looking at massive deployment of products that have been deemed by the people who are tops in the computer security industry in this country, and as well making advisories to the government on all sorts of other national security issues, these people are saying, including myself, these products are not secure, yet we are going ahead with this.

What can we do?

Unfortunately, if we want the money, the carrot is being dangled out there. We have to go and grab it, we have to come up with some sort of plan.

Some states are saying, no, we are not going to go ahead and rush ahead with this. Wisconsin has actually decided to decertify its self-auditing voting machines and they've decided that they are going to use what they have for now and try to figure out whether there will be other systems that will be able to be certifiable to their own standards which may be stricter than those that are presently in place.

At the minimum we need to have fully electronic voting systems have as well the voter verified paper ballot. You heard a number of people mention it. It's very heartening to me since I'm the one who came up with that idea in 1993.

I think that it is an extremely important thing. It does have problems because there's not necessarily a way right now for people who are visually impaired to actually view

that. But that could be satisfied. There could be voice feedback on that too. There are scanners. There is a wide variety of things that could be added on to make that component of it accessible as well.

Vendor involvement and control in the election process. This is a very serious concern. When you look at the ownership of some of the voting system vendors and the fact that the products are proprietary and the fact that the Federal Election Commission allows proprietary what they call commercial off-the-shelf products or COTS products.

If you use, let's say for example, not to deride Microsoft, but if you use a Microsoft product that's commercially available like a Microsoft operating system, that does not have to be examined. But that doesn't prevent it from having bugs and nefarious code in it.

So there's all sorts of problems, issues with regard to vendor involvement and the use of proprietary code and the use of a secret inspection process. The NASED examination process is secret. It's protected by

trade secret agreements.

In order to be involved with getting a product certified, you often have to sign different agreements to do that.

So all of these types of things are very serious and need to be addressed.

Rush Holt of New Jersey, the U.S. Representative, actually from my district in New Jersey, has put on the record a bill that he's introduced in Congress to try to address some of these concerns.

That bill, if enacted, would preclude the use of some of the vendor machines that have presently been certified.

So we need to address that.

And we need to make sure that all of our equipment that we do deploy is appropriate for everyone's use, not just a one-size-fit-all type of thing.

So those are my recommendations and I appreciate your time and I'll leave it to you for any questions and concerns.

I have to also say that in the past I've always made my time and services

available to New York City. I'll extend that offer to the State and be happy, you know, to work with you in helping to understand some of the computer technology involved that's underlying these systems.

DEP. EXEC. DIR. KOSINSKI:

Thank you.

I have a question.

DR. REBECCA MERCURI: Okay.

DEP. EXEC. DIR. KOSINSKI: I mean I've read, you know, a number of articles that are out there on the websites, you know, about this security issue which is obviously an issue.

And I guess I have a question for you.

You recommend here that the solution is this voter verified paper ballot at the end of the day I guess so that I, as a voter, before I leave the voting booth would have a printed version of my ballot given to me.

DR. REBECCA MERCURI: No. It doesn't go home with you.

DEP. EXEC. DIR. KOSINSKI:

Well, now, hold on a second.

DR. REBECCA MERCURI: Okay.

DEP. EXEC. DIR. KOSINSKI: It's made available to me. I am then able to look at it. I am then able to verify that, yes, indeed, that's who I voted for. I then deposit that ballot --

DR. REBECCA MERCURI: It's behind a screen. If you look at the picture --

DEP. EXEC. DIR. KOSINSKI: This is just behind a screen?

DR. REBECCA MERCURI: Right. If you look at the picture in the handout that I've given, it's behind a screen.

DEP. EXEC. DIR. KOSINSKI: Let me ask you this question.

You're telling me, you're telling us, that the problem with these new voting systems is the security that has been provided is not adequate.

DR. REBECCA MERCURI: Yes, that is correct.

DEP. EXEC. DIR. KOSINSKI: Are you telling me that there is no available

security or that it merely has not been applied to these particular machines?

DR. REBECCA MERCURI: I'm talking actually both.

First of all, under computer science theory, there is no way to demonstrably prove without any reasonable doubt that software that is inside a machine does not contain nefarious code. That's been long demonstrated and that's a computer science fact, much as when you're a physicist, you have to deal with things like gravity and friction and stuff, magnetism, you know, stuff like that.

DEP. EXEC. DIR. KOSINSKI: So you're saying there's no way to test these --

DR. REBECCA MERCURI: Yes.

No manner of thorough testing -- you could look at the code until you are blue in the face. You could actually -- you know, one pre-election testing, post-election testing, it could all look perfectly good. And what you demonstrated is, in fact, the case. But in that case you would be able to find it in the code because it was like two hundred lines of code.

But in practice it would be buried deeper than that. And it is certainly possible for that code to be buried deeper. And it's also possible for that code to be there. It's not a difficult thing to do and it doesn't take a lot of difficulty for that to take place.

DEP. EXEC. DIR. KOSINSKI: Now, is this something that would have to be done purposely or is this something that would be an error somehow that occurred in the creation of the code?

DR. REBECCA MERCURI: Both in fact. In fact, both things could be taking place. There could just be an error, and MIT itself has reported about the millions of lines of coding errors that, you know, we have in all the software that we use. There's just bugs out there. That's just part of the process.

But as well it could be done deliberately. It could be done nefariously. It could be done by anyone who has access to the materials. They don't have to necessarily have access to the source code.

So it could be done. We're not

talking in a world of theory. This is actual scientific fact. It's just something that we have to live with.

It's why we have viruses on the Internet. Believe me, if Microsoft and Intel could get rid of viruses on the Internet, they would have gotten rid of them. If they had a way to stop these things from being downloaded into your e-mail and corrupting your entire machine and deleting your hard drive, they would have figured out a way to do that.

We don't have any way to do this. We are at the top of the industry and we can't figure it out right now.

In the future there may be ways. People, believe me, are working on this now and they are trying to apply these techniques. But right now none of the systems that are out there are invulnerable to these types of attacks. We just do not have that technology in place.

DEP. EXEC. DIR. KOSINSKI: Now, you spoke briefly to some of the security measures that you thought were not in place --

DR. REBECCA MERCURI: Yes.

DEP. EXEC. DIR. KOSINSKI: --

for these particular voting systems.

DR. REBECCA MERCURI: Yes.

DEP. EXEC. DIR. KOSINSKI: What would the advantage be of putting those in place if, in fact, you are telling me that there is no way to ensure the security of these systems?

DR. REBECCA MERCURI: Well, one thing is that if you're going to have the voter verified paper ballot, you have to either count all the ballots or, as in Rush Holt's bill, he suggested a spot check and then for them to be used in the case of a contest or recount.

So my feeling is you should count all the paper ballots. But that may be too cumbersome for a state like New York to do.

So if you are going to rely in some essence on the computerized tabulation that's coming out at the end of the day and then you are going to, you know, crosscheck and spotcheck that in a variety of different ways, then it gives you some other levels of confidence that the computer tally is actually correct.

And then, of course, in the case

of a contest, if someone really believes that there has been some foul play, then they could actually go back and count the paper ballots. It gives you that ability to do that.

So you want to put at least a shroud, you know, protect the machines so that you don't constantly have a varying number of votes coming out of the machine totals and coming out of the paper ballots.

And, in fact, we're seeing that. In these new machines that have been deployed -- in Dallas, Texas, again in the November 2002, they had machines that when you tried to press for any of the Democratic candidates, it would only line up for the Republicans. This is a coding error. This is some sort of bug.

So you need to have protocols put in place to make sure that that can't be happening.

In Florida, there were cartridges that, they didn't have the right number of votes on them. I mean you had fourteen hundred voters voting, it should have been a total of that number of votes on the cartridges,

and you had like seventy-eight votes coming in. That doesn't make any sense.

In New Jersey in 2000 we had brand new machines where zeros came out for some candidates. The vendor explained this that ballots were not cast. But I mean what's the difference between a ballot not being cast and votes being lost? There's no way to know right now. We have absolutely no way to know.

So we need to have additional safeguards to make these machines more secure.

But in lieu of that, even if you don't have that, if you have a paper ballot, at least you have some way of confirming the election. So it might take you two weeks after the election to do a recount, but you can do it and then you would be able to come up with, you know, these are the unofficial returns, these are the official returns, now the election is certified. So at least you have a way of doing that in the meanwhile.

Right now, if you don't have that, you don't have any way of certifying it.

So we need to shore up the walls

in all possible respects, and then add additional things.

In my article that I gave you copies of, you saw a better ballot box because I'm looking into the future where the paper would also have cryptographic codes and seals on it so that just like, you know, you even have a lottery ticket. A lottery ticket, if we could make up individual ones, we would all be millionaires.

So there's certain cryptographic codes and seals on lottery tickets that prevent people from coming up with fraudulent lottery tickets.

So in the same way these ballots that get printed out and put into the box, they should have cryptographic seals on them that make us certain that after the election those were not substituted and no monkey business was taking place. That's the type of thing we're looking at in the future.

And in the very far future, maybe ten years down the road, we are looking at the possibility that voters could actually confirm that their ballots were received intact

but again not by revealing their vote to them because if that's revealed to them, they could sell their votes. So that's also a felony. We don't want that.

But there's mathematical ways of actually proving that your ballot actually got into the ballot box and was counted correctly.

So these are the types of things that we are looking at in the future. All of this is, you know, based on sound mathematical theory. And once you have the paper, it gives you the ability to add those features. It's just another line of stuff that's going to get printed out as dots maybe at the bottom. And we could add those features on as we go.

But if you don't have the paper, then you have no assurances and you don't have the ability to do that in the future, to add on those additional security features on the paper that we really, really need.

DEP. EXEC. DIR. KOSINSKI:

Thank you.

COMM. KELLNER: What's happening with the technology now of putting the

audit trail in a permanent medium that would not necessarily be paper?

DR. REBECCA MERCURI: Well, one of the things that people have looked at is, and we've heard this in a number of products where they randomized the ballots, they take the ballots and they randomize them and put them maybe on a CD, you know, Writeonce, or some sort of, as you said, permanent medium that could not be transposed.

The problem about that is that you still have no assurance that what you saw on the ballot face on the screen, on the touch screen or whatever it is, the stuff that you saw there, you have no way of knowing that that got onto the permanent medium and then you have no way of knowing that it got from the permanent medium into the tallying correctly.

And so, yes, you could do that, but you still run all the liability and the risks of that and you have no independent way that the voter can verify that.

In the cases where some of the vendors have provided that as a capability or

something similar to that, they've actually made those CDs or whatever it is recording on, cartridges, they made that proprietary so only they can read them. This is what I meant by getting away from proprietary vendor issues.

If that material is proprietary only to the vendor and only the vendor can read it, then you've got a trust factor and you have to worry about that.

I would like to see the -- you know, if we are going to do something like that, then people have talked about open source, you know, an ability that other people could read that. But you still have that question was it recorded correctly.

There may be in the future ways of confirming that that very small minuscule process that does the recording would be done correctly, again with the involvement in that of the Institute of Standards and Technology and some of these other standards bodies.

But right now we do not have that and right now it's all proprietary so we can't go and look at that.

So it's really unfortunate.

COMM. KELLNER: Right now the New York State Board has certified three electronic voting machines for use and has had reports from, is it Wiley Laboratories that does the certification of the software that these machines are secure.

And how are we to interpret that?

DR. REBECCA MERCURI: Well, we -- we who have signed the petition by David Dill do not believe that these voting systems, the self-contained ones, are secure.

We believe that there are a number of security flaws in these machines and, in fact, they are not secure.

Some of the machines - and, again, I'm not familiar with the exact models that New York is considering, but some of the models --

COMM. KELLNER: We know that -- the model that -- the only one that's actually in use in New York is the Sequoia Pacific.

DR. REBECCA MERCURI: Is the

Sequoia Pacific. And I have not had the opportunity to examine that incarnation of the machine.

I have examined though the Sequoia Pacific Edge Machine and I do know that that machine is completely reprogrammable all the way down to the firmer level by a cartridge that's inserted inside the machine.

And that cartridge is actually accessible on election day and, in fact, it is also used to obliterate the machine after election day thus obliterating any trace of nefarious code or, you know, even problems or bugs that are actually in place.

I don't know if that particular feature is available in the New York State machine.

COMM. KELLNER: The New York State machine has a Z80 chip.

DR. REBECCA MERCURI: Z80 chip is a very old chip.

COMM. KELLNER: That's how it's

--

DR. REBECCA MERCURI: Right.

COMM. KELLNER: It's not a cartridge.

DR. REBECCA MERCURI: Right.

But the Z80 chip is an old, a very old chip. I'm very familiar with the Z80. I remember testifying in New York City ten years ago about the fact that the Z80 has the ability to swap its memory cells. It actually has an alternate set of registers, which is a nice feature, but you can also make it look like it's doing one thing while it's doing something else in the background.

COMM. KELLNER: Why did Wiley certify the machine then?

DR. REBECCA MERCURI: Well, because they're certifying to the NASED and, hence, the Federal Election Commission standards, and those are hopelessly inadequate. That's why the IEEE is having the standards committee that's meeting, you know, every other month to establish a very, very strong standard that would be compatible with other industry standards that we have for computer security.

So basically what NASED and

Wiley Labs, because, you know, they are certified by NASED to do this certification, they are just doing their marching orders. If the orders are here's the certification standards and they're lax, well, then we can certify in a lax way. And that's exactly what's going on.

DEP. EXEC. DIR. KOSINSKI:

Thank you.

DR. REBECCA MERCURI: You're welcome.

DEP. EXEC. DIR. KOSINSKI:

Thanks for coming.

DR. REBECCA MERCURI: You're welcome.

I'm not sure I have everybody on the list.

Angelos Keromytis. Am I saying that right?

MR. ANGELOS KEROMYTIS: Pretty close.

DEP. EXEC. DIR. KOSINSKI:

Pretty close? Well, you're next anyway.

MR. ANGELOS KEROMYTIS: Good afternoon.

My name is actually Angelos Keromytis, but close enough. And I am an Assistant Professor at the Computer Science Department of Columbia University where I conduct research in network and software security and have been doing so for the past eight years or so.

And it is based on this knowledge that I come here today and inform you basically on some issues on the security and the assurance of the voting machines that are coming, voting machines, the so-called Direct -- the DRE machines.

And in doing so I will actually replicate some of the information that Rebecca has told you.

So perhaps the most important observation to make here is that all of these machines are effectively the same in terms of functionality, in terms of capabilities and in terms of the potential for failure as your common desktop PC or your laptops.

And this is because of the costs in terms of manufacturing, designing, programming

and maintaining those systems. For the manufacturers, if they were to do so for completely proprietary systems, if they were to design so-called independent systems, they would cost a few orders of magnitude more than if say they were to just buy regular PCs or servers from a vendor like Dell and use commodity operating systems like Microsoft Windows, and then on top of that implement the voting software as an application.

And the problem here is that all of these systems can hardly be called reliable. They often crash for no apparent reason. My PC crashed three times while I composing this letter. Anybody who has used a PC can probably sympathize.

And they can by no means be called secure. There are literally tens of security vulnerabilities that are made public on the Internet every week about products like Microsoft Windows or any other software. These are vulnerabilities that can be exploited by anyone even with minimum knowledge of how the software works or what the vulnerability itself

is.

They are so-called scriptese, that all they do is they download tools that are made available on line for research purposes or simply for showoff purposes by other hackers. And they just target these tools at remote machines or anybody they don't like causing the systems to crash or to execute malicious code or in any way exploiting the vulnerability.

And the situation arises from the tremendous complexity of software, of inadequate testing, and programmer mistakes, just to name a few reasons.

And the result is that, even in the absence of malicious intent, it is impossible to guarantee that the machine has recorded in this case the vote that was selected and displayed on the screen. There is no known way to ensure that this is not happening inside a voting machine. Absolutely none.

Furthermore, the programming practices of several of these manufacturers, as evidenced by several articles in the popular press, and I have provided one such example in

the letter I have given you, leave much to be desired in terms of accountability, security, auditability and tamper-resistance of these voting machines.

The fact that several of these machines also include network capabilities, even if these are in terms of the so-called "old" modern technology, greatly increases these risks, that the machines pose to the electoral process.

Effectively anybody with some knowledge of the technology used can connect remotely to these machines and modify the data that they contain in basically untraceable ways.

So, furthermore, no electronic voting system has been certified to any international or here Federal security standard. And Rebecca mentioned some of these. No electronic system, voting system, has been verified as secure. And I would be really surprised if any was, in fact, verified as secure in the near future.

Encryption, which is something manufacturers often tout as a technology that would solve all of the problems, does not provide

assurance for privacy and oftentimes security and certainly no accuracy in terms of the ballots cast and the tallying process.

Cryptographic systems, even the very strong ones, can be cracked or otherwise attacked often because of the software failures. After all, all the systems are implemented in software and if the software itself is faulty, it can be attacked.

And thus this leaves the ballot contents along the identity of the voter open for perusal by any attacker.

So in the absence of tools and processes that can manage such risks adequately, other approaches have been suggested. These include precinct-based optical scan ballots or touch screen machines that print paper ballots, again as Rebecca mentioned earlier.

Electronic balloting systems that do not provide such printouts that the voters can examine do not allow for an independent audit trail, despite what the manufacturers often claim.

As all voting systems are prone

to error, the ability to perform a manual hand-count, a recount of the ballots is essential.

Such systems can be combined with random recounts, again as Rebecca noted, of a small percentage of the paper ballots to verify the accuracy of the result. And such a proposal has been adopted or is under consideration by the State of New Jersey.

In conclusion, I hope that you recognize the serious security and assurance problems that electronic voting systems introduce to the electoral process and that you consider these risks in your task of implementing HAVA.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Mr. Keromytis.

It's just a curiosity of mine, when we talk about these new voting electronic systems, even without a paper ballot trail, in your opinion is there any way that the actual vote that the person made could be found out and identified to that particular voter, especially with systems that have requirements for doing some kind of ID code to go into it?

Because it's just a matter of,

one of the things that's sacred about our voting system is that you don't know how the person voted.

It seems to me that in having any kind of paper trail or even the computer itself we'll know how that person voted, be able to identify that person. Is that not the case?

MR. ANGELOS KEROMYTIS:

Unfortunately, it is the case so that there is -- let me answer the question.

There is great potential for actually being able to identify how individual voters voted, whether or not paper ballots have been used.

Now, there are certain techniques that can be used to minimize the risks, but these would tend to raise the cost in terms of the hardware involved, in terms of the software, in terms of the testing, the underlying infrastructure.

And I think the lesson that can be had here or can be drawn is that as you introduce electronics in the process, you can only talk about managing the risks. It is

impossible to, in fact, assure a hundred percent the result of a vote. It's simply, or maybe not so simply, an issue of managing expectations and convincing the electoral body and yourselves that the vote is reasonable tamper-proof, tamper-resistant.

And that is the state of affairs as far as I can tell.

COMM. KELLNER: In electronic jargon we call these Direct Recording Electronic machines, ATM style machines.

So I keep asking the question, well, everybody uses ATMs all the time and the public seems very comfortable with them. The banks seem to be making money with them.

Why is the ATM style machine acceptable for banking and not for voting?

MR. ANGELOS KEROMYTIS: Well, it's only money, of course.

(Laughter.)

MR. ANGELOS KEROMYTIS: There are three reasons actually.

The first is the situation is slightly easier because there are no strong

requirements for privacy or anonymity as there are in the electoral process.

There are extensive audit trails, extensive logs that are kept by the banks and those can be used to detect fraud or failures of any kind.

Second, even in that case they don't actually provide a hundred percent assurance. There is no guarantee -- the companies, CitiBank or any of the banks, accept a certain level of fraud. They just live with it. They factor this into their pricing modus.

Maybe that is something or an equivalent approach that has to be taken here.

Third, there are cases, in fact, where the technology even there has failed and has led to the conviction of people who reported problems with activity, unauthorized activity to their account, they were accused by the company as lying and trying to commit fraud, they were convicted, they served a few months and the conviction was later overturned in several cases by showing that the technology was actually mistaken in identifying the users as the

culprits.

DEP. EXEC. DIR. KOSINSKI:

Thank you.

Any other questions?

(No response.)

DEP. EXEC. DIR. KOSINSKI:

Thanks very much for coming. We appreciate it.

I had Julie Hyman who I called earlier. I don't know if she returned.

(No response.)

DEP. EXEC. DIR. KOSINSKI:

Apparently not.

I have Paul Bennett. Is Paul still here?

(No response.)

DEP. EXEC. DIR. KOSINSKI:

Adrienne Kivelson.

MS. ADRIENNE KIVELSON: Yes.

Good afternoon.

My name is Adrienne Kivelson.

I'm a volunteer and a co-chair of the New York City League of Women Voters. And I am not going to talk about the technology involvement of the voting machines today, but I'm going to talk

about some issues that have arisen that we really feel we need direction on and we need it very quickly.

The League, as you know, has been providing voter education and promoting informed citizen participation in government for more than eighty years and we welcome initiatives which promise to improve the electoral process, enhance voter accessibility and protect the integrity of the vote count.

I come here today because we are concerned that your Draft Plan does not adequately specify how you are going to implement HAVA and how it will actually help New Yorkers vote.

Over the past several months numerous recommendations and comments have been submitted to the State's HAVA Task Force and at State Legislative and City Council hearings. There has been testimony from community advocates, election specialists and others about the desired prerequisites for new voting machines, the need for a statutory change to eliminate the full-face ballot requirement and

the importance of delineating alternate forms of identification and the value of involving established community and civic organizations, in addition to elected officials, in the development of the Plan and mandated voter education component.

Unfortunately, we don't see a lot of these recommendations in the Draft Report that has been issued.

As well-intentioned as it may be, in too many places it says little more than that the State Board of Elections, in consultation with county boards of election, will comply with the requirements of the Help America Vote Act in a timely fashion.

Now, the League of Women Voters supports using county board of elections, but in New York City the League wants to make it very clear we have a New York City Board of Elections, and the constant reference to the county boards of elections, we're assuming you are including the New York City Board of Elections in that description.

DEP. EXEC. DIR. KOSINSKI: Yes.

MS. ADRIENNE KIVELSON:

However, our specific concerns are as follows:

While the Plan mentions that the State will explore the use of databases in addition to Motor Vehicles' files to verify information on mailed-in voter registration applications, it provides no details on which databases are under consideration.

This is a very important issue to us in New York City because our residents, particularly our young people and our senior citizens, have fewer drivers' licenses and car registrations than do residents in most other parts of the State.

At this time we are at a loss to tell people as to what to say in our voter education literature about what type of identification will be used and what type of identification is necessary.

We do voter registration on a daily basis. People want to take forms home with them. High school students are registering. They take forms home with them.

If they are going to mail them

in, we say, well, you may be asked for some kind of identification.

"Well, what will I be asked for?"

"Well, we really can't tell you."

We are a volunteer organization. We print our own literature. We don't know what to say in that literature. We actually have a Voter Bill of Rights which started out with you do not have to have identification when you go to the poll to vote in New York City. We've had to put that on hold because we don't know the identification.

This is a crucial issue for all of us who are involved in voter education. If primaries for Federal office are included in the 2004 Federal election cycle, then we have less than a year to have voter education materials and voter registration training in place.

We are also very concerned that the report doesn't acknowledge a role for the Legislature in HAVA implementation. You discussed it today but it was not clear in the Draft

Report. It doesn't even address the implications of the election law's full-face ballot requirement which limits the type of voting systems the State can utilize.

This antiquated provision prevents consideration of the full choice of new voting technologies that facilitate access for disabled voters and more easily accommodate multiple languages.

We urge you to join us in supporting legislation to remove this requirement expeditiously so that the full range of voting systems can be considered before you are forced to make a hasty decision to comply with the Federal timeline.

The Draft Plan alludes to accessibility for the disabled and language minorities with little more than a statement that the new voting machines will accommodate these populations and that the State will monitor compliance through inspection reports filed with them by the counties. This language does not satisfy the requirement that there be a statewide effort to ensure accessibility.

The lack of detail is what really disturbs us about this Plan. There is little or no explanation on what the strategies are for selecting the system, or of how poll worker training will be upgraded or poll worker recruitment enhanced or how the \$20 million allocated for voter education will be spent.

We believe the Help America Vote Act requires community and citizen involvement in the development of the Plan and the implementation of the Act. This Draft Plan doesn't even provide a role for the State HAVA Task Force, formation of which the Act mandated, to review and approve the Plan.

The League had reservations, which we expressed early on, about the composition of the HAVA Task Force. We would have liked to have a more broadly representative body with a more diverse membership.

However, the HAVA Task Force is the only remotely public entity officially involved in this process. We call upon you to convene a meeting of the Task Force to review the testimony and recommendations made at these

hearings. Task Force members must be given an opportunity to review the final document and sign off on its contents.

We urge to revise the Plan, to go into greater detail on the initiatives, programs and strategies which will accomplish the goals you establish. Provide more realistic timetables. Include more community partners and technical advisors in implementation strategies.

Finally, any Plan adopted by our State and submitted to the Federal government should acknowledge and delineate the role for community, advocacy, civic and educational organizations whose valuable experience can contribute to a better electoral process for all New Yorkers.

We look forward to working with you in this important endeavor.

Thank you.

DEP. EXEC. DIR. KOSINSKI:

Thank you. I appreciate your coming.

I just wanted to make a comment on a couple of the issues you raised.

MS. ADRIENNE KIVELSON: Sure.

DEP. EXEC. DIR. KOSINSKI: The one about the use of other data, other databases, and you are right, that we are exploring that.

I should just mention that that issue came up at our Task Force meeting a couple of months ago, and since then we have been exploring the availability of those particular databases which we hope to be able to use.

There's a couple of issues that come up, one of them being the privacy issue. You know, one of the ways we think that we can use these other databases is if the Social Security Administration database is not adequate for us to be able to identify Social Security numbers, then we hope that there will be some other databases to augment that.

But in doing so, there are privacy issues that arise. And so we have to deal with those before we can access other databases and access people's information on those databases and ensure that we are not infringing on privacy rights that come in.

There are literally thousands of statewide or state databases out there --

MS. ADRIENNE KIVELSON: Well,
I'm sure you can --

DEP. EXEC. DIR. KOSINSKI: --
that possibly are accessible, but there are many
issues involving those.

MS. ADRIENNE KIVELSON: Sure.

DEP. EXEC. DIR. KOSINSKI: So
we haven't identified the specific ones that we
can use yet because we have to take these other
issues into consideration. But we certainly hope
to be able to in the future.

You know, the full-face ballot
issue, we certainly recognize that is a
Legislative issue. You're absolutely right. I
know the State Legislature is talking about it
and we are looking for, you know, the State
Legislature to act on that or to make a
determination on that.

I think we felt in the context
of the Plan, you know, we're dealing with the
State laws that presently exist and, you know, we
plan to go forward anticipating if there are
State Legislative changes, those would be
incorporated.

Now, this Plan is not a document that, once we send it down, that's the end of it. This is a Plan that will be updated. It's a three-year program as I mentioned before. We anticipate that as this process goes on, the Plan will be updated to reflect any changes that are made in New York.

And we would hope that, you know, any legislative enactments will then be reflected in the Plan as it changes. So we think that will be developed over time.

MS. ADRIENNE KIVELSON: Well, we appreciate that.

But we hope that the State Board of Elections and the Task Force would, in fact, make some recommendations or support legislative initiatives so that it's not a two-track process because we really don't have time to do that.

So when you're formalizing the Final Plan, it would be helpful if you either support, and we support, the Assembly legislation that's been passed, but if the Task Force or the State Board of Elections - and I know that you do come in with a legislative agenda at different

times, and we hope that some of the items in here would be things that you would consider recommending as the State Board of Elections and as the HAVA Task Force so that we at least are all on the same page, not with the Legislature working here and the election officials working the other way.

But we appreciate this and just hope that the final Plan that is developed is one that the Task Force has an opportunity to sign off on it, certainly that the Board of Elections does, and that it is done quickly because we really find, particularly on the voter registration and information end of it, at this time we are really in a quandary on what to tell people to do, what to tell people to expect, and to really do a good job of voter education, which we do year-round rather than waiting just for election day.

So we could use all the help we can get with specific information as soon as we can have it.

DEP. EXEC. DIR. KOSINSKI:

Terence.

MR. TOLBERT: One of the things that we -- Assemblyman Wright has complained about the composition of the Task Force, but one of the things that is true is that both of the chairs of the Assembly and Senate Election Committees do sit on the Task Force.

These issues have come up. Both of them are aware of what we would like to be accomplished whether a recommendation is given by the Task Force or not to them.

One of the things that we also took into account was that there was a voter - and I never get the name of the task force that was convened two years ago, the Governor's Task Force.

MS. ADRIENNE KIVELSON: The Governor's Task Force.

MR. TOLBERT: Many of these recommendations were included in it. And we reviewed it, I think, at the first meeting of the Task Force as to what we need to do even before HAVA was put into effect.

So to Peter's credit he has had the ear of both chairmen and hopefully we will

reach some level of agreement.

But one of the things you will find is that the Legislature will put itself into someone's business any chance it gets.

(Laughter.)

MR. TOLBERT: But you don't have to worry about them not being aware of what needs to be done.

MS. ADRIENNE KIVELSON: Well, we just would hope that the Task Force and the State Board would come out with some recommendations that will further this process rather than wait.

We know you act with all deliberate speed.

MR. TOLBERT: I wouldn't say that.

MS. ADRIENNE KIVELSON: That would be our wish.

Thank you very much for your attention.

DEP. EXEC. DIR. KOSINSKI:
Thank you very much. We appreciate it.

Next I have Lisa Smart.

MS. LISA SMART: Good
afternoon.

Thank you for the opportunity to come here today as a representative of the Queens Independent Living Center, QILC. My name is Lisa Smart and I'm a Volunteer Systems Advocate at QILC.

My colleague here, John Strothenke from Westchester Disabled on the Move, and I are part of Brad Williams' Systems Advocacy Network and we are here to voice our concerns.

The Queens Independent Living Center is an organization directed by and for people with disabilities, dedicated to advocacy, empowerment and universal access through education and activism.

As a Systems Advocate, it is my responsibility as well as the responsibility of my colleagues to identify and address systemic barriers for people with disabilities and put forth the inspiration and motivation to remove said barriers from impeding our lives.

The Help America Vote Act, HAVA, was signed into law by the President as an

attempt to modernize the electoral process. As a result of this modernization process, it was clear to all who believe in the democratic process that this is the opportunity to include all who have been disenfranchised by the inability of the creators to know what the future would hold.

Therefore, it is incumbent on you to make the new ways of voting fully accessible to all Americans including those who may have a disability.

So, the submitted Plan does not require change in the full-face ballot law of New York State. This requirement severely limits the selection of voting machine choices to the State of New York.

We know the ATM type of machines provide greater access to people with disabilities through multiple input and output devices. And if the options to move to a more modern ATM type of voting machine were available, the process of implementing this system and change would move more quickly.

DEP. EXEC. DIR. KOSINSKI:

Candyco Transcription Service, Inc.

(518) 371-8910

John.

MR. JOHN STROTHENKE: Yes.

I just wanted to augment what LISA is saying because Lisa and I see each other at meetings all the time. We are part of Region I and there are three regions to the Systems Advocacy Network. We have thirty-seven Independent Living Centers throughout the State.

And I will be submitting full testimony on the 23rd. So I'll just make -- I just want to augment what Lisa said because her comments are submitted in writing. And I'll just be brief.

She had alluded to the full-face ballot machine. I had the opportunity to go to Saratoga and take a look at those machines. And then I ran into the vendor again up in Albany at a disability awareness day.

So I actually saw the machine twice and spoke to the vendor at length.

A full-face ballot machine, in my opinion, is too big for storage, probably even harder to store than the old machines. It's twice the price at least, about \$7,000 plus dollars.

The smaller machines that Lisa alluded to could be stored very effectively.

Physical barriers are rampant to wheelchair users. Westchester Disabled on the Move participated in a survey last election. We've been doing it actually since 2000. We've done about seventy sites. We did thirty in the presidential election.

We found that seventy percent of those sites surveyed were not accessible to a person like myself in a wheelchair. And these are all scattered sites throughout the counties. So it was a pretty good random sample.

And what's disturbing about this is that most of these are public buildings and they fall under the ADA. And this is a violation of ADA.

And what's even more disturbing is a vast majority of the sites were in public schools. So you have students who have disabilities who can't get into their schools because of accessibility issues.

Now, it's my belief that the money saved on doing away with the full-face

ballot, which New York State is one of the only states in the union that still uses it, could be used to fund making non-compliant sites accessible to voters in wheelchairs.

We found that most barriers or many of the barriers were easy to fix: making more handicapped parking spots available. We found that there was just a lack of them. There was -- more signage for handicapped parking spots, installing curb cuts in sidewalks. That is not an expensive thing, but there were places where I just couldn't get up onto the sidewalk.

Changing the door handles, the knobs to the regular door. I think it's done in this building, pretty good about that.

And occasionally building ramps.

Now where this is cost prohibitive, I think that it behooves the Board of Elections to find another public building on the ground floor in the same district.

And those are my comments today and I will give you a full laundry list.

DEP. EXEC. DIR. KOSINSKI:

Okay.

Terence.

MR. TOLBERT: I just actually -- I noted in a number of people's comments about the full-face ballot. Maybe I should have said this earlier. I think it's something that we should all take into account.

The Task Force can make recommendations if it likes, but the true battle is not going to be with the Task Force. It's going to be with the two hundred and eleven members of the Senate and the Assembly.

And I implore all of you who have this at the front of your issue in dealing with HAVA that you start talking to your State legislators who either have one way of thinking about this or another, but those are the people that you need to start having this conversation with.

And it is important that you do it as quickly as possible because for them, as someone said earlier, that deliberate speed that you should hope that we would end with might not occur just simply because it's the nature of the beast, of the Legislature.

So if you could go back to the Independent Living Centers and maybe convene a discussion among yourselves about how you are going to start a campaign to attack members of the State Legislature.

And I use the word "attack," because some people have some issue with not wanting to get rid of it and they are very serious about what it means to them as elected officials because that's who it affects more than anything else.

So you might want to start thinking about how you're going to wage this battle and figure out how to turn them around, get them in agreement or make the issue so important that they have to have a vote on it.

First, not even a vote, a bill, because that's one of the things that's holding this up is that this is a discussion that they will try to avoid. And I shouldn't say "they," I should say "we," the Legislature, because it is a political and it is a personal issue for them.

And I implore you to think about how you are going to start a discussion with your

State level.

And I'm sure -- Peter has made it clear to all of us, in the absence of legislation, he has to go with what the State law is. And that's the bottomline.

MR. JOHN STROTHENKE: I understand that.

I wanted to make a bigger point because, and I'm speaking personally here, because I broke my neck in a diving accident fifteen years ago. So I was walking around and I've lived -- I moved away from home when I was seventeen and I had about ten years where I was completely independent, fiercely independent, you know, worked for a living, had my own place.

And when I got hurt, I continued to be independent. Maybe that's why I'm in Independent Living right now and trying to teach others how to be independent.

But what irks me the most, and I never even got that worked up about the accessibility issue, but I want to get into the darn building. That's always been my thing. You know, you have nice accessible, you know,

machines, that's great. You know, before they used to have the Green Party guy was in there with me and the Democrat and the Republican. It got kind of crowded in the booth, but, you know, we had an impartial -- you know, and they helped me push the levers and I got my vote cast. And I knew that my vote was there and it wasn't an absentee ballot floating around somewhere or didn't get counted until the last minute. I really participated.

But, you know, I've been to some polls where I had people pull me up a bunch of stairs. But I was like going to make sure I got in. But come to find out in '92 that there is a law that requires that there is public accommodation.

And most of these are in public buildings. It's inexcusable.

So I think that the Committee might want to address the physical barrier issue. We've talked a lot about technology today, but I really didn't hear anyone talk this concretely about the physical barrier aspect.

You got to get into that poll. I

finally got into my poll site and it turned out that they didn't have me on record as being a registered voter. I had moved to Tuckahoe and I know I registered. It was at City Hall. So I had to do an affidavit. And I was trying to punch through those little affidavits with my quadriplegia. I got through it, you know. But I mean the main thing is I voted. That was important to me.

DEP. EXEC. DIR. KOSINSKI:

There were just two comments I guess I wanted to make.

First of all, on the voting machine issue, you know, the touch screen machine versus the full-face ballot machine, I heard a comment earlier today about price.

There is some perception out there I think that it's cheaper to go with the touch screen versus the full-face ballot.

I think our perspective is that while the touch screen machine is cheaper as an individual unit, the chance is we're going to need more of those in New York because it takes longer to vote on those.

MR. JOHN STROTHENKE: All right.

DEP. EXEC. DIR. KOSINSKI: So we don't necessarily believe that price is something that should drive this issue because we don't really think there will necessarily be a cost saving if the State were to go --

MR. JOHN STROTHENKE: All right.

DEP. EXEC. DIR. KOSINSKI: -- say with the touch screen versus the full-face simply because it appears to us that we will need more touch screen machines than we would need at full-face.

So while the individual unit may be cheaper, the overall cost may be very similar at the end of the day simply because we'll need more machines.

On the second issue, on the polling place accessibility, clearly that is a major issue. And I don't know if you were here earlier when we did talk at least briefly about that, that there is this separate pot of money that's available in Washington. Health and Human Resources is actually in charge of administering that.

New York has applied for that money that's to come to the Office for the Advocate of the Disabled. And I know there's an intent to work with the Independent Living Centers on this.

It's only \$100,000. It's not as much as we had hoped to get in New York, but there is some expectation that we will receive money in the out years, in additional years under HAVA. This money is specifically for polling place accessibility. It is specifically for that purpose.

Clearly, you know, it's frustrating to us as well I'll say, that we identify - I'm talking about boards of election - we identify these public buildings to be polling places and then we find out they are not accessible. And it sort of crosses our mind how can you be a public building and not be accessible. And then sort of the burden slips down to the Board of Elections to somehow make this building accessible when we are thinking, you know, doesn't it seem that building should be accessible not just for voting days but for all

days because these are public buildings. These are schools. These are other public facilities that in our mind should be accessible to the disabled for other purposes besides voting.

On the other hand, if it takes this to make that accessible and we can identify money that the Federal government is going to make available now under HAVA for this purpose, you know, we're out trying to get this money and to work with the Independent Living Centers to try to identify those sites that are not accessible and to see if there are ways we can enhance that.

So that it is a part of this program. It's really separate from this particular Plan. It's not in this Plan because it's not part of the Plan. But it's a separate pot of money administered separately and it doesn't run through the Board of Elections. It actually runs through the Office for the Advocate of the Disabled. But we have had discussions. I know we've had Brad Williams going out and addressing this issue.

MR. TOLBERT: Ms. Smart, is that

young lady with you?

MS. LISA SMART: Yes. That's my daughter, Bianca. She actually accompanied us when we went for access patrols to, you know, check out the accessibility of voting sites.

And she was also very surprised and pointed out some extra stuff.

MR. TOLBERT: Bianca, can I ask you a question?

What do you think of this hearing?

MS. BIANCA SMART: I think it's good.

MR. TOLBERT: Oh! She says she thinks it's good.

MS. BIANCA SMART: I think it's good because it really helps people realize that people with disabilities need the same thing with people without disabilities because we all need to be treated the same, to have the same things. Even though you're different, it doesn't mean you have to be treated differently.

(Applause.)

DEP. EXEC. DIR. KOSINSKI: Ms.

Smart, thank you for coming.

MR. TOLBERT: Thank you.

MS. LISA SMART: Actually, this is our mini-advocate at QILC. She's been with me, has come in with me for a year, City Hall, everywhere, you name it, she's been there.

MR. TOLBERT: Well, she earned my ear.

MS. LISA SMART: And she's actually advocating at her own school, changing some things.

MR. TOLBERT: How old are you, Bianca? Bianca, how old are you?

MS. BIANCA SMART: Ten.

MR. TOLBERT: Ten? If I had been as smart as you at ten --

DEP. EXEC. DIR. KOSINSKI: Listen, thanks for staying. I know it's been a long day. I really appreciate you guys staying.

MS. LISA SMART: Okay. Thank you.

DEP. EXEC. DIR. KOSINSKI: Thanks so much.

MR. JOHN STROTHENKE: Thank you.

MS. LISA SMART: Now to get my legs to work.

DEP. EXEC. DIR. KOSINSKI: Is there anyone else here that wants to testify?

I'm sorry. I don't know if you are on the list.

You are next.

MS. SUZY SANDOR: Thank you.

DEP. EXEC. DIR. KOSINSKI: You may even be last.

MS. SUZY SANDOR: I don't know what else there is to say, but I'll try.

My name is Suzy Sandor, S-a-n-d-o-r. I'm a voter and activist.

And I know these hearings are about machines, but --

DEP. EXEC. DIR. KOSINSKI: Not just about machines.

MS. SUZY SANDOR: I know. I know.

But I would like to concentrate a little bit about the state of our democracy and what election means to some of us.

Election is the most important

thing. As Thomas Paine said it's "The right of voting for representation is the primary right by which other rights are protected."

In this case we have a huge military budget, for example. We don't have basic institutions as universal health care, universal education. And I feel that this is the direct result of our two-party system, winner-take-all, lesser of two evils kind of representation.

Our elected officials are of two kinds. Almost ninety -- or almost a hundred percent of incumbents get reelected at ninety percent of the vote, with ninety percent of the vote, with margins of forty-three percent sometimes.

On the other hand, we have elected officials such as the president, governor, mayors, attorney general, who can barely muster the majority of the vote, meaning that very often most of the people have not voted for them. And sometimes they lose the popular vote altogether.

But it doesn't matter.

So I'm really -- and then we

have redistricting. And really that's where the real election occurs every ten years where the majority and minority party decide among themselves which district they are going to get, and for the next ten years the outcome of the election is pretty much set.

And if you log in at fairvote.org, you can already see the result of some of the 2004 election.

So what I'm concerned with is that really the new machines, if there is a machine that's good enough for New York State, I don't know, it hasn't been invented yet it seems. But if we have new machines, that these new machines would support instant runoff voting for proportional representation, and would also support maybe non-partisan election, the way we are going to have it maybe in this City.

So that is what my concern is about.

My accent is from Belgium. And it's from Old Europe and Old Europe has a lot of new computers. They have looked at it in 1989. In 1991 they had some -- implemented some voting,

electronic voting. That failed. And they fixed it.

And right now I don't know really if it's a hundred percent, it's ninety-five percent or eighty percent. But they now have electronic voting. They don't have paper trails. I asked a few friends and they have never seen paper trails.

It seems that they use the magnetic card that has a copy of the ballot. And so they give the electronic card back and that would be really a third backup because they already apparently have two backups already within the machine.

And most people are very happy. They do trust, like I told Mr. Kellner, kind of trust the electronic system. And there also is built within the system a certain amount of fraud that they know they have to live with. There is no such thing as zero fraud.

Well, what else? And I think that is all I wanted to say.

DEP. EXEC. DIR. KOSINSKI:

Thank you, Suzy.

Do you have any questions?

COMM. KELLNER: Thank you, Ms.
Sandor.

DEP. EXEC. DIR. KOSINSKI:
Thank you very much for staying.

Is there anyone else in the room
that would like to testify?

(No response.)

DEP. EXEC. DIR. KOSINSKI:
Would you like to go again?

(Laughter.)

DEP. EXEC. DIR. KOSINSKI:
Well, thank you very much.

And I guess that's the -- we
will close the hearing. And I appreciate
everybody coming.

(At 3:10 o'clock p.m. the
proceedings were concluded.)

* * *