

NEW YORK STATE SENATE
STANDING COMMITTEE ON ELECTIONS

Public Hearing in the Matter
Regarding Voter Registration
and
Election Reform

Empire State Plaza
Meeting Room 5
Albany, N.Y.

May 11, 2009
Monday
10 a.m.

PRESIDING: Senator Joseph P. Addabbo
Chairman

PRESENT: Senator Joseph A. Griffo

Also Present: David Kogelman
Counsel

Bernadette Oliver
Staff Member

Frank Skuduko
Legislative Director

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(P R O C E E D I N G)

1
2 CHAIRMAN ADDABBO: Good morning,
3 everyone. That worked. That worked. Good
4 morning. And welcome.

5 It is a pleasure to have you here. My
6 name is Joe Addabbo, I have the privilege and
7 honor of chairing the Elections Committee for
8 the State Senate, and again, I welcome you here
9 to our second round of a series of public
10 hearings that we're doing throughout the state.
11 And this one, hopefully, will be as constructive
12 and as good of a dialogue as the others were.

13 Again, welcome.

14 Let me thank a couple of people who
15 have put this together. Again, the Senate staff
16 who arranges the writing and putting the room
17 together, we appreciate their time and efforts
18 as well.

19 To my right here is the legal counsel
20 to the Committee, David Kogelman. I'd like to
21 thank my staff, Bernadette Oliver, for helping
22 put this together.

23 To my left here is our good State
24 Senator, Joe Griffo, who was formerly Chair of

1 the Elections Committee. Joe, thank you, for
2 being here as well. I will introduce colleagues
3 of mine if and when they come to be here.

4 But again, welcome to the second set of
5 hearing.

6 Now we had done, previously last month
7 we did hearings, the first one being in Buffalo.
8 We did one in Manhattan. We are here today.
9 This Thursday we'll be in Syracuse, and again,
10 it's an effort just to try and get opinions, and
11 good constructive conversation about what the
12 Elections Committee wants to do. And it's very
13 simply.

14 Basically from registration to actual
15 voting process, how do we make it easier and
16 more accessible for qualified voters to
17 participate and vote? We saw such a high number
18 of voters in the 2008 presidential election, we
19 don't want to lose that volume. And we want to
20 see where we can make improvements, where we can
21 make it easier, where we can make it more
22 accessible to voters throughout the state. And
23 the idea is, we're not going to do this in a
24 vacuum. Our intent was to branch it out to all

1 aspects, or as many aspects throughout the state
2 as possible to get as much input as possible.
3 And I've been very pleased so far with the way
4 the public hearings have been going.

5 We are looking to break down barriers
6 that may be an obstacle for some of our voters.
7 We are thinking of ways to make it again, easier
8 and more accessible to our voters.

9 This month's hearing, both here and in
10 Syracuse on Thursday, we're going to have a
11 general conversation about the process. From
12 voter registration to actual vote; to improve
13 the voter sites, accessibility; to talk about
14 absentee voting. Basically to talk about those
15 who play a role in the voting process, our poll
16 watchers, our poll workers, to see how we can
17 possibly expand the volunteerism that may go on
18 throughout Election Day.

19 How do we prevent long lines and
20 delays, which is most frustrating to our voters?
21 How do we help those who come in maybe for the
22 first time, and maybe their name is not in the
23 book, how do we address that situation? And new
24 voting systems, of course, as we go forward in

1 the next generation of possible voting machines,
2 how do we go forward? So again, I wanted to
3 have a good conversation.

4 To those who we're going to read off
5 the list of those who signed up to give
6 testimony, I'm going to ask that you do me a
7 favor. I have no clock, there's no big buzzer
8 that goes off, there's no electric shock that
9 goes off when you go too long; I'm going to ask
10 that you keep your comments brief. Try to keep
11 it to three minutes, if you could, to allow that
12 we get, we're here till 1 o'clock, trying to get
13 everybody in, trying to allow some time for
14 questions and answers, so again, if you can keep
15 your comments to three minutes, I would
16 appreciate it.

17 If you have long testimony, your
18 testimony, your printed testimony, is part of
19 the record. If you can have a conversation
20 based on testimony, I would greatly appreciate
21 it. So again, if you can keep your comments to
22 three minutes, I would, again, greatly
23 appreciate it.

24 Before I call my first panel, I want to

1 thank one extra person I forgot on my staff,
2 Frank Skuduko. My Legislative Director is in
3 the room, and I want to thank Frank.

4 Our first panel, a panel of two; it is
5 Susan Lerner, the Executive Director of Common
6 Cause New York, and Russ Haven, the Legislative
7 Counsel for NYPIRG. Please, if you would step
8 forward.

9 Ms. Lerner, good to see you again.

10 MS. LERNER: Thank you, very much,
11 Chairman Addabbo. I'm very happy to be here.

12 CHAIRMAN ADDABBO: Mr. Haven.

13 MS. LERNER: And Russ, why don't we
14 have you kick off.

15 MR. HAVEN: Oh really?

16 MS. LERNER: Yes.

17 CHAIRMAN ADDABBO: And for the record,
18 if you can just please state your name and give
19 your testimony, I would appreciate it.

20 **RUSS HAVEN**

21 **Legislative Counsel**

22 **NYPIRG**

23 MR. HAVEN: Good morning. My name is
24 Russ Haven, and I'm Legislative Counsel with the

1 New York Public Interest Research Group, NYPIRG.

2 And I drafted this statement, it's
3 actually primarily drafted by Neil Rosenstein,
4 who I think you saw in New York City, and so it
5 will be a challenge to pare this down to three
6 minutes, but I'll do my best to summarize.

7 As I mentioned, I'm Legislative Counsel
8 with NYPIRG. NYPIRG is a statewide, student
9 directed, non-profit research and advocacy
10 group, and among our chief issues are government
11 accountability and election reform.

12 Once again, we thank the Senate for
13 holding these series of hearings. We think it's
14 a very critical issue, it goes to the
15 fundamental basis of our representative
16 democracy, so, we thank you for providing these
17 opportunities to comment.

18 NYPIRG has a long history of working on
19 -- in expanding the vote. We did a lot of work
20 on getting college students the right to vote
21 around the state, including bringing lawsuits
22 where necessary. And we've also done a good
23 deal of work monitoring what happens on Election
24 Day throughout the state.

1 We've issued reports on Election Day
2 conditions in New York City, that highlighted
3 problems with poorly trained poll workers and
4 chaotic conditions at poll sites, and each year,
5 we train our campus-based staff at 20 different
6 campuses on how to identify trouble spots and
7 assist students and other voters when they may
8 encounter problems at the polls. And last year,
9 for example, in Albany, there was a poll worker,
10 an obstinate poll worker, out at the poll site
11 on campus at SUNY Albany who refused to provide
12 affidavit ballots to students, and we had to
13 intervene, and it actually took several hours
14 before it was resolved.

15 And as you may know, with our
16 colleagues at Common Cause, we run a Voter Help
17 Line in New York City, and last year in
18 November, we fielded more than 1,800 calls
19 helping voters find their polling sites and
20 getting information from them on problematic
21 situations at the polls.

22 I guess the bad news is that there's
23 still a good deal to go in terms of improving
24 the state's laws and regulations with respect to

1 how we run the poll sites and voter's
2 experience. And poorly run poll sites can
3 actually end up with voters being
4 disenfranchised.

5 For example, if there's a long line, a
6 voter may leave before casting their vote. If a
7 voter with a disability comes in and the voting
8 system, to facilitate their vote, isn't turned
9 on, or there aren't properly trained staff who
10 can help them, they may not vote. So these are
11 serious problems, and we appreciate your turning
12 your attention to them, and we hope that many of
13 those, or all of these worthwhile proposals
14 would come on this year.

15 Let me turn our attention to the early
16 voting provision 3250. At this point, NYPIRG
17 is, I would say we're enthusiastic about the
18 potential to expand participation in elections,
19 but at this point, we still don't have a
20 position one way or the other on early voting
21 systems, we're looking at the data. That being
22 said, we think there's a real advantage to
23 having voters cast their vote on a designated
24 Election Day. And so that should be something

1 that you consider in as you balance out the
2 benefits of any early voting system.

3 The good thing about casting your vote
4 on Election Day is that additional information
5 may come out. And particularly with local
6 races, much of the media doesn't focus on those
7 races until the last minute, and so voters vote
8 on an early voting system could miss that
9 information.

10 One thing we'd urge you to consider is
11 that for large counties, in terms of numbers of
12 population such as Brooklyn, or Upstate in
13 counties with large geographic areas, that you
14 be mindful that one single early voting site
15 would not be enough if that's the way you go,
16 and that we would urge you to have more early
17 voting sites, perhaps one per Assembly District.

18 We realize this might create some
19 issues, and you might need to revise a special
20 ballot, something combining the futures of an
21 affidavit and emergency ballot just to make sure
22 that folks haven't early voted in more than one
23 location, and if that were the case, we'd urge
24 you to make sure that the affidavit ballot would

1 be subject to review only if there was some
2 indication that more than one vote got passed.

3 With respect to absentee voting, we
4 strongly support Senate Bill 5028, which is the
5 Constitutional Amendment that would remove the
6 unnecessary restrictions and burdens that are
7 placed on New Yorkers who want to vote by
8 absentee ballot. Many New Yorkers have
9 legitimate child-care, work or health issues,
10 and we should be encouraging them to vote, not
11 putting up obstacles through the ballot
12 application process, the absentee ballot,
13 application process.

14 And once again, we're, at this point,
15 we are a wait and see on whether or not early
16 voting, or widespread use of a no-excuse
17 absentee ballot should be used because of,
18 again, there is benefit to voting closer to
19 Election Day or on Election Day.

20 Senate Bill 2868-A, which would
21 simplify the process in state law for applying
22 for an absentee ballot, we support that as well.
23 There is a lot of information that doesn't
24 appear to be essential on the absentee ballot

1 forms. Some of it's intrusive, all of it's
2 subject to the Freedom of Information Law, and
3 we think that's unnecessary to maintain the
4 integrity. Importantly, the Bill maintains the
5 affirmation of the sworn statement on the back
6 of the form, so we think that would deter
7 inappropriate conduct or abuse of the system.

8 One other benefit of 2868-A is that it
9 would allow people to request absentee ballots
10 for more than one election; for example, for the
11 Primary and then the General. So that's a
12 benefit as well.

13 With respect to the Affidavit Ballot
14 Bills, we support Senate Bill 1701, that is the,
15 I guess it's the maybe it's the right parish,
16 wrong church bill, I'm not sure how you're
17 characterizing it. This is the Bill that would
18 allow voters to have their vote counted if they
19 show up a poll site in their correct county but
20 not at their correct election district.

21 As you, as I'm sure you know, voters
22 face a lot of confusion at poll sites, and this
23 often leads to them showing up at the wrong poll
24 place. And there's many reasons this may

1 happen. We would really encourage you to take a
2 preventative approach by getting voters more
3 information from more different sources earlier
4 in the process, and we note that we're
5 encouraged by your Legislation, Senator, that
6 would allow for, revise the Voter Registration
7 Form that would allow your email address to be
8 included, and then you would get, hopefully more
9 updates inexpensively, and that would, and
10 closer to Election Day, not getting something in
11 August for a vote that will take place in
12 October, or actually in November. So we think
13 1701 is a good way to go, and it would allow
14 voters to cast their votes and have them counted
15 for those votes in which they're eligible.

16 While we support the policies in Senate
17 Bill 2443, we're concerned that the Bill needs
18 additional safeguards. This is the Bill that
19 would require that poll workers have maps and
20 poll site finders, and other information, so
21 that if a voter shows up and they can't find
22 their registration information, that they would
23 be able to direct them to the correct poll site.
24 While we think that's a good thing, we're

1 concerned that what may happen with this Bill to
2 become, were this Bill to become law, is that
3 poll workers may end up dissuading people from
4 casting affidavit ballots. And, you know,
5 again, our experience is that some poll workers
6 are reluctant to give out affidavit ballots.
7 Understandably, they want to move the traffic
8 flow along, but sometimes that's at the expense
9 of people's votes, and so we have strong
10 concerns about that. While we support the
11 concept of the Bill, we have reservations and,
12 therefore, can't support it at this point.

13 We also think there's some other things
14 you can do to help people get information on
15 their correct poll site. For example,
16 prominently displaying large maps with street --
17 with identifying streets and other information
18 at the poll sites so people can easily find
19 their way to those poll sites.

20 Two additional suggestions at reducing
21 unnecessary use of affidavit ballots;

22 One is, at some point, we should be
23 moving towards laptops or PDA devices that would
24 be at the poll sites where the poll workers

1 could quickly be able to put in information
2 similar to what you get on the website, the
3 State Board Website. My understanding is New
4 York City is, has a simple voter-web interface.

5 And the other thing is, to put a
6 prominent notice at the entrance to the poll
7 site informing voters on how they can access the
8 information through the State Board of Elections
9 Website.

10 On the topic of under votes, NYPIRG --

11 CHAIRMAN ADDABBO: Excuse me, Mr.
12 Haven, only because I see your testimony --

13 MR. HAVEN: Sure.

14 CHAIRMAN ADDABBO: -- I'm going to ask
15 that you summarize --

16 MR. HAVEN: Okay.

17 We have real reservations about Senate
18 Bill 5112, we oppose it. We have concerns that
19 the benefits of the new voter technology won't
20 be realized if each under vote, each race where
21 ballot measure that a voter does not complete,
22 does not indicate a preference for, if that's
23 not flagged for them. We think one of the
24 promises of new voter technology is that voters

1 will participate in more races. As you know,
2 with the full-face ballot, often things like
3 ballot measures, constitutional changes up at
4 the right hand corner of the ballot, are
5 overlooked. And we don't think that's
6 intentional. We think if you cued people on
7 that, they'd be much more likely to cast their
8 preferences in those races.

9 We have many ideas on how to expand the
10 number of poll workers. We urge you to take a
11 look at those. We'd be available for any
12 questions or comments, and we have some,
13 numerous other reforms on Election Day
14 operations that we think would be beneficial,
15 and we urge you to consider them as well.

16 Thank you.

17 CHAIRMAN ADDABBO: Thank you, for your
18 extensive testimony, thank you, very much.

19 **SUSAN LERNER**

20 **Executive Director**

21 **Common Cause/NY**

22 MS. LERNER: Good morning, I'm Susan
23 Lerner. I'm the Executive Director of Common
24 Cause, New York, and thank you, again, for this

1 series of hearings. I think it is absolutely
2 crucial that the public have an opportunity to
3 participate in examination of our election
4 system, and I would note that while we all
5 strongly subscribe to the principles of
6 democracy, we often hear speeches about the
7 importance of our election process, particularly
8 in this time of budget shortfalls. It is really
9 challenging to ensure that our election
10 administration authorities have sufficient
11 resources to be able to run elections. It is
12 absolutely challenging to run elections
13 efficiently and effectively.

14 And with NYPIRG, as Russ pointed out,
15 we do co-facilitate the coalition of groups that
16 monitor election activities, it's now called the
17 New York State Citizens Coalition for Voter
18 Participation and Fair Elections. We've had an
19 opportunity to comment on the conduct of
20 elections over the years, particularly in New
21 York City, but also in other jurisdictions that
22 we have, comments about two particular areas
23 that I'd like to talk about before turning to
24 the specific bills, which I believe combine to

1 make the Election Day experience difficult for
2 both poll workers and for the voters.

3 And the first is just the general
4 question of recruiting and training poll
5 workers. This is not a problem which is unique
6 to New York. Our election system, because we
7 choose to staff it with volunteers throughout
8 the country, all election administration
9 authorities, whether it's Board of Elections, or
10 Registrars, have the same problem in recruiting
11 a competent and available pool of workers to
12 staff the polls.

13 Now I think some of the things that we
14 do here in New York State complicate the
15 recruitment process. And one of the things that
16 other states and other jurisdictions have looked
17 at to increase the number and quality of poll
18 workers is to create incentives for city and
19 state workers to volunteer at the polls. That
20 obviously would require, if it were done in a
21 systematic way, some negotiation with the unions
22 who cover state and municipal workers, but it
23 really is a ready pool of people who are used to
24 dealing with the public, who are used to, in

1 most instances, taking care of details. And I
2 think we have seen in other jurisdictions that
3 have facilitated the recruitment of city and
4 state workers, that it can be very helpful.

5 The other thing that we believe is an
6 impediment is the primacy, which is given to
7 patronage workers. There is clearly a roll for
8 patronage workers at the polls, but our system
9 gives them too much primacy. The time period
10 for filling those slots is held open for much
11 too long. It discourages the Board of Elections
12 from going to the general population pool of
13 civic-minded individuals who have volunteered
14 other than through the parties to work the
15 polls, and as a result, all too frequently
16 jurisdictions go to the general pool at the last
17 moment, when people are no longer available to
18 work for Election Day, or when there isn't time
19 to train them adequately. So it creates a
20 situation where we have an insufficient number
21 of poll workers, and the ones that we do have
22 are all too often not appropriately trained.

23 It's interesting that I believe the law
24 is pretty clear in terms of uniform standards

1 for training poll workers. I think that the
2 State Board of Elections has done a reasonable
3 job in setting forth those standards. But the
4 law is really not enforced the way that it
5 should, it's not followed, and we'll have more
6 to talk about at the hearing in the future where
7 we're talking about Board of Election
8 compliance.

9 But I believe that the Committee should
10 be looking at the statues that exist now and
11 figuring out how to strengthen the requirements
12 for training.

13 We believe that there should be
14 stronger incentives, that there should be higher
15 compensation for those who train, and that you
16 should really be looking at the question of
17 whether those who are poll workers, who have
18 sufficient, who are appointed in sufficient
19 time, to take the training but fail to do so, or
20 fail to pass the extremely simple and often
21 open-book exam, that they're required to take in
22 order to be poll workers, whether they should
23 receive compensation at all. So that there's a
24 real incentive to take the training, pass the

1 test and know what you're doing as a poll
2 worker.

3 And we also believe that the Committee
4 should be looking at lowering the age for poll
5 workers. There is a enthusiastic and
6 technically skilled body of people among younger
7 college students and older, mature high school
8 students, who would be thrilled to be involved
9 as election workers. And lowering the age of
10 which one can work at the polls to 17, would
11 encourage people to become involved at the time
12 when they're most enthusiastic, when this is a
13 fresh and new experience, and we would then be
14 training a whole new generation of poll workers
15 who hopefully would then become lifetime
16 volunteers at the polls.

17 The other area that we believe really
18 contributes to problems at the polls, is not
19 just that the poll workers are under staffed and
20 under trained, but also that the voters are
21 poorly informed. We talked about this at the
22 earlier hearing when we talked about pre-
23 Election Day opportunities, and this goes to an
24 area that I did talk about earlier, and that is

1 providing information to the voters, better
2 voter education, providing voters with
3 information about their polling place, and as
4 Neil, in his testimony and as Russ mentioned,
5 having a more nimble way in which to communicate
6 with the voters on the spot.

7 In one instance that I'm aware of in
8 Brooklyn in the past presidential election, huge
9 lines to go into the polling place. The lines
10 were all about going to the first stop in a
11 multi-election district, AD District polling
12 site, and that is to find out which of these
13 tables, which is my AD? Because when the voter
14 receives one notice in August, often they don't
15 keep it, they don't remember their ED and their
16 AD, and they line up, sometimes for an hour or
17 more, just to find out which of the tables to go
18 to.

19 An enterprising colleague, young
20 colleague from another organization, I believe
21 Citizens Union, saw the situation, brought her
22 laptop, sat outside on the curb, and said to
23 people, you can skip the line if you tell me
24 your address. I'll tell you your ED and your

1 AD, which you can look up on line, and she
2 helped facilitate the process for the hour or
3 two that she was willing to spend as a volunteer
4 outside of the polling place. I, myself, was
5 able to skip the hour-long line at my polling
6 place because I knew to bring the information of
7 my ED and my AD. So there should be much more
8 effort to let people know the information they
9 should have to be informed.

10 And then as I mentioned in my testimony
11 at the last hearing, providing sample ballots
12 and informing people so that you don't stand
13 there trying to figure out, who are these people
14 that I'm trying to vote for, for judge, that
15 I've never heard of before, and what indications
16 do I have as to who I want to vote, so the
17 people spend less time on line.

18 Turning to the specific bills.

19 Common Cause is a long-standing
20 proponent of Early Voting. We strongly support
21 its adoption in New York. Several months ago we
22 issued a memorandum in support of 3315A, which
23 is the Assembly Bill, the same as 3350. And
24 I've included a copy of our Support Memo with

1 our testimony.

2 Our experience in other states
3 indicates that early voting can be very, very
4 successful, both from the voter's point of view
5 and also from an election administration point
6 of view. It is not necessarily a money saver.
7 Our experience, for instance, in speaking with
8 my colleague in North Carolina, where they have
9 a very effective early voting and same-day
10 registration program, indicates that it's not a
11 money saver, but it does not cost additional
12 money. It's simply basically moves where the
13 costs are and the time in which the costs are
14 incurred. But it has substantial administrative
15 benefits from the election administration point
16 of view.

17 We also are very strong proponents of
18 No-Excuse Vote by Mail, and so we strongly
19 support S5028, and S2868A. We have a report,
20 which I will provide, I was - my -- I had a
21 printer malfunction, which our Education Fund
22 prepared entitled *What we Know About Mail*
23 *Elections and How to Conduct Them Well*, which I
24 think the Committee may find helpful.

1 We also believe that the concept of
2 Permanent Absentee is one which should be
3 explored as well, and we definitely feel that
4 eliminating the intrusive questions that you
5 currently have to answer in order to file an
6 absentee ballot here in New York is a very good
7 proposal. And certainly while we work through
8 time it will take to pass a Constitutional
9 Amendment eliminating those intrusive questions
10 as soon as possible, I think, will help
11 facilitate those who need to vote absentee and
12 encourage them to do so.

13 As far as S1058A, Accessible Polling
14 Places, we believe the bill is long overdue. We
15 support it wholeheartedly. It's been somewhat
16 disheartening to hear testimony from Board of
17 Election Officials who don't seem to have any
18 cognizance of what the requirements of the
19 Americans With Disabilities Act is, and they
20 clearly need more guidance, and this bill would
21 provide it, and we strongly support its passage.

22 We also have been long-term proponents
23 of Half Day Shifts for Poll Workers. We don't
24 share NYPIRG's concerns, we think that this can

1 be handled with appropriate regulations, and we
2 think that it will facilitate the recruitment of
3 more poll workers and make it easier for people.
4 It's an extraordinarily long day that we ask
5 them to serve, and by the end of the day when
6 you've been there from 6 a.m. or 5:30 in the
7 morning, and it's 10 or 11 and you're trying to
8 do detail work and count things correctly, and
9 be sure that you have track of everything that
10 you have track of, no surprise that that ends up
11 being difficult. So we think that will
12 facilitate it.

13 We have some of the same concerns about
14 S2443, and we share NYPIRG's concerns about
15 S5112. We do not support that bill. We believe
16 that it undercuts the very real advantages of
17 having optical character readers right there in
18 the precinct and informing the voter about under
19 count, under voting, so that they can affirm
20 that they have deliberately under counted or
21 correct their errors, so, we do oppose that
22 bill.

23 SENATOR GRIFFO: Ms. Lerner, thank you,
24 very much.

1 Both of you in your testimony eluded to
2 the role of the Board of Elections, and let me
3 just stop here and say that the Board of
4 Elections and the Commissioners have been very
5 helpful, and very, again, a great participant in
6 these hearings, and as you go forward, of course
7 many of the legislation would obviously obligate
8 them to do something new in our voting process,
9 we are going to be mindful of the Board of
10 Elections' role and the increased resources that
11 they may need --

12 MS. LERNER: Right.

13 SENATOR GRIFFO: -- should they have to
14 implement some of these pieces of legislation,
15 so we're going to be mindful of that issue and
16 include, obviously in the Commissioners and the
17 Board of Selections, State Board of Elections,
18 in considering these new pieces of legislation
19 and the new procedures.

20 First, to Mr. Haven.

21 You had mentioned that in last year's
22 elections, you had individuals at polling sites
23 culminate into some type of survey on the issues
24 that they encountered. You mentioned long lines

1 being one of them. What were the other issues
2 that had come up, common problems that had come
3 up, during the '08 elections?

4 MR. HAVEN: Certainly the confusion, or
5 the refusal to give people affidavit ballots.
6 And difficulties in confirming someone's
7 registration.

8 In an election like in November 2008,
9 where there's a tremendous amount of interest, a
10 lot of new voters are coming into the system,
11 often people could not have their voter
12 registration confirmed. There was conflicting
13 information they were getting from poll workers
14 at the polls, and it appears, in many cases,
15 people weren't adequately trained or supervised,
16 and they were, voters, as a result, voters
17 weren't getting adequate, accurate information.

18 MS. LERNER: A persistent problem that
19 showed up in the voter help line that we co-
20 administer with NYPIRG, and this was something
21 which we heard reports of throughout the state,
22 the new voter roles, and the purging of the
23 voter roles, which are handled different in
24 every single county, created a great deal of

1 confusion. And we received a much higher
2 proportion of votes from people who were long-
3 standing voters, voting in the same location
4 from the same address, who would get, who got to
5 the polls, and after 20, 30 years of having been
6 registered, all of the sudden they found that
7 they were not in the voter books, and they had
8 been removed entirely. Which enraged them. And
9 often they would have difficulty in that
10 situation in getting an affidavit ballot. And
11 so the entire process of how the roles are
12 constituted, is definitely a problem.

13 We also found that poll workers in
14 general do not understand the difference between
15 an affidavit ballot and an emergency ballot,
16 which is of great moment to the voters, because
17 as you know, an emergency ballot will be
18 counted, and an affidavit ballot is subject to
19 challenge. So, in instances where the machine
20 breaks down, or where the polling books were
21 missing, we found poll workers were not
22 instructed to give emergency ballots, they were
23 giving out affidavit ballots. This goes to
24 training.

1 SENATOR GRIFFO: And, thank you, very
2 much, because obviously that is an issue that
3 has come up on the previous hearings as well.

4 You both mentioned under voting as an
5 issue. It's a piece of legislation that
6 obviously we are contemplating. Do you know of
7 any state that notifies the voter of their under
8 vote, or the under voting?

9 MS. LERNER: Well, the experience in
10 the jurisdictions that have optical scanners,
11 where they are pre-synched based optical
12 scanners, and this was my experience voting in
13 California, is that the voter inserts their
14 ballot into the optical scanner, and if they
15 have under voted, the machine actually notifies
16 the voter. You know, error, there are some
17 races that you have not voted for, and you then
18 are able on the spot to say, that was my
19 intention, or, oh, gee, give me my ballot back,
20 let me fill in the races which I mistakenly
21 failed to vote on. So, one of the strengths of
22 the OCR System, with paper ballot and pre-
23 synched based optical character readers, is that
24 it is a check on the under voting situation.

1 And I think, is, this bill would undercut that
2 particular safeguard, and I think would be a
3 mistake in that regard.

4 SENATOR GRIFFO: And lastly, because
5 again, it's an issue that has been coming up
6 both in the Committee and at these hearings,
7 early voting, same-day voting, the No Show Vote.
8 Do you see, or foresee, any problems if early
9 voting and Election Day voting are done
10 simultaneously? Do you foresee any problems,
11 especially as maybe New York State goes through
12 its first round of early voting and same-day
13 voting?

14 MS. LERNER: Well, I think it will be a
15 challenge for the election officials to make the
16 adjustment, but our experience in states that
17 have done it, is that it actually eases their
18 burden by spreading the numbers out over time.
19 And by allowing them to identify problems that
20 would be really catastrophic on Election Day,
21 and the instance that comes to mind is one from
22 the Presidential Election in 2008 in North
23 Carolina, where one of the counties had put
24 together a ballot, which turned out to be very

1 confusing to the voters, and could easily have
2 been a butterfly ballot situation. It could
3 have been the second Palm Beach, in 2008. But
4 it, on the first day of early voting, which is
5 approximately three or four weeks before
6 Election Day, it became obvious that voters were
7 confused by the ballot. And the election
8 authorities, and the election protection groups,
9 Common Cause North Carolina and others, were
10 then able to swing in and do a substantial
11 amount of voter education, and let people know.
12 They put up special signs, they had information
13 to explain to the voters how this particular
14 ballot layout worked, and a tremendous crisis
15 was averted. People were able to deal with the
16 ballot as it was constituted, with the support
17 of election authorities and the civic groups,
18 with sufficient time to let people know, watch
19 out, it can be a little confusing, this is what
20 you need to do to vote correctly.

21 MR. HAVEN: I would just say, I mean,
22 we're going through a tremendous upheaval in
23 transition in terms of a lot of technology, how
24 we get our information. The, you know, people

1 under 30 don't read newspapers, for example, and
2 so there's just a lot of changes happening.

3 When it comes to same-day registration,
4 I mean, you can go into Macy's and get a line of
5 credit in two minutes, or any other store that
6 will, they will give you a credit card on the
7 spot. You can go into a gun store and they'll
8 do an instant background check on you, and it
9 comes, 95 percent of the time, it's completed
10 within, you know, moments, so I think we can
11 move to these systems, we just have to
12 understand there's going to be transitions and a
13 little bit of confusion. People have been
14 voting on these standard lever machines for, you
15 know, how long? Seventy-five years? So it's
16 going to be a change, but once it becomes the
17 new norm, people will be accustom to it, and the
18 new generations of voters will be much more
19 friendly and much more conversant in the new
20 technology, and for them, it will seem like, it
21 will seem like just the thing to do.

22 MS. LERNER: But I'm afraid that one of
23 the things which will help minimize the
24 confusion, are adequate resources.

1 CHAIRMAN ADDABBO: Okay, true.

2 Ms. Lerner, Mr. Haven, thank you, very
3 much for kicking off the hearing today and being
4 our first panel, thank you, very much.

5 MR. HAVEN: Thank you.

6 MS. LERNER: Thank you. Sorry.

7 SENATOR GRIFFO: That's okay.

8 You talk about making it easier as
9 relative to information. I find that when you
10 talk about new technology, I mean, that is
11 obviously going to be the answer to the future.
12 But you have to be mindful of the segment of the
13 population that are elderly right now, and I
14 think you take that into consideration if it's
15 easy to use and they can understand it, and
16 maneuver it, then they're going to participate.
17 You don't want to disengage a whole segment of
18 the population because of fear of a new process.
19 So what do you propose right now, because we
20 have to take a look at not only a new generation
21 and their methodology, and their familiarization
22 with new technology, but cognoscente of those
23 who are there, and is education going to be
24 enough? Is training going to be enough? How do

1 you inform people to get them to the right
2 polling place to avoid that confusion on that
3 day? Do we delay the notice to maybe later in
4 the time period so it's closer so somebody has
5 it in their hand? Do you have any ideas on
6 that, Russ, or Sue?

7 MS. LERNER: I definitely believe that
8 we should be going to a system where the voter
9 receives a notification within the three to four
10 weeks prior to each election, where they're
11 voting, and what the races are that they're
12 going to be voting on.

13 I think a postcard can definitely help.
14 I think education is really the key. As well
15 as, in the transition, and again, it's a
16 resource question, having a trained poll worker,
17 whose responsibility it is to basically help the
18 voter understand the new system, who is
19 dedicated to explaining the new technology for
20 those who need extra assistance, either because
21 of physical or language problems, or simply
22 because they find it confusing.

23 To overstaff for the first cycle or
24 two, while people learn the new systems, and to

1 spend the resources, and HAVA does provide
2 education money to actually go out into the
3 community, have more opportunities for voters to
4 engage with the new technology, and to actually
5 have an hands-on experience of looking at it,
6 poking at it, ask questions, do presentations
7 through civic minded organizations; the League
8 of Women Voters, the Rotary Clubs, and so forth,
9 and actually get people out into the community
10 to say, hey, our election system is entering the
11 21st Century, and there are some changes that
12 you should be familiar with, and engage the
13 public in the transition.

14 MR. HAVEN: Yes, I absolutely agree.
15 I mean, you know, I can remember being in grade
16 school and they would, they would take us into
17 the voting machine in like 5th or 6th grade to
18 show us how the levers work, and this is, and
19 they would explain this is what you're going to
20 do, you know, when you're an adult, and so to
21 demystify it, so you need to get out to the
22 senior centers, the VFW's, the, you know, the
23 ethnic group, you know, centers that are close
24 to the community, and particularly for seniors,

1 but for everyone. Have, you know, vans with the
2 voting technology being out at the malls, and
3 giving people an access, you know, to do this,
4 to test it out, to kick the tires, and get
5 familiar with it, and that will make things go
6 more smoothly. And then have an adequately
7 trained staff who can walk people through it at
8 the polls when they come in, so.

9 SENATOR GRIFFO: Thanks.

10 CHAIRMAN ADDABBO: Thank you.

11 Again, thank you, very much, for your
12 time and testimony.

13 MR. HAVEN: Thank you.

14 CHAIRMAN ADDABBO: We appreciate your
15 time here today.

16 MS. LERNER: Okay, thank you.

17 CHAIRMAN ADDABBO: Our second panel,
18 again, a panel of two, is Courtney Totter,
19 Manager of Advocacy, National Multiple Sclerosis
20 Society. Is Courtney here? Come up, Courtney.
21 Come on down. And, forgive me, Lisa Tarricone.
22 Tarricone.

23 MS. TARRICONE: Tarricone.

24 CHAIRMAN ADDABBO: Tarricone. Addabbo

1 gets messed up as well. All the time. Director
2 of Westchester Independent Living Center. Good
3 morning, Lisa.

4 MS. TOTTER: Good morning.

5 CHAIRMAN ADDABBO: Please just state
6 your name and give your testimony.

7 **COURTNEY TOTTER**

8 **Manager of Advocacy**

9 **National Multiple Sclerosis Society**

10 MS. TOTTER: Sure. Actually my name is
11 Courtney Totter. I am the Manager of Advocacy --

12 CHAIRMAN ADDABBO: Sorry, Courtney.

13 MS. TOTTER: -- Programs and Services,
14 that's okay, at the Upstate New York Chapter of
15 the National Multiple Sclerosis Society. I work
16 in collaboration with three other National MS
17 Society Chapters throughout New York State and
18 represent the best interest of the 34,000
19 families in New York State that affected by MS.

20 I'm also here on behalf of all New
21 Yorkers living with disabilities as Chairperson
22 for the Voter Education Subcommittee through the
23 New York State Independent Living Council, as
24 well as a member of the New York Association on

1 Independent Living's Election Reform Committee.

2 I am happy to be here today to show
3 support for legislation to reform election law
4 to include people with disabilities. As you may
5 know, there are more than 35 million voting-age
6 persons with disabilities living in the US, and
7 approximately 3.3 million voting-age persons
8 with disabilities living in New York State. It
9 is troubling that according to a report by the
10 American Association of People with
11 Disabilities, only 1.3 million, or 1/3 of
12 voting-aged New Yorkers with disabilities voted
13 on Election Day in 2000. It is of further
14 concern that people with disabilities are 20
15 percent less likely than those without
16 disabilities to vote, and 10 percent less likely
17 to be registered to vote.

18 While in 2000, the 1.3 million turnout
19 vote in New York State was modest, it paled in
20 comparison to the almost 2 million potential
21 voters, who, for various reasons, did not
22 exercise their fundamental right. I ask how
23 many of these 2 million disabled New Yorkers
24 were disenfranchised due to barriers at polling

1 sites; barriers that past election day that
2 included inaccessible or inoperable voting
3 machines, physically inaccessible polling site
4 locations, and poorly trained election
5 inspectors.

6 For example, according to a survey by
7 Zogby International, on Election Day 2008, only
8 8 percent of those New Yorkers surveyed
9 responded yes to the question, were you given
10 the opportunity to vote on a ballot marking
11 device, thereby creating a wide gap between the
12 potential voting age population with
13 disabilities and a large portion of the
14 citizenry not even offered the opportunity to
15 interface with the new technology.

16 Immediately following the November
17 election, the Governor issued an open letter to
18 the Secretary of State calling for an assessment
19 of the election and an analysis of voting
20 processes, the results of which have not yet
21 been released to the public, though the intent
22 of this report is to include suggestions on how
23 to modernize our State's voting practices and
24 remove barriers to participation.

1 In accordance, New York State must take
2 every step necessary to remove all barriers to
3 ensure that individuals with disabilities are
4 able to fully participate in the elections
5 process and to exercise their fundamental right
6 to privately and independently cast their own
7 votes.

8 For this reason, I urge the Senate
9 Elections Committee to support two pieces of
10 legislation, 1058-A, legislation which would
11 require that polling places be accessible to
12 disabled voters, and 1836-A, legislation which
13 would authorize the Board of Elections to employ
14 election inspectors to work half-day shifts with
15 adjusted compensation. Both bills serve to
16 remove barriers to fully participating in the
17 election system, as well as the physical process
18 of voting for people living with disabilities.

19 The New York State Board of Elections
20 should not only ensure that all polling sites in
21 every county are accessible, a task with no
22 fiscal impact due to state and federal funds
23 made available to the counties to help make
24 necessary modifications, but should also

1 actively encourage the recruitment of people
2 with disabilities and young adults interested in
3 serving as election inspectors, and, in doing
4 so, should allow a qualified election inspector
5 with a disability to work a partial shift upon
6 request.

7 Currently, an election inspector may be
8 expected to work up to 16 hours in one day.
9 Many people with disabilities or chronic
10 diseases, such as multiple sclerosis, cannot
11 work such long hours due to medical constraints.

12 Further, for those individuals living
13 with disabilities who receive services such as
14 Medicaid, Supplemental Security Income, and
15 Social Security Disability Insurance, the pay
16 generated from working a 16-hour day could
17 impact eligibility for these government
18 benefits, thereby jeopardizing a person's health
19 insurance and/or entire source of monthly
20 income.

21 In addition, the opportunity to work
22 half-day shifts would provide many counties with
23 the benefit of ensuring that every municipality
24 will have full-day polling site coverage with at

1 least one inspector from each of the two major
2 political parties present.

3 In closing, it is my sincere hope that
4 you realize the importance of upholding every
5 U.S. citizen's fundamental right to participate
6 in the voting process and that you will
7 recognize the positive impact these bills will
8 have on New Yorkers living with disabilities. I
9 urge you to support Senate Addabbo's Bill as
10 Assemblyman Cahill's same as Bill is passed
11 today, and to move 1058-A out of committee and
12 onto the floor for its immediate passage.

13 I appreciate your commitment to
14 removing barriers to full participation in the
15 voting process by people with disabilities, and
16 thank you for the opportunity to speak with here
17 today.

18 CHAIRMAN ADDABBO: Thank you, Ms.
19 Totter.

20 MS. TOTTER: Thank you.

21 **LISA TARRICONE**
22 **Director**
23 **Westchester Independent Living Center**

24 MS. TARRICONE: I am providing the

1 following testimony this morning as a voter with
2 a disability, and as Director of Systems
3 Advocacy for Westchester Independent Living
4 Center. My work as an advocate is to promote
5 and ensure, through systemic change, the full
6 integration of individuals with disabilities in
7 every aspect of community life, which includes,
8 most fundamentally, the right to a fully
9 equitable voting system.

10 My comments this morning will address
11 bills number 1058A, which requires that all
12 polling places be accessible to persons with
13 disabilities, and 1386A, which authorizes the
14 Board of Elections to employ election inspectors
15 to work half-day shifts with adjusted
16 compensation.

17 Regarding bill 1058A.

18 In March of 2004, Westchester
19 Independent Living Center, along with
20 Westchester Disabled on the Move and several
21 other plaintiffs, filed a lawsuit in federal
22 court against the Westchester County Board of
23 Elections for polling site access violations
24 under standards within the Americans

1 Disabilities Act and New York State Building
2 Code. Violations included within the complaint
3 ranged from instances of administrative
4 problems, such as locked doors and the lack of
5 proper signage at polling sites, to major
6 architectural barriers; sites with several steps
7 at the entrances, steep walkways and narrow
8 doors.

9 One of the more egregious violations
10 cited in that complaint was that of an attempt
11 at resolving a major barrier at one polling
12 place with the use of a makeshift ramp of
13 weathered plywood. One of the complainants
14 mentioned that if the plywood broke, he would
15 have had a serious injury.

16 Although our lawsuit resulted in a
17 court ordered settlement to establish a
18 collaborative effort between the plaintiffs and
19 the Westchester County Board of Elections
20 Officials to rectify the access violations,
21 which are continuing to date, voters with
22 disabilities across the state continue to face
23 barriers to their polling place. Bill 1058 must
24 be passed and signed into law, and I would

1 specifically like to stress one of its most
2 crucial components; that the guide and
3 procedural methods for compliance be developed
4 in consultation with persons, groups or entities
5 with knowledge about public access.

6 I will state here today that polling
7 place access improvements and enhanced
8 disability awareness training within poll worker
9 workshops in Westchester County are a direct
10 result of the collaborative relationship that
11 has been established between the plaintiffs in
12 our lawsuit, such as myself as someone with
13 knowledge about public access, and our
14 Westchester County Board Officials. In order
15 for New Yorkers with disabilities to be ensured
16 of their right to a fully inclusive voting
17 system, Bill 1058 must be passed into law with
18 provisions for oversight by the appropriate
19 persons or entities strictly upheld.

20 Regarding Bill 1386A.

21 Westchester County has 383 polling
22 sites and over 1,000 election districts. During
23 primary and general elections, the county Board
24 of Elections must employ over 3,000 election

1 inspectors, poll clerks and coordinators to
2 serve in each of its election districts.

3 I participate in advisory meetings with
4 my county Board of Elections Officials, have
5 attended several poll worker trainings and
6 worked as an election inspector during the last
7 2008 General Election Primary, and recently,
8 during a special election. I have witnessed
9 first-hand, the challenges my county board
10 encounters in its attempt to adequately staff
11 each of its election districts with poll workers
12 on election days, which, I feel, is largely
13 attributable to the required 16-hour shift.
14 These challenges have been particularly
15 difficult with the implementation of accessible
16 voting machines in each site, as an additional
17 two election inspectors are assigned to each of
18 these machines throughout the county.

19 Westchester County Board of Elections
20 conducts thorough poll worker training seminars,
21 and disseminates comprehensive written materials
22 and support guides to all training participants.
23 The specialized trainings facilitated for the
24 accessible Sequoia ImageCast machine are limited

1 to six participants, in order to ensure a more
2 hands-on understanding of the machine's
3 operating system. In addition, the county will
4 schedule follow-up trainings with individuals
5 who feel they need further instruction.

6 However, despite the county's best
7 effort to provide exemplary poll worker training
8 and support, worker turnout and performance on
9 elections days, at times and in certain
10 districts, can be inadequate. Poll worker do
11 not show up for duty, leaving an imbalance in
12 party representation in certain districts;
13 others may take extended breaks; others become
14 fatigued and may not perform as responsibly
15 during the later part of the shift. I have
16 witnessed all of these first hand.

17 The current required 16-hour poll
18 worker shifts are taxing for most individuals;
19 however, they are particularly onerous for
20 persons with disabilities that have specific
21 medical and/or transportation considerations
22 that greatly limit their ability to sustain
23 these long and consecutive shifts.

24 I believe passage of this bill,

1 allowing for half-day shifts with adjusted
2 compensation, would significantly mitigate these
3 challenges and offer a more reasonable option
4 for all poll workers. Shorter and more
5 reasonable hours could also draw more interest
6 from single parents and students, allowing them
7 more flexibility when arranging for childcare
8 and balancing schedules respectively. Half-day
9 shifts would importantly provide a more feasible
10 opportunity for persons with disabilities to
11 participate in the election process and
12 establish increased visibility within their
13 communities. As experts, persons with
14 disabilities could offer much needed feedback to
15 their county boards regarding accessible voting
16 and poll worker etiquette at the polls.

17 I appreciate this opportunity to
18 provide comments this morning that will,
19 hopefully, serve to update and reform New York
20 State laws and regulations to providing more
21 fully equitable voting system for its 3.3
22 million eligible voters with disabilities.

23 Thank you.

24 CHAIRMAN ADDABBO: I thank you both,

1 again, for again highlighting the 3.3 million
2 voters with disability throughout the state.
3 Thank you, very much.

4 Ms. Totter, I'm going to ask that if
5 you have any updated information, you referred
6 to the Zogby Survey, but if you have any other
7 information, please forward it. 2008 elections
8 and so forth, please forward it, that
9 information is helpful.

10 Any questions from Senator Griffo?

11 I'm going to ask that if you both have
12 any ideas on how we can improve the voting
13 process for those with disabilities, please let
14 us know. It is a big segment of our state that
15 should not be left out, and we want to hear from
16 you as far as, you know, ideas that you may
17 have. So please let us know even after today's
18 hearing. We'll be looking forward to working
19 with you in the future. So thank you, very
20 much. Thank you for your time today.

21 MS. TOTTER: Thank you.

22 MS. TARRICONE: Thank you.

23 CHAIRMAN ADDABBO: Thank you.

24 Our next panel, a panel of two; Aimee

1 Allaud, Elections Specialist, League of Women
2 Voters, and Jean Andrews, Steering Committee
3 Member for New York Democratic Lawyers Council.

4 Please state your name.

5 MS. ALLAUD: Yes. Oh, okay. Did you
6 wish me to go first?

7 CHAIRMAN ADDABBO: It doesn't matter.

8 **AIMEE ALLAUD**
9 **Elections Specialist**
10 **League of Women Voters NY**

11 MS. ALLAUD: Okay. All right. Good
12 morning, Senator Addabbo, and members of the New
13 York State Senate Elections Committee.

14 My name is Aimee Allaud, and I'm the
15 Elections Specialist for the New York State
16 League of Women Voters. I have served on the
17 2003 HAVA Task Force to draft a State
18 Implementation Plan and am currently serving on
19 the Task Force, which is preparing amendments to
20 the original plan.

21 Once again, the League appreciates the
22 opportunity to discuss those election reform
23 issues that can be addressed through
24 legislation.

1 I've confined my remarks today to the
2 bills that you had asked for comment on, but I
3 do appreciate the, and share with NYPIRG, what
4 the League does, many of the comments that they
5 have made on much broader reforms that could be
6 made and should be looked at in the election
7 system.

8 The League of Women Voters is a multi-
9 issue, nonpartisan political organization, which
10 encourages informed and active participation in
11 government and influences public policy through
12 advocacy and education.

13 Today's hearing was called to obtain
14 public input into those bills currently before
15 the Senate that govern casting allot and polling
16 places. The League believes that voting is a
17 fundamental citizen right that must be
18 guaranteed and protected. Voting is the gateway
19 to participation in a representative democracy,
20 and laws to encourage participation while
21 ensuring the integrity of the voting process are
22 necessary. The following comments are informed
23 by these core beliefs:

24 On Senate Bill 3250, Senator Addabbo,

1 enacted the Early Voting Act. The League has no
2 position on early voting per se. We have not
3 had the opportunity nationally or at the state
4 level, to study the effects both positive and
5 negative, of early voting laws in other states,
6 or to examine how early voting might impact
7 election administration processes in New York
8 State.

9 We suggest that the Senate study the
10 issue further before enacting this legislation,
11 especially since the introduction of new voting
12 machines in 2009 and 2010 will increase demands
13 on the total administration of elections in the
14 state.

15 On Senate Bill 5028, and Senate 2868,
16 also Senator Addabbo, both expand absentee
17 voting by removing unnecessary documentation
18 requirements on the application for an absentee
19 ballot. The League strongly supports both of
20 these measures. Both the New York State
21 Election Commissioners Association and the New
22 York State Board of Elections also support these
23 measures.

24 The League testified in support of

1 eliminating the intrusive and unnecessary
2 information required on the application form in
3 1993, when the New York State Board of elections
4 held statewide hearings on the absentee ballot
5 application process. Legislation to streamline
6 the process is long overdue. New York's voter
7 turnout statistics would be positively impacted
8 if eligible voters had additional opportunities
9 to exercise the franchise through this method.

10 For example, the number of voters who
11 actually voted in the presidential elections of
12 2004 and 2008 is still under 65 percent of the
13 eligible voting age population. The New York
14 State Constitution does not require the
15 disclosure of personal details on the
16 application form.

17 Furthermore, the application is the
18 equivalent of a sworn statement, and a voter's
19 signature or mark should be sufficient to
20 satisfy the constitutional mandate.

21 However, if this legislation becomes
22 law, it will be incumbent upon the local Boards
23 of Elections to improve the administration of
24 the absentee ballot voting process in order to

1 ensure its integrity.

2 On March 6, 2009, the New York State
3 Comptroller's Office issued a report on absentee
4 voting. The scope of their auditing report was
5 to determine whether the absentee voting process
6 in New York was adequately overseen by the New
7 York State Board of Elections, and whether
8 voting by absentee ballot was properly
9 administered by local boards of elections. The
10 recommendations of the report call for greater
11 oversight by the New York State Board of
12 Elections and stricter accounting of requests
13 for absentee ballot applications and ballots by
14 the local Boards of Elections. According to the
15 New York State Board of Elections' 2008 Annual
16 Statistical Information Report released last
17 week, 280,659 voters completed absentee ballots
18 and returned them to their respective Boards of
19 Elections for the 2008 general election.

20 By the way, these statistics do not
21 include the five New York City counties. That
22 data was unavailable at the time.

23 We may expect that there will be
24 increased use of absentee voting if this

1 legislation is passed, and additional oversight
2 and controls of the applications and ballots by
3 the county boards of elections will be required.

4 Section 8-406 of the New York State
5 Election Law, absentee ballots, delivery of,
6 specifies that a qualified voter who requests an
7 absentee ballot may designate in writing a
8 person who will deliver the ballot to him or
9 her. Currently the law does not limit the
10 number of absentee ballots an individual may
11 deliver to qualified voters. The League
12 recommends that the Legislature amend the
13 Election Law to set a limit to the number of the
14 absentee ballots individuals can deliver to
15 voters as it has done in Section 8-407, voting
16 by residents of nursing homes, residential
17 health care facilities, et cetera.

18 Over the many years that the New York
19 State League and our local chapters have
20 monitored the election process, we have observed
21 abuses of the absentee ballot process. For
22 example, we call your attention to the 2004-2005
23 case, Willingham et al. v. County of Albany, I
24 have the cites in the testimony, filed with the

1 United States District Court in the Northern
2 District, in which the collection and processing
3 of absentee ballots was found to be illegal.
4 This specific example of egregious behavior
5 would not have occurred if the Election Law
6 limited the number of absentee ballots any
7 person could deliver to a qualified voter.

8 Under the Election Law, county Boards
9 of Elections are given the responsibility of
10 administering elections and only employees of
11 the Boards should have access to completed
12 absentee ballot applications, blank absentee
13 ballots, and submitted absentee ballots.
14 Unauthorized persons should not have access to
15 absentee ballots. The Election Law is very
16 clear on the rules governing absentee ballots,
17 and county boards must be held accountable for
18 enforcing the law.

19 On Senate Bill 1701, Mr. Dilan, the
20 counting of affidavit ballots. The League has
21 no position on this bill.

22 On Senate 1058, Mr. Addabbo, requiring
23 that all polling places be accessible to
24 physically disabled voters. The League supports

1 this bill, we strongly support it, which will
2 amend the New York State Election Law to conform
3 to federal accessibility standards. New York
4 State has introduced assessable voting machines
5 into all polling places in 2008, and it is now
6 imperative that persons with physical
7 disabilities have the ability to access the
8 poling place to use the machines.

9 Mindful of the time, I will go on to
10 say that we absolutely strongly support Senate
11 Bill 1836, Mr. Klein, the half-day shift bill,
12 for all the reasons that my predecessors have
13 stated.

14 And we also urge the Senate to pass Mr.
15 Dilan's Bill, 5172, which would permit 17-year
16 olds to serve as election inspectors also. This
17 young tech-savvy population would be an asset at
18 the polls when new voting machines are fully
19 implemented.

20 On Senate Bill 2443, Ms. Stewart-
21 Cousins, the League has no position on this
22 bill.

23 The last bill I want to speak about at
24 some length, is the bill about the Foley Bill,

1 Senate 5112, adding a new subdivision to the
2 election law stating that ballots must provide
3 an area to be filled in by a voter that would
4 notify the voting system that the voter intended
5 to under vote deliberately so the optical
6 scanner would not produce an error message,
7 which would reject the ballot.

8 The justification for this bill is that
9 when paper ballots are used and not filled out
10 entirely, it is possible for a voter to receive
11 an error message from the optical scanner even
12 though the voter voted as he intended. The
13 reason that the error message happens is because
14 the voter did not vote on every race.

15 The federal Help America Vote Act does
16 not require voting systems to have under vote
17 notification. Specifically, Section 301 only
18 requires that voting systems provide an
19 opportunity for a voter to change or correct the
20 ballot before it is cast and counted. New
21 York's regulations creating voting system
22 standards, Section 6209.2, require that in a
23 paper based voting system, the system must
24 indicate to the voter specific contests or

1 ballot issues for which an over vote or under
2 vote is detected. This specific section of the
3 law and regulations could be amended to delete
4 "or under vote" which would allow scanners to be
5 programmed without under vote notification.

6 I call your attention to the Brennan
7 Center for Justice report of 2006, "The
8 Machinery of Democracy, Usability of Voting
9 Systems, suggests that if correcting errors
10 during the voting process imposes a significant
11 burden on voters, the number of voters who
12 choose not to make corrections increases leading
13 to higher residual vote rates. Accordingly, the
14 mechanism for connecting or correcting errors
15 must be easy both to understand and to execute."
16 Their list of 14 recommendations in the area of
17 ballot design and system instructions should be
18 reviewed by decision makers before enacting
19 legislation. The report goes on to say that,
20 "it should be noted that usability is affected
21 not solely by the type of voting system at
22 issue, but also by the ballot and instructions
23 designed by the vendors or elections officials
24 for a particular jurisdiction."

1 The New York State full-face ballot
2 requirement creates a very complex ballot face
3 and complicates the placement of candidates and
4 issues, often resulting in voter confusion and
5 under voting. The League of Women Voters and
6 other organizations have recommended that the
7 full-face ballot be rescinded to allow for
8 better ballot design. However, the Legislature
9 has not acted upon this recommendation.

10 Two states, at least, do not require
11 under vote notification for the voting system.
12 They are Massachusetts and Michigan. In
13 inquiring about why Michigan does not contain an
14 oval or box on the ballot, Bradley Wittman,
15 Director of the Election Liaison Division,
16 Michigan Department of State, responded to me,
17 "One of the administrative challenges associated
18 with optical scan voting that we have had to
19 work to overcome is ensuring that the secrecy of
20 the ballot is protected at each step of the
21 voting process. When a ballot is rejected by
22 the tabulator, the voter is often left confused
23 and uncertain. In such situations, election
24 workers seem to have a natural tendency to want

1 to look at the ballot to help the voter out.
2 The use of under vote boxes will, I am sure,"
3 this is Mr. Wittman, "increase the interactions
4 between the voters and the election workers at
5 the tabulator, which will, in turn, increase the
6 risk that ballot secrecy violations will occur."
7 Michigan does not have under vote notification
8 requirement.

9 Whatever the legislative requirement
10 for changes to be made to the ballot, it will be
11 imperative that voters are educated on how to
12 prepare the paper ballot correctly; how to cast
13 a vote properly on the voting machine, including
14 how to review their ballot, and how to make
15 corrections before the ballot is cast.

16 The success of the introduction of new
17 voting machines in New York depends on intensive
18 education of the electorate. Although federal
19 funds have been made available specifically for
20 this purpose, the Legislature has responsibility
21 to adequately fund this essential function over
22 the long term. We recommend that the
23 Legislature work closely with the New York State
24 Board of Elections to achieve that goal.

1 Thank you.

2 CHAIRMAN ADDABBO: Thank you, Ms.

3 Allaud.

4 Ms. Andrews. If you could just pull
5 the microphone closer to you, please.

6 MS. ANDREWS: How's that?

7 CHAIRMAN ADDABBO: That's great.

8 **JEAN ANDREWS**

9 **Steering Committee Member**

10 **NY Democratic Lawyers Council**

11 MS. ANDREWS: Okay. Well, Senator
12 Addabbo, and Senator Griffo, thank you for
13 holding this important hearing, and for granting
14 me the privilege to address it.

15 My name is Jean Andrews, and I am a
16 member of the Steering Committee of the New York
17 Democratic Lawyers Council, the voting rights
18 project of New York State Democratic Committee
19 and the Democratic National Committee. The
20 NYDLC is a coalition of lawyers and others
21 dedicated to fostering universal participation
22 and trust in the electoral process by ensuring
23 that:

24 All eligible persons can register to

1 vote easily.

2 All registered voters are able to vote
3 simply, fairly, and without intimidation, and;

4 All votes are counted and all voting
5 systems are open and reliable.

6 We count several thousand New Yorkers
7 from across the state among our ranks, and
8 membership is open to any and all lawyers, law
9 students, and other activities who share our
10 commitment to voting rights. As a member of the
11 NYDLC, I have assisted in organizing election-
12 monitoring activities, served as a poll watcher
13 and as a hotline attorney, and addressed
14 problems and concerns arising at the polls on
15 election day.

16 Any experience monitoring the polls on
17 Election Day will quickly bring one to the
18 conclusion that some problems at the polls are
19 better solved through prevention than through
20 intervention on Election Day or thereafter. In
21 recognition of this fact, the NYDLC has formed a
22 number of committees in which members research
23 and investigate election-law related issues,
24 such as implementation of the HAVA in New York

1 State, protection of Minority Voting Rights, and
2 countering Deceptive Practices. We believe it
3 is important to advocate for voting rights and,
4 where necessary, for reforms to the conduct and
5 administration of elections in the months
6 between elections to prevent the recurrence of
7 problems encountered and identified during
8 previous elections.

9 In that vein, I appear before you today
10 to speak in support of several of the measures
11 being considered by the Committee.

12 S3250, the Early Voting Act;
13 S5028, which would amend the
14 Constitution to allow for no-excuse absentee
15 voting;

16 S2868A, to eliminate the requirement
17 that voters who request an absentee ballot
18 disclose private and personal information, and;

19 S5112, which would require that paper
20 ballots have a box, or oval, that the voter can
21 mark to alert the voting system that under votes
22 are intentional.

23 Collectively, these bills will
24 facilitate the election process by making it

1 easier for voters to participate, and thereby,
2 strengthening our democracy.

3 In speaking in support for these bills,
4 I draw on my organization's experience observing
5 elections in New York State; research my
6 organization has conducted on laws, practices
7 and results in other states; and my own
8 experience in monitoring those practices on
9 election days in New York and in other states.

10 The NYDLC applauds and supports
11 measures that expand access to the electoral
12 process and encourage broader participation.
13 Bringing early voting to New York State is an
14 important reform in this respect. Forty-three
15 states plus the District of Columbia currently
16 allow some form of opportunity to cast a ballot
17 before Election Day. Of those states, they are
18 split roughly in half between in-person, no-
19 fault absentee balloting and genuine early
20 voting. Results from this past November
21 indicate that in states which allowed early
22 voting, nearly 30 million voters chose to cast
23 their ballots early, significantly easing the
24 burden on polling place infrastructure on

1 Election Day.

2 The NYDLC's analysis of Election Day
3 problems this past November indicates that the
4 impact of the usual Election Day problems, such
5 as issues surrounding voter registration,
6 missing poll workers, and broken machines, was
7 compounded by unusually heavy turnout early in
8 the day. This led to longer than normal wait
9 times, with long lines in certain polling
10 places, and doubtless resulted in some voters
11 being unable to exercise their right to vote.

12 Across the state, approximately 40
13 percent of all problems reported to our Election
14 Day hotline were reported before 10 a.m.
15 Establishing the opportunity for voters to cast
16 their ballot prior to Election Day would ease
17 this burden at the polling place, allowing
18 voters with limited time on Election Day a
19 window of up to several days during which to
20 cast their vote and thus easing the strain on
21 the Election Day infrastructure for poll workers
22 and for those who vote on Election Day.

23 The experience of other states,
24 research conducted by the Model Legislation

1 Committee of the NYDLC, as well as my own
2 personal observations in Ohio during and before
3 the November 2008 General Election, where early
4 voting was an option, lead me to conclude that
5 early voting can be implemented in a fashion
6 that maximizes electoral participation overall
7 and eases Election Day congestion. We support
8 Senate Bill 3250, the proposed Early Voting Act.

9 And about No-Fault Absentee Balloting.

10 Removing the restrictions on a voter's
11 ability to vote absentee similarly will open the
12 path to greater participation in elections. All
13 states provide some form of absentee balloting
14 for voters who will not be able to vote at their
15 official polling place on the designated
16 Election Day. Roughly 33 states allow no-fault
17 absentee balloting, a net increase of five
18 states from a year ago. Sixteen states plus the
19 District of Columbia, require the voter to show
20 or to declare a reason, from a list of approved
21 reasons, as to why they will not be available on
22 Election Day. New York allows absentee
23 balloting only for those voters who fall into
24 one of four categories, or who will be

1 accompanying a spouse who fits into one of those
2 categories.

3 So-called no-fault absentee balloting,
4 by contracts, allows any voter who wishes to
5 vote by absentee ballot to do so. While
6 changing the existing absentee balloting laws
7 would be simple, requiring only the elimination
8 of the permissible categories, absentee
9 balloting is subject to the restrictions of
10 Article II, Section 2, of the New York State
11 Constitution, which restricts absentee voting to
12 qualified voters who may be absent from their
13 county of residence on Election Day. New York
14 would, as a result, require a Constitutional
15 change in order to enact actual no-fault
16 absentee balloting.

17 While no-fault absentee balloting has
18 been found to have a positive, but minimal,
19 effect on voter turnout, the real benefit is an
20 equalization of the playing field for voters.
21 As presently constructed in New York, absentee
22 balloting is available primarily to college
23 students at schools away from home, people who
24 will be away for vacation or business reasons,

1 and those with medical issues that can hinder
2 their ability to get to the polls. The first of
3 these two groups skew heavily towards the higher
4 socio-economic classes. Allowing everyone to
5 vote by absentee ballot, regardless of their
6 reasons for choosing to do so, gives more equal
7 treatment to all voters. We therefore, support
8 Senate Bills 5028 and 2868A.

9 And finally, my organization would like
10 to address Senate Bill 5112. Whereas the
11 measures discussed above aim to alleviate
12 existing problems, this bill seeks to prevent a
13 new one from arising.

14 As the members of this Committee are
15 well aware, New York is slated to move to new,
16 optical scan voting technology in the near to
17 medium term. As it now stands, a voter who
18 chooses not to vote in every race on the ballot
19 would have their ballot returned with an under
20 vote error message. This measure is intended to
21 keep voters from mistakenly failing to vote in
22 every race on the ballot, and as such, is
23 laudable. However, the optical scanner will
24 accept the corrected ballot only by manual

1 override administered by a voting machine
2 worker. This would result in a compromise of
3 the privacy of the voter, since the under vote,
4 intentional or not, would then necessarily draw
5 the attention of the worker and possibly that of
6 other just curious nearby people.

7 Further, the additional vote-casting
8 time caused by under vote rejections followed by
9 manual overrides is also a predictable, but
10 unnecessary, cause of increased voter waiting
11 time, longer lines, and voter frustration. This
12 will undoubtedly be most problematic during the
13 heaviest voting periods.

14 We believe that S5112 offers a workable
15 solution. It allows voters to mark a single
16 oval, or other space on the ballot, to indicate
17 that they intend not to vote for every race or
18 elective decision. And it will let those
19 voters, who choose not to vote for certain
20 races, to cast their ballots without the
21 resulting under vote rejection. It will ensure
22 privacy and speed the voting process. Requiring
23 that the voters positively indicate that they
24 intend not to vote in every race or elective

1 decision will serve as a reminder for a voter
2 who might have accidentally forgotten to vote in
3 a particular rate. We, therefore, support
4 S5112.

5 In conclusion, I speak in support of
6 S3250, the Early Voting Act; S5028 and 2868A,
7 which would open the absentee voting process;
8 and S5112, which would allow intentional under
9 votes.

10 And welcome contributions, I'm sorry.
11 Anyway, it would enhance the ability, the
12 accessibility of the electoral process and lower
13 barriers to participation, and strengthen our
14 democracy.

15 Thank you.

16 CHAIRMAN ADDABBO: Thank you, Ms.
17 Andrews.

18 Any question?

19 SENATOR GRIFFO: Just a quick question.
20 On the, you talked about the no-fault absentee
21 balloting, basically to remove any of the
22 criteria would allow people to vote for whatever
23 reason they may choose to, right?

24 MS. ANDREWS: Mm-hmm.

1 SENATOR GRIFFO: So, then we talk about
2 early -- wouldn't that, in essence, be a form of
3 early voting then?

4 MS. ANDREWS: It's a form of early
5 voting. The difference between sort of actual
6 early voting and no-fault absentee voting is the
7 absentee ballots are counted differently. And
8 where you have actual early voting, it's as if
9 you were voting on Election Day.

10 SENATOR GRIFFO: But perhaps that
11 should be looked at, is what I'm telling you,
12 because if you're really trying to enhance and
13 make it easier again for the public, if you were
14 to look at one as opposed to the other, the more
15 we continue to put together, could complicate or
16 confuse people.

17 MS. ANDREWS: Mm-hmm.

18 SENATOR GRIFFO: And maybe if this, if
19 the restrictions were to be removed on absentee
20 balloting, maybe then there would not be a need
21 for an early voting provision also.

22 MS. ANDREWS: Well, they're different,
23 I mean --

24 SENATOR GRIFFO: I know they're

1 different, but --

2 MS. ANDREWS: -- they are, yes.

3 SENATOR GRIFFO: -- I'm asking you then
4 if --

5 MS. ANDREWS: Yes.

6 SENATOR GRIFFO: -- there's a, if
7 you've looked at the possibilities of how do we
8 look at both subjects and maybe do it a little
9 differently than the approach that we're
10 reviewing at this point in time.

11 MS. ANDREWS: Well, I think basically
12 we would more strongly support early voting.
13 And, but that also requires that you go
14 somewhere to vote, at least according to this
15 current bill. And absentee balloting is, allows
16 you to mail it in, you get --

17 SENATOR GRIFFO: That would be easier.
18 I mean, if we're trying to make it easier for
19 the resident, wouldn't it be easier actually for
20 somebody to basically put their ballot together
21 in house, in their own home? The only
22 difference --

23 MS. ANDREWS: Yes.

24 SENATOR GRIFFO: -- would be that, for

1 a sense of how their counted, as you indicated,
2 or if somebody feels that they want to be at
3 that machine.

4 MS. ANDREWS: Well, they are counted
5 very different right now, so --

6 SENATOR GRIFFO: Right.

7 MS. ANDREWS: -- that would have to --

8 SENATOR GRIFFO: Right.

9 MS. ANDREWS: -- be discussed or
10 changed, or, I mean, that would mean you'd be
11 getting towards something like what Oregon has,
12 which is mail-in balloting.

13 MS. ALLAUD: Senator, I'd like to
14 comment here too, that, as I said --

15 CHAIRMAN ADDABBO: If you can just put,
16 Ms. Allaud can you just push the microphone
17 closer.

18 MS. ALLAUD: Oh. Noting that the
19 League doesn't have a position, as I said
20 earlier, on early voting per se, the processes
21 are very different, and I think not to
22 discourage anyone for the looking at early
23 voting, I think that the Committee and the
24 Legislature should look at what the

1 ramifications of instituting an early voting
2 system are for election administration. I think
3 to underestimate how that might effect the
4 administration, at the local levels, to have a
5 whole process where, again, the absentee
6 balloting process is done, is kind of an
7 independent thing by a voter at his own
8 convenience. It doesn't require a mechanism of
9 setting up a voting machine, shall we say, and
10 all the protections employed around that, at
11 specific times, in advance of the election.
12 You're not eliminating Election Day operations
13 at the same time that you put in place an
14 Election Day operation.

15 I know you may think this sounds
16 counter, not, counter intuitive to what the
17 League of Women Voters has always stood for, but
18 I think at the same time, we have to recognize
19 that election administration is a responsibility
20 for accuracy, security and verification of the
21 whole processes that, and the end result. And
22 right now, we're entering into a period when New
23 York is going to encounter some voters, as well
24 as election administration, is going to

1 encounter some dramatic changes. And I
2 certainly would not recommend, my organization
3 would recommend that you look at this much more
4 closely before you decide to enact legislation
5 permitting it.

6 MS. ANDREWS: I just would like to say
7 one thing, additional thing. Unless you change
8 the Constitution, absentee, requesting the
9 absentee ballot requires that you are intending
10 to not be able to go to the polls. And a lot of
11 people really, I think, want to go to the polls,
12 and I experienced a number of states that had
13 early voting, and just the level of excitement
14 was very different. In some of the counties in
15 Ohio, 50 percent or more of the voters voted
16 early. And not absentee, they wanted to be at a
17 polling place, you know, involved in, you know,
18 actually doing it and having it counted right
19 away, and I think it's qualitatively a very
20 different thing.

21 SENATOR GRIFFO: Then if that were the
22 case, then why would we want less restrictions
23 on absentee ballots, because you want to
24 encourage more people to get to the polling

1 facility, more people would have that desire and
2 interest, as you've indicated.

3 MS. ANDREWS: Yes, I mean, that's
4 better. But some people can't be there.

5 CHAIRMAN ADDABBO: Well there was the,
6 also the other issue of privacy, you know, for
7 the restrictions, or information needed --

8 MS. ANDREWS: Right.

9 CHAIRMAN ADDABBO: -- on the absentee
10 ballot, you know, not to tell people where
11 you're going to be on a certain date. But to
12 obviously, protect privacy and even safety
13 issues, to alleviate the need for determining
14 why or stating why you need an absentee ballot.

15 Also in the previous hearing, I'm not
16 sure, if it was, I believe it was Buffalo, or
17 Manhattan actually where the conversation along
18 these lines, the general notion was there wasn't
19 going to be a tremendous amount of people
20 looking to do the absentee ballot. People still
21 want to go out and vote, so where, even if we
22 were to change the rules a bit, there wasn't
23 going to be a mass, you know, exodus from the
24 polling sites into mailing out the absentee

1 ballots. People generally still want to
2 participate. So ...

3 MS. ANDREWS: I think that's what the
4 states that have instituted early voting have
5 done.

6 CHAIRMAN ADDABBO: I need to move on,
7 so again, --

8 MS. ANDREWS: Yes.

9 CHAIRMAN ADDABBO: -- I appreciate
10 your, both of you, your time and testimony
11 today.

12 MS. ANDREWS: Thank you, very much.

13 CHAIRMAN ADDABBO: Mm-hmm, my pleasure.

14 MS. ALLAUD: Thank you.

15 CHAIRMAN ADDABBO: Our next panel,
16 again a panel of two, is Helen Benlisa, Project
17 HAVA Coordinator, the Catskill Center for
18 Independence. And Dennis Karius, Chair of
19 ARISE, A Regional Initiative Supporting
20 Empowerment.

21 Again, this is Ms. Benlisa, correct?

22 MS. BENLISA: Yes, I am.

23 CHAIRMAN ADDABBO: Okay. Is Dennis
24 Karius here?

1 MS. BENLISA: We are not a two-person
2 panelist, it's just because --

3 CHAIRMAN ADDABBO: No, no, no. It's
4 okay.

5 MS. BENLISA: You're starting with two
6 people at a time?

7 CHAIRMAN ADDABBO: It's okay. Ms.
8 Benlisa.

9 MS. BENLISA: Thank you.

10 CHAIRMAN ADDABBO: Give me your
11 testimony.

12 **HELEN BENLISA**

13 **Project HAVA Coordinator**

14 **Catskill Center for Independence**

15 MS. BENLISA: Sure.

16 Good morning, and thank you very much
17 for holding these hearings. For us, it's
18 nothing short of miraculous from the disability
19 community that these hearings are taking place.

20 I'm here, I'm just going to restrict my
21 comments to 1058A. As a mother of a 15-year
22 old, I've learned to pick my battles, and I'll
23 just stick to that.

24 I am the Project HAVA Coordinator at

1 the Catskill Center for Independence. My job is
2 to administer the Upstate portion of New York
3 State's Protection and Advocacy for Voter Access
4 Grant. Part of my job is to help provide
5 technical assistance to county BOE's in those 52
6 counties, everything above Westchester, about
7 polling site accessibility, among a lot of other
8 things. But since this is what this bill is
9 about, I'm just going to talk about that a
10 little bit.

11 For over 40 years, accessibility has
12 been a legal issue, basically. You know, we
13 have the AVA in '68, Rehab Act, ADA, HAVA is,
14 you know, determined that polling sites are
15 accessible, no ifs, ands or buts, for federal
16 elections anyway, and we've very excited to see
17 waiver language very close to being removed from
18 New York State Law, which is really important,
19 because last summer, the Comptroller's Office,
20 the State Comptroller's Office did an audit of
21 several counties, I think 18 counties, to see
22 where they were at in the election preparedness.
23 And one of the questions they asked was about
24 polling site access, and most of the counties

1 agreed that they were doing something towards
2 being ready, and, but one county said there were
3 four waivers in place for four of their polling
4 sites.

5 If HAVA supercedes state law, as it
6 does, there's no reason for waivers to be in
7 place. That means people, you know, people
8 don't understand what the issue of accessibility
9 is. They don't understand what level, you know,
10 what's accessible as opposed to what's useable.
11 Accessibility has standards to adhere to. These
12 are minimum standards. They've been developed
13 by asking people with disabilities what is the
14 minimum requirement they could possibly use to
15 get into a building, what is the minimum
16 requirement for safety?

17 Now a lot of counties, and I don't want
18 to disparage the work that's been done, there's
19 been a lot of good effort, a lot of good-faith
20 effort. But, it hasn't been -- there's not a
21 good enough knowledge base, let's just put it
22 that way. We can't fault people for not knowing
23 something. We can fault them if they know it
24 and they're not held to be in compliance, but in

1 terms of what the knowledge base is, it's not
2 been fully understood. So that's part of the
3 issue, while we're glad to see the waiver
4 language being removed, and glad to see that the
5 State Board is going to, you know, create a user
6 friendly guide hopefully with the assistance of
7 our approved groups like us, but there isn't
8 really any recourse.

9 What they've had to do for HAVA, the
10 State Board has had to issue to the counties
11 some kind of survey instrument. They use the
12 Department of Justice checklist. They gave them
13 x-amount of dollars, health and human services
14 dollars, to provide temporary accommodations,
15 temporary features to make polling sites
16 accessible. But beyond that, there wasn't
17 anything, any double check, any resurveying of
18 sites that required maybe a more substantial
19 modification. The permanent modifications that
20 were done were not required to be resurveyed.
21 There's the law as it states now, does not
22 require that either.

23 Another, just a little picky-un thing,
24 there's, it seems like the phrase substantial

1 compliance is kind of the lingo, regular lingo
2 for most legislation, and I would say that
3 compliance with accessibility is either or.
4 You're either pregnant or you're not. You're
5 accessible or you're not. You could be useable,
6 but useable isn't exactly always safe. In my
7 testimony, there's lots of pictures of places
8 that have been deemed accessible, that aren't.
9 And they may be useable, but they're not safe.

10 My center has been involved in polling
11 site access since the beginning, since the early
12 90's. In about 2000, with the help of the
13 Attorney General's Office, brought suit to three
14 counties, well suit to two counties, one entered
15 into a consent decree, for making polling sites
16 accessible. There are pictures in my testimony
17 that, of those sites that are in some of those
18 counties that were sued, it's clear that the
19 accessibility wasn't maintained. That has to be
20 a really big component of it. We say go out and
21 make your site accessible, that only means they
22 might do it for one day, but do they know how to
23 do it year to year? Are their poll workers
24 trained in the, you know, what the meaning of

1 accessibility is?

2 A lot of times with the new accessible
3 features, you know, the orange cones or the
4 temporary ramps, the stuff gets dropped off at
5 polling sites, the poll workers are left with
6 the, you know, the task of setting it out,
7 maintaining it throughout the day. If they're
8 not adequately educated to know what they're
9 supposed to do, we can't be sure that, you know,
10 they could say that they're accessible, but we
11 can't be sure that anything is done correctly,
12 or safely. I mean, I'm not a litigious person,
13 I think it's sort of a long way around the bend
14 to go that way. My thought is if we educate
15 people, if we know, if they know what it means
16 and how to maintain it, the likelihood of it
17 actually existing will occur much sooner and in
18 much greater, you know, be more widespread than
19 just, you know, here and there.

20 CHAIRMAN ADDABBO: Oh, again, Ms.
21 Benlisa, again, I appreciate your view on 1058A.
22 The intent there is, as you know, was to
23 basically make it more consistent with the
24 federal requirements for those disabilities and,

1 again, get it into compliance, so --

2 MS. BENLISA: Right.

3 CHAIRMAN ADDABBO: -- making it more
4 consistent and being more compliant, I don't
5 know who can argue with that.

6 MS. BENLISA: No, no, no, I'm not
7 arguing with it --

8 CHAIRMAN ADDABBO: No, no, no, that
9 we're --

10 MS. BENLISA: I'm saying, I'm saying,
11 but along with that --

12 CHAIRMAN ADDABBO: I agree with you.

13 MS. BENLISA: -- because we've had
14 this, basically if it's been a federal standard
15 for over 40 years, and we're going to try to
16 make it a state standard. The problem is,
17 people still don't know what it is. I mean you
18 go to any ten sites, I could take you across the
19 state, I've been to over 100 sites across the
20 state, and the parking is not designated the
21 same in each one. There's not a uniform
22 application, so that's part of where the
23 education comes in. That, you know --

24 CHAIRMAN ADDABBO: And it's working

1 with the State Board of Elections, of course, to
2 make it, again --

3 MS. BENLISA: Yes.

4 CHAIRMAN ADDABBO: -- more consistent
5 throughout the state. But thank you, very much.

6 MS. BENLISA: One would hope.

7 CHAIRMAN ADDABBO: I appreciate that.

8 MS. BENLISA: Thank you.

9 CHAIRMAN ADDABBO: Thank you.

10 Our next panel, Irene Miller, New York
11 Citizens for Clean Elections, and Adam Smith,
12 Director of Vote by Mail Advocacy Project.
13 We've got Ms. Miller and Mr. Smith.

14 Good morning.

15 MS. MILLER: Good morning.

16 CHAIRMAN ADDABBO: Would you please
17 state your name and give your testimony please.

18 **IRENE MILLER**

19 **New York Citizens for Clean Election**

20 MS. MILLER: Irene Miller. And, I want
21 to thank Senator Addabbo, and other members of
22 the Senate Committee on Elections for this
23 hearing to revitalize participatory democracy.
24 I think that's very good.

1 I'd like to take a little broader view.
2 I agree that many of the amendments are in good
3 order, but apparently a lot of these amendments
4 have also to do with the -- and are designed to
5 conform to New York's Election Reform and
6 Modernization Act of 2005, which mandates
7 replacement of our level voting system with
8 computerized voting, a 3 percent audit of the
9 paper ballots scanned into optical-scan
10 computers, and ballot recounts of up to 100
11 percent if necessary. That's the ERMA Act of
12 2005.

13 ERMA was written as tactical response
14 to a 2005 federal court order to comply with the
15 Help America Vote Act of 2002, that's HAVA,
16 which mandates private, accessible voting for
17 persons with special needs. In November of
18 2008, when we installed ballot-marking devices,
19 BMDs, for people with special needs in every
20 polling place, our lever system became fully
21 compliant with the court order and with HAVA,
22 which lists levers, optical-scan computers, and
23 direct electronic recording as permissible
24 systems. That is in Section 301(a) of HAVA.

1 With HAVA compliance, ERMA is no longer
2 necessary. It should be repealed so that we can
3 keep our levers.

4 Our lever machines have served us very
5 well. Computers, on the other hand, can be
6 easily hacked, and are prone to breakdowns. And
7 they are mutable, meaning a computer can be
8 programmed to invisibly modify itself during an
9 election and then modify itself back to its pre-
10 election state after the election, all without a
11 trace. And this can happen even if computers
12 are certified.

13 A National Institute of Standards and
14 Technology study, and dozens of other computer-
15 scientist studies, show that computers can be
16 programmed to function one way during
17 certification testing, and another during an
18 actual election.

19 Now these amendments that have been
20 proposed, I think, many of them are very good
21 and they address a lot of the problems of
22 casting the vote. But I'd like to stay with the
23 bigger picture.

24 Our lever system has functioned very

1 well. And thanks to their ingenuous design, New
2 York's lever machines make ballot rigging
3 extremely difficult. They are immutable. Signs
4 of tampering can be seen when the back is open,
5 and they provide secure chain of custody over
6 all ballots because the count is completed at
7 each poll site on election night in full view of
8 all parties.

9 The proposed amendments would be
10 necessary for casting, improving our casting
11 votes. But, going to a computer voting, in
12 addition to being hackable without a trace, do
13 not perform, do not permit secure chain of
14 custody because the scanned paper ballots are
15 not under constant scrutiny by all parties. If
16 a recount is called, who can prove that there
17 was no ballot tampering during the weeks before
18 the count is completed? I ask you. Amendments
19 calling for more paper ballots, including
20 absentee ballots, also cause grave concern
21 because they, too, are not under constant
22 scrutiny by all parties.

23 I urge you to rethink all bills and
24 laws that increase these terrible threats to our

1 votes. New Yorkers have great franchise
2 security with our lever system and do not want
3 to shoulder more taxes for extremely costly,
4 untrustworthy computer voting. Coupling BMDs
5 with levers instead of optical scan computers
6 would save taxpayers millions that would be
7 needed for recurring costs of computer
8 maintenance, storage, testing, technical
9 support, training, and paper, and more, which
10 would unnecessarily raise taxes to exorbitant
11 levels.

12 You have the power to save our time-
13 proven levers and a great deal of taxpayer
14 money. All you need to do is repeal ERMA and
15 its mandate for computerized voting. Please do
16 that. And thank you, for listening.

17 CHAIRMAN ADDABBO: Thanks. Thank you.
18 Mr. Smith.

19 MR. SMITH: Good morning.

20 CHAIRMAN ADDABBO: Good morning, Mr.
21 Smith.

22 **ADAM SMITH**

23 **Director**

24 **Vote by Mail Advocacy Project**

1 MR. SMITH: Good morning, Senator
2 Addabbo, Senator Griffo. Thank you, for
3 providing this opportunity for public comment on
4 these important issues.

5 My name is Adam Smith. I'm the
6 Director of the Vote by Mail Advocacy Project.
7 We are dedicated to improving citizens' access
8 to the polls through expanded mail voting
9 options.

10 I would also note that we are also in
11 favor of in-person early voting. We believe
12 multiple paths to the ballot box improves
13 democracy for everyone.

14 Mail voting is the fastest growing
15 method of casting a ballot in the United States.
16 As mentioned earlier, it is estimated that in
17 November of 2008, 30 percent of all ballots cast
18 in the nation were not cast at polling place on
19 Election Day. Early in-person voting accounts
20 for part of that 30 percent, but the vast
21 majority were mail ballots.

22 The majority of states now allow their
23 citizens to request a mail ballot with no
24 excuse. There's nothing inherently complicated

1 or problematic in running elections with even a
2 significant mail component. We are not aware of
3 a single state that has ever moved to no-excuse
4 absentee that has then voluntarily moved back to
5 require, to once again require an excuse.

6 Maryland initially in 2006, moved to
7 no-excuse absentee voting, but a state court
8 later found that under their constitution, that
9 an excuse was a constitutional requirement. So
10 in 2008, an amendment went to the Maryland
11 voters via ballot question, and the right to
12 vote by mail passed by a margin of 71-29
13 percent. This illustrates that voters very much
14 appreciate having the option of voting at their
15 convenience and from the comfort of their homes.

16 To give you another example, the state
17 of Colorado has long allowed its citizens to
18 request a mail ballot without excuse, and over
19 several cycles, somewhere around 30 percent of
20 voters had done so. In 2007, my organization,
21 the Vote By Mail Advocacy Project, led the
22 effort to pass a permanent mail voting option in
23 Colorado, under which voters can opt in to have
24 all of their ballots sent to them by mail. This

1 eliminates the need to fill out a new request
2 form for each election and makes things easier
3 for voters and for elections officials. We
4 expected the new option would be popular, but
5 even we were surprised when more than 60 percent
6 of the ballots cast in Colorado in the 2008
7 Presidential Election came from folks who had
8 chosen to vote by mail rather than at a polling
9 place. I would note that Colorado does have
10 early in-person voting, and 95 percent of the
11 early votes cast in Colorado were by mail.

12 Another example of the popularity of
13 mail-in voting comes from Oregon, which has, I'm
14 sure you know, switched to all mail elections in
15 1998. In 2003, a University of Oregon Study
16 tested the attitude of voters five years into
17 that system and found that 81 percent of
18 Oregonians preferred voting by mail to voting at
19 a polling place.

20 Now we're not here discussing New York
21 to an Oregon-style all mail system, or even
22 providing a permanent mail option, although our
23 neighbors in New Jersey are expected to do that
24 this year. We're simply here to talk about

1 giving New Yorkers the same right as voters in
2 most state already enjoy, that is to request a
3 ballot to be sent to them for a particular
4 election without the need to swear to their
5 planned absence from the county on a future
6 date, or to be prepared to prove that absence
7 after the fact of challenge.

8 I'm sure that you all know that in the
9 recent election, New York 20, the absentee
10 ballot of Senator Kirsten Gillibrand, whose
11 vacated seat was an issue in the race, was
12 challenged under the theory that she might have,
13 in fact, been in the county before the polls had
14 closed that evening. Fortunately for Senator
15 Gillibrand, there was adequate record of her
16 presence on the floor of the United States
17 Senate late that afternoon to make it clear that
18 she had not, in fact, invalidated her own vote
19 by apparently coming home earlier than expected.

20 I think we can all agree that not every
21 voter is going to have that type of an airtight
22 alibi, and the question is why should they need
23 one? If I, as a properly registered voter,
24 believe that receiving a ballot by mail will

1 make it more likely that I'll be able to vote,
2 and I return that ballot with proper signature
3 affixed affirming that it is, in fact, my vote,
4 what business is it ultimately of the state what
5 time I made it home, or where I was, or what I
6 was doing on the day in question?

7 In closing, I want to reiterate how
8 pleased I am that this Committee is considering
9 bringing New York into line with the majority of
10 the U.S. states by allowing its citizens the
11 option of voting by mail if they so choose. I
12 trust in the end, in a state that has some, both
13 some of the country's worst traffic at one end
14 and some of its worst snowy Novembers at the
15 other end, will see fit to put our faith in your
16 constituents to make that decision for
17 themselves.

18 Thank you.

19 CHAIRMAN ADDABBO: Mr. Smith, thank
20 you, very much, for your testimony. Any
21 questions?

22 Mr. Smith, thank you, very much.

23 MR. SMITH: Thank you.

24 CHAIRMAN ADDABBO: Thank you, for your

1 time as well.

2 Our next panel, a panel of two. Andrea
3 Novick, Legal Counsel for Election Transparency
4 Coalition of New York, and Joanne Lukacher,
5 Executive Director, Election Transparency
6 Coalition of New York.

7 Still good morning. Good morning.

8 MS. LUKACHER: Good morning, is it
9 still morning?

10 CHAIRMAN ADDABBO: It's still, you've
11 got five minutes for morning.

12 **JOANNE LUKACHER**

13 **Executive Director**

14 **Election Transparency Coalition of NY**

15 MS. LUKACHER: Okay.

16 Good morning. Thank you for this
17 opportunity, and we certainly appreciate your
18 time, and I will endeavor to keep this under
19 time.

20 CHAIRMAN ADDABBO: Thank you.

21 MS. LUKACHER: My name is Joanne
22 Lukacher, I'm the Director of the Election
23 Transparency Coalition New York. We're a not-
24 for-profit, not-partisan organization dedicated

1 to educating the public and our elected
2 representatives in the requirements for a
3 transparent, secure, accurate and reliable
4 election system.

5 Separately, I'm also a member of the
6 Dutchess County Voting Integrity Task Force. In
7 response to the information gathered by our task
8 force, in December 2008, Dutchess County became
9 the first New York County to adopt a resolution
10 requesting to be allowed to keep its lever
11 voting machines. Five other counties, Columbia,
12 Ulster, Greene, Schuyler, and Essex, and the
13 Association of Towns of New York, have since
14 passed resolutions asking to be allowed to keep
15 our mechanical lever voting machines.

16 As you know, in response to the Help
17 America Vote Act, HAVA, nearly the entire
18 nation, and I must say, we're hearing other
19 states cited, but many to their chagrin at this
20 point, adopted software-based voting systems,
21 which by their very nature are mutable, non-
22 transparent, and completely vulnerable to
23 malfunction and malicious tampering, which is
24 virtually undetectable. It's for this reason

1 also that we would question Senate Bills 3250
2 and 1701, we haven't reviewed them thoroughly,
3 but they seem to depend upon electronic
4 transmission of ballots, which we would be
5 opposed to.

6 New York is the only state in this U.S.
7 that counts all of its votes in a manner that is
8 verifiable, and avoids the risk of incorrect
9 election results resulting from computer
10 malfunction or manipulation.

11 It's a common assumption, which we have
12 heard others correct here, that HAVA bans lever
13 voting machines. It does not. Now that ballot
14 marking devices, or BMDs, which create a paper
15 ballot for special needs voters, have been made
16 available at every polling place in the state,
17 New York is fully HAVA compliant. Publicly hand
18 counting these paper ballots at the polling
19 place on election night is consistent with the
20 historic requirements of New York Election law.
21 In like public manner, the lever machines are
22 opened at each polling site and the tally sheet
23 created under the watchful eyes of the press,
24 party representatives and other citizens.

1 While lever machines can be canvassed
2 to verify accurate transcription of the results,
3 as they were just recently in the special
4 congressional election in New York-20, paper
5 ballots are hand counted at the poll site on
6 election night because once they leave the
7 polling place, they will always be subject to
8 questions of tampering and satisfying the
9 extremely difficult chain of custody proofs.
10 However, the state has acknowledged the
11 unreliability of the optical scan counters by
12 the mandating of a post-election hand counting
13 of 3 percent of the ballots. But not only is
14 this inadequate to assure that the scanners have
15 counted the votes as cast, but a post-election
16 recount is illegal under New York State Election
17 Law, since it abridges the aforementioned chain
18 of custody proofs. Post election night hand
19 counting adds to the already huge financial
20 burdens, which electronic voting systems impose
21 on local governments; burdens which one county,
22 Essex, has deemed insurmountable.

23 In addition to the cost of mandatory
24 audits and hand recounts, the cost of conducting

1 elections with electronic optical scan systems
2 include; specialized storage and transport
3 requirements, huge paper and printing cost, cost
4 of periodic interim machine testing, electrical
5 costs, complex programming costs, privacy
6 booths, the cost of finding larger polling
7 places to accommodate the multi-step procedure
8 of creating a ballot and then moving, probably
9 standing in line at yet another station to scan
10 a ballot, the currently unknown and potentially
11 unknowable cost of repair and replacement of
12 optical scan machines, upgrading, testing and
13 re-certifying software. The list goes on. All
14 of these recurring expenses will be passed on to
15 the local taxpayers in exchange for a system
16 which is unreliable, non-transparent, and
17 unconstitutional.

18 Contrast this with our level machines,
19 which were designed to be tamper resister, if
20 tampering occurs, it is time consuming,
21 detectable, and non-viral. They're transparent.
22 They provide one-stop shopping, that is, our
23 vote is cast and counted simultaneously. And
24 they can last indefinitely with simple

1 maintenance. We already own the levers and know
2 how to budget for election cost.

3 It's not HAVA but the New York State
4 legislative response to HAVA, the Election
5 Reform and Modernization Act, or ERMA, which
6 requires the replacement of our lever machines.
7 I repeat this because although the State Board
8 of Elections Commissioner, particularly
9 Commissioner Kellner, acknowledges that we are
10 now HAVA compliant, in recent statements to the
11 press, the State Board of Election press officer
12 has misleadingly conflated the federal court
13 proceeding against the State ordering the
14 replacement of our lever machines, with the
15 actual requirements of the federal law, HAVA.
16 If ERMA were amended, there would be no
17 legislative requirement to replace our level
18 machines.

19 I conclude with words from our county
20 legislatures. I was going to quote from each
21 one, but in the interest of time, I'll skip to
22 just a few.

23 * Columbia County believes the
24 continued use of lever style voting machines is

1 in the best interest of the public.

2 * Greene County believes that continued
3 use of lever voting machines is in the best
4 interest of the public. That unlike optical
5 scan computers, our time proved lever machines
6 can be relied upon to accurately count votes as
7 cast and cost far less.

8 * Both in terms of efficacy and cost-
9 efficiency, Schuyler County believes the
10 continued use of the lever-style voting machine
11 is in the best interest of the public.

12 And I will conclude with the words of
13 State Board of Election Commissioner Gregory
14 Paterson regarding lever voting machines; If you
15 have something that works and something that
16 doesn't, speaking of levers, I vote for the
17 thing that works.

18 Our democracy deserves no less.

19 Thank you, very much, again, for your
20 time, and we look forward to any questions
21 either now or in the future. Thank you.

22 CHAIRMAN ADDABBO: Ms. Lukacher, thank
23 you, very much. Any questions?

24 (APPLAUSE)

1 SENATOR GRIFFO: Yes.

2 CHAIRMAN ADDABBO: Senator Griffo.

3 SENATOR GRIFFO: The, you bring up a
4 good point, lever machines are tried and tested,
5 and have been, worked for so many years, but one
6 of the other issues with the Help America Vote
7 Act also was the disability handicapped
8 accessibility for those with disabilities.

9 MS. LUKACHER: Yes.

10 SENATOR GRIFFO: How do you, I always
11 thought if somebody was really ingenious, they
12 would develop a way to remake the lever machine
13 where it could accommodate, you know, to make
14 that equal access. So how do you, what do you
15 propose as a result of that?

16 MS. LUKACHER: Well we, we do have the
17 ballot marking devices in place now as of our
18 last general election in 2008. So that, it's
19 the addition of the ballot marking devices, and
20 the lever, to the lever system that we have,
21 which makes the complete election system, which
22 is HAVA compliant. So if I wasn't clear, I was
23 advocating for pretension of the lever machines
24 in company with the ballot-marking devices. Is

1 that?

2 SENATOR GRIFFO: You're right, and I
3 understand what you're saying. I'm just saying
4 that, how do you talk to somebody who says they
5 want to have that same access, but you're not
6 really giving them the same access? That's one
7 of the issues with the lever machines. I mean I
8 have, as a former county official and working
9 with our Boards of Elections, I always believe
10 that the lever machines worked well. And how do
11 you improve upon that? That's, as I said, if
12 somebody really was ingenuous and they came up
13 with a way to elevate the machine up and down,
14 or something like that, where you --

15 MS. LUKACHER: I do believe I've, I
16 think I've actually heard that some machines are
17 adjustable for height. That doesn't, you know--

18 SENATOR GRIFFO: But to give somebody
19 the same access, not between.

20 MS. LUKACHER: Right.

21 SENATOR GRIFFO: I think that's what
22 we're dealing with with some of the federal, you
23 know, interpretations and some of the advocacy,
24 and some of the groups that are coming forward,

1 and people don't want to have to vote
2 differently and separately.

3 MS. LUKACHER: Sure. I understand that
4 position. I'm not sure that that's what the
5 law, I'm actually going to turn this over to
6 Andie, who's the attorney, who knows the law
7 better and has come up with some --

8 SENATOR GRIFFO: That's just my
9 question --

10 MS. LUKACHER: -- good analogies for
11 the kind of situation that I think your posing.

12 MS. NOVICK: But in answer to your
13 question, it's true that the law requires that,
14 well, what HAVA requires is that there's a means
15 for citizens with special needs to be able to
16 vote independently. There is nothing in HAVA
17 that requires that everyone vote identically.
18 And in fact, were we to keep our lever voting
19 system, which is secure and transparent, and
20 were we to keep the ballot mark -- well, we have
21 to keep the ballot marking devices as we used
22 them in 2008, and I would urge that we spend a
23 lot more time and energy making them more
24 accessible so that they work better, we counted

1 them by hand. That would be the most secure way
2 to count a paper ballot, is on hand, on election
3 night, which is in fact, the only way we've
4 permitted vote counting in this state for 232
5 years, except for absentee voting. So that both
6 the citizens with special needs would be better
7 served by having their ballots created on ballot
8 marking devices but counted by hand on election
9 night. And people who chose to, or were able to
10 vote on the levers, would also have a secure,
11 verified election count on election night. If
12 there were a way to create a lever machine that
13 did both, that would be terrific.

14 I don't, there's no requirement in the
15 law that we all have to vote exactly the same.
16 We have stairs, we have ramps, they both provide
17 the means to get there in the best way possible,
18 and that this would be the best, most secure and
19 constitutionally compliant system we could have.
20 Although I would say with regard to what you
21 were thinking, and my husband says this to me
22 all the time, which is that, after I'm finished
23 testifying, maybe you'll agree, what we should
24 be doing in New York is in the business of

1 making new levers because the entire country
2 would be purchasing lever machines if they
3 could, if they understood the theft deterring
4 transparent quality that the levers provide that
5 software doesn't. So it could be a really good
6 boon for upstate business, and you know, the
7 levers were born in Upstate New York. And it,
8 we're not going to let them die here.

9 (APPLAUSE)

10 SENATOR GRIFFO: Thank you.

11 MS. NOVICK: But I haven't testified
12 yet.

13 CHAIRMAN ADDABBO: You still have to
14 go, do you want to, if you want to speak Ms.
15 Novick, go ahead.

16 **ANDREA NOVICK**

17 **Legal Counsel**

18 **Election Transparency Coalition of NY**

19 MS. NOVICK: All right.

20 So, I am an attorney, and I'm one of
21 the founding members of the Election
22 Transparency Coalition, but I won't talk about
23 that since you did so eloquently, and I want to
24 thank this Committee for the opportunity to be

1 heard.

2 What I would like to talk about is the
3 Constitution, which seems to have gone
4 unmentioned here. And an interesting
5 observation, in listening to everyone's
6 testimony, everyone's been talking about the
7 best way to cast a vote. Everyone's been
8 talking about the means to make it a, easy,
9 well, easy's good, and increasing the turnout is
10 good, and registration and all that, but it's
11 all about casting. But the Constitution is
12 concerned with counting. I don't have that case
13 in front of me, I think it's Mets vs. Maddocks,
14 and I think I, it's a Court of Appeals decision,
15 I think it's in my, I gave you two testimonies,
16 written, a longer written with the case law, and
17 a shorter oral.

18 But it's the counting that counts. And
19 it's, which is not to say that casting isn't
20 important, but if we don't focus on the
21 counting, then the casting won't mean anything.
22 So I'm going to address myself to the
23 Constitutional requirements, which have to do
24 with counting.

1 I have literally read every case that
2 was written in the last 200 years in New York
3 State with regard to our electoral system, so, I
4 can speak about that.

5 For two centuries, we have consistently
6 interpreted our Constitution as requiring an
7 open and observable system. I'm not just going
8 to be talking about the Election Reform and
9 Modernization Act, but also with regard to the
10 proposed legislation before the Committee, which
11 is the expansion of absentee ballot voting, as
12 well as early voting, and we are opposed to both
13 of them because they're unconstitutional.
14 They're unconstitutional in the same way ERMA is
15 unconstitutional.

16 So let me just begin where we began as
17 a state in 1777 when our first Constitution was
18 passed.

19 From the very beginning, every single
20 step of the electoral process has to be observed
21 by citizens. Public scrutiny has to be
22 available because after all, it's the citizens
23 constitutional right, in fact, we have two
24 constitutional rights in the Constitution to

1 protect the right to vote; the right to
2 franchise in Article II, and the right against
3 disfranchisement in Article I, so we're talking
4 about a paramount constitutional right. And the
5 legislature tread lightly in the beginning,
6 because of course, a constitution is a
7 restriction on legislative power. So the
8 legislature is not allowed to legislate in a way
9 that impedes the right to vote.

10 But it became apparent early on in the
11 19th century that elections are crime scenes
12 waiting to happen. It's a good time for a
13 pause. It's true, it's not polite, we're not
14 supposed to talk about it anymore, but this is
15 the history of election law in New York if you
16 read it, and it's a glorious history, it makes
17 you proud to be a New Yorker, proud to be a
18 member of the Bar, proud to be a legislature.
19 We have done a phenomenal job of protecting the
20 franchise.

21 And because we approached it when we
22 realized that we had to as crime scenes waiting
23 to happen, in recognizing that fraud is always
24 going to occur, unless we take active steps to

1 prevent it, that's precisely what successive
2 generations of legislatures, and the Court of
3 Appeals, have done. Because to disenfranchise,
4 to allow fraud to dilute the count is the
5 essence of disenfranchisement, and that is
6 unconstitutional. So it's the responsibility of
7 the legislature to prevent even the opportunity
8 for fraud, and that is precisely what our
9 legislature has done for 232 years. We approach
10 the elections, we presume subversion of the
11 count. And then we have built-in safeguards to
12 expose and prevent that crime.

13 So the paramount mandate of our laws,
14 and I'm talking about laws that have been on the
15 books since the beginning, and some that have
16 been on the books since 1896, all of which are
17 still on the books. The paramount mandate of
18 those laws is that voting takes place and is
19 completed on one day. And that's in order that
20 the greatest transparency and the maximum
21 deterrents can be brought to bear. Paper
22 ballots are fragile things, and I'm actually
23 quoting from a more recent 1967 Court of
24 Appeal's Decision, which talks about paper

1 ballots being fragile because they can be
2 altered, replaced, switched, or they can be
3 innocently lost. And that is why the
4 constitutional safeguards require that paper
5 ballots be cast and opening counted at the poll
6 site, where election officials, party
7 representatives, watcher, are continuously
8 present, diligently watching for a faithful
9 performance of what are very meticulously
10 delineated duties that result in a conclusively
11 verified determined count on election night
12 before the opportunities for unseen ballot
13 tampering are given a chance to undermine the
14 rule of the people.

15 Expanded absentee voting and early
16 voting and ERMA, all violate that mandate. They
17 only permit watchers to be present to observe
18 the count other than when the voter presents him
19 or herself to the voting place.

20 When absentee voting was first enacted
21 in 1919, it was considered, and it's still
22 considered in the case law, in derogation of our
23 Election Law. And it is recognized and it is
24 considered a less secure means to vote. And

1 that is precisely why it is limited and that is
2 precisely why we should continue to limit it.
3 We do it as a compromise, it's not as good a
4 system as the system that we have, but we do it
5 because certain people are not, cannot be
6 present, and for those people for whom it's
7 unavoidable that they can't be here, we don't
8 want to disfranchise them, so we recognize a
9 compromise for that situation, knowing, and
10 we've built in many safeguards to try to protect
11 it, but it's already a less secure means to
12 vote. You can't, I've voted absentee, you bring
13 your ballot down, you can't see it after that,
14 there's, you've got an immediate chain of
15 custody problem which can't be observed. So any
16 abrogation of a system that prevents continuous
17 observation by bipartisan election officials and
18 party reps and the public, which our current
19 system provides, unconstitutionally exposes the
20 count to those unseen, and what have been
21 historically considered heightened opportunities
22 for fraud. That's unconstitutional.

23 I have only a few minutes, and so I've
24 got this example that I hope will illustrate how

1 radically destructive of our fundamental
2 constitutional principles the proposed
3 legislation, and more importantly ERMA, which is
4 scheduled to go into effect next year, truly is.

5 So, let's say you're a parent of a
6 college student. You have college students,
7 boys, girls, anyone? Okay. You have a boy.
8 The college is having a difficult time
9 protecting students because of a popular illicit
10 drug that's causing violent behavior on the
11 campus. And the college, trying to gain control
12 over a dangerous situation, randomly starts
13 taking urine samples from the students. You get
14 a call from prison, it's your son. He's in
15 prison, he's been convicted of illicit drug use,
16 and he's serving a four-year sentence. You know
17 your child didn't take this drug. There's no
18 way your kid did this drug. You're a New York
19 Senator, you're working for a New York Senator,
20 you demand to know how this happened. There was
21 no trial, there was no plea of guilty, there was
22 no judicial proceeding at all. The police said
23 that it was your child's urine sample and that
24 was the proof, and now your kid's in prison for

1 four years.

2 Your told that during these routine
3 samplings, the student writes his or her own
4 name on the vile containing the urine sample so
5 that each student is able to verify that, yes,
6 that's my urine sample, which is what we've been
7 talking about earlier. Yes, I can verify that's
8 my vote, I see it on a piece of paper. But
9 that's not what it's about, verifying that
10 that's mine. That verified vile is then handed
11 by the student to the police, and there's a
12 secure procedure, and many people are observing,
13 watching it, and then there's a secure procedure
14 for chain of custody, while the sample travels
15 to police headquarters, and then it goes to a
16 lab to be tested, and we've got really great
17 secure procedures, probably like we have in the
18 election law. But how do you know the chain of
19 custody wasn't disturbed? And how do you know
20 that the police procedures were actually
21 observed? And what evidence is there that ties
22 that urine sample, which deprives your kid of
23 liberty for the next four years, how do you know
24 that wasn't tainted, or switched, or was an

1 unintentional error? And the answer is, you
2 don't know, because there's no procedure for
3 determining it. There was no proceeding for
4 anyone to establish chain of custody, and there
5 was no proceeding for anyone to challenge it.
6 And there's no evidence. There's no evidence to
7 prove that that's, that that evidence isn't
8 connected to your child.

9 Well that is precisely what happens in
10 an electoral system where the election results
11 depend on paper ballots, whose enviable chain of
12 custody is presumed, which is what ERMA has
13 created. Which is, of course, the reverse of
14 what 232 years of law has said, which is that we
15 presume fraud. That's in there too, it's in the
16 Livingston case. Court of Appeals.

17 If the ballots are not counted on, at
18 the place where they're cast so that there's
19 continuous observation, then we're unable to
20 know whether the tampering occurred or not once
21 they're outside of public view. And the Court
22 of Appeals, in the Stewart case, which is also
23 mentioned in my written testimony, has already
24 held in 1898, that if any critical step of the

1 process, or the ability to create evidence
2 outside of public view, is permitted within an
3 electoral system, then what that court held is
4 that voting becomes a, and I'm quoting, "a
5 useless formality as it depends upon the will
6 of," in that case it was election inspectors, in
7 this case it would be others with unobserved
8 access to either the software or the ballots,
9 "it depends on the will of others as to who
10 shall hold the offices and not upon the vote of
11 the people." And that's unconstitutional, it's
12 been unconstitutional since 1898, it's what ERMA
13 reinstitutes, which is only one of the reasons
14 that ERMA is unconstitutional.

15 CHAIRMAN ADDABBO: Ms. Novick.

16 MS. NOVICK: Yes.

17 CHAIRMAN ADDABBO: I'm so sorry, I'm
18 going to have to respectfully --

19 MS. NOVICK: You want to speed me up?

20 CHAIRMAN ADDABBO: Yes, wrap up.

21 MS. NOVICK: Although I did notice that
22 NYPIRG got 20 minutes, and Common Cause got that
23 many, but give me two more minutes.

24 CHAIRMAN ADDABBO: Go ahead.

1 MS. NOVICK: Because the Stewart Court,
2 which is the Court of Appeals also noted that a
3 system which fails to create and preserve
4 evidence, which is the case with ERMA because
5 we're not preserving the ballots anymore, which
6 violates Election Law 3222, which says the,
7 you're supposed to preserve, we're not, but
8 we're going to be using them for doing these
9 audits. That any system like that deprives the
10 public of its evidence, of its necessary proofs,
11 and that is the essence of constitutional due
12 process. That means we can't, we have no
13 evidence to challenge the results. If fraud is
14 committed and there's ballot tampering, that's
15 it. You can't be a quo warranto proceeding,
16 there's nothing you can do. It's the denial of
17 the, your constitutional right to vote.

18 So, that is why the super majority of
19 ballots must be openly and conclusively counted
20 on the same day. In a constitutional democracy,
21 we're not permitted to blindly trust that chain
22 of custody was somehow preserved in violate. We
23 are a system of checks in balances. I'm going
24 to quote briefly the words of the New York

1 Legislature at the Public Officer's Law.

2 "It is essential to the maintenance of
3 a democratic society that the public business be
4 performed in an open and public manner and that
5 the citizens of this state be fully aware of and
6 able to observe the performance of public
7 officials. It is the only climate under which
8 the commonwealth will prosper." I'm concluding.

9 So I am respectfully urging you to
10 consider two centuries worth of constitutional
11 precedence in New York and not enact the S3250,
12 the Early Voting Act, or S5028, and S2868A,
13 Expanding Absentee Voting, and I am urging you
14 to repeal ERMA. In fact, I'm imploring you to
15 revisit ERMA in light of the overwhelming
16 evidence that wasn't available when ERMA was
17 enacted four years ago.

18 Since ERMA was enacted, over three
19 dozen computer scientist studies, and there are
20 links to them in my testimony, have exposed
21 software-based voting's vulnerability to
22 undetected and unpreventable fraud. And that
23 security threat was recently corroborated by the
24 CIA. And I've provided links to that as well.

1 And finally, I'm hoping that you will
2 consider the extraordinary economic crisis we
3 are experiencing, and the hardship that
4 replacing our reliable, our theft-detering, and
5 our affordable lever voting system, which we
6 own, with this costly, unreliable computerized
7 system, which will cause the counties and the
8 residents incredible hardship.

9 I have also included a letter that I
10 had sent to every member of the State Senate and
11 the Assembly, although nobody got back to me,
12 except my Senator, who misunderstood and thought
13 that HAVA banned levers.

14 But I am including that, link to that,
15 although I don't have a hard copy, I could
16 certainly provide that for you, because that
17 gives you a lot of the information about the
18 excessive costs that computerized, that running
19 elections will cost after the federal monies are
20 used to pay for the equipment.

21 The county resolutions have already
22 been referred to so I won't refer to them again.
23 We're expecting at least as many has been passed
24 to be passed this week, and we hope that number

1 will continue to climb.

2 And in conclusion, if all of this
3 evidence, if this fiscal crisis, if New York's
4 wealth of legal precedence isn't enough to
5 persuade you that ERMA was a mistaken, then I
6 have prepared litigation, and we are prepared to
7 commence it to seek a declaration that ERMA is
8 unconstitutional. I don't want to do it, it's a
9 lot of work. But, it is the patriotic duty of
10 citizens, and of county Boards of Elections, and
11 of the county governments, to appeal to the
12 judicial branch when legislation is contrary to
13 the Constitution, and, therefore, null and void,
14 and I urge you to back and look at that
15 legislation.

16 Thank you, for this opportunity.

17 (APPLAUSE)

18 CHAIRMAN ADDABBO: Thank you, Ms.
19 Novick.

20 Ms. Lukacher, thank you, very much for
21 your time and testimony.

22 MS. NOVICK: Thank you.

23 MS. LUKACHER: Thank you.

24 CHAIRMAN ADDABBO: Thank you.

1 Our next panel, William Cook, Director
2 of Legislation for New York Association of
3 Letter Carriers, and Alfie Charles, Vice
4 President of Elections Solutions, Pitney Bowes.

5 MR. COOK: Good morning, Senators.

6 CHAIRMAN ADDABBO: Good morning.

7 **WILLIAM COOK**

8 **Director of Legislation**

9 **NY Association of Letter Carriers**

10 MR. COOK: I am William Cook, the
11 Director of Legislation for the New York State
12 Association of Letter Carriers, and of the
13 National Association of Letter Carriers, AFL-
14 CIO. I will be brief.

15 As the NALC New York State Legislative
16 Liaison, I am here to speak in support of two
17 pending bills that are the subject of today's
18 hearings; S5028 and 2868. Both pieces of
19 legislation affect the rights of New York State
20 registered voters to have the unrestricted right
21 to vote with an absentee ballot. Both the New
22 York State Association of Letter Carriers and
23 the National Association of Letter Carriers
24 fully support the rights of our citizens to cast

1 a ballot through the conveyance and security of
2 the mail.

3 In these tough times, we see more and
4 more families struggling to make ends meet. Too
5 many citizens simply cannot sacrifice the money
6 and time it takes to wait in long lines to vote.
7 The voters of New York State deserve the right
8 to cast their ballot through the mail.

9 Our own members are disadvantaged
10 during election season. As employees of the
11 United States Postal Service, letter carriers
12 work long hours leading up to and on Election
13 Day. The nation's letter carriers work late on
14 Election Day to pick up and deliver all last
15 minute absentee ballots to ensure that every one
16 of our customers' votes will be counted. In
17 doing so, many of our own members struggle with
18 balancing the competing priorities of work,
19 caring for their families, and voting. My
20 members, our citizens, your constituents, need
21 flexibility, security, and reliability to be
22 able to cast their votes. The No Excuse
23 Absentee Ballot is an integral option that our
24 citizens need to exercise their duty and

1 responsibilities of citizens of this great
2 country.

3 Voters all over this country are
4 already taking advantage of voting by mail. In
5 the 2008 election, we witnessed a significant
6 increase in mail-in ballots. One in four
7 Americans cast their ballots by marking their
8 ballot at home and then returning it with the
9 assistance of the Postal Service. This
10 represented a 50 percent increase over 2004.
11 Americans are attracted to the flexibility,
12 convenience, and safety of voting by mail.

13 As more people choose to cast their
14 ballots through the mail, our members in the
15 NALC, will continue their duty to ensure that
16 every ballot is delivered safely and securely.

17 Our nation's letter carriers are held
18 to the highest standards of public service.
19 Before we are hired, we undergo rigorous
20 background checks by the Federal Bureau of
21 Investigation. Throughout every year of our
22 employment, the FBI regularly reviews each and
23 every letter carrier. Many of our letter
24 carriers work in the same neighborhoods year in

1 and year out. We know the families and they
2 know us by name. As a result, time after time,
3 public opinion polls demonstrate that the
4 nation's letter carriers are the most trusted
5 face of the government. Voter fraud, theft and
6 abuse have not developed as a result of
7 increased balloting through the U.S. Mail.

8 I am sure we all agree that voting is a
9 sacred duty. As your Committee looks at
10 election law reform, it is important that the
11 standards of accuracy, security and privacy are
12 upheld. The Committee can rest assured that the
13 mail that is transported by the United States
14 Postal Service is still the most secure,
15 reliable and private means of communication
16 available. Letter carriers are ready to do all
17 they can to ensure that every citizen has the
18 opportunity to have their voices heard in this
19 great democratic process.

20 Thank you, for allowing me to testify
21 today.

22 CHAIRMAN ADDABBO: Thank you, Mr. Cook.

23 **ALFIE CHARLES**

24 **Vice President of Elections Solutions**

Pitney Bowes

1
2 MR. CHARLES: Thank you.

3 Senator Addabbo, Senator Griffo, thank
4 you, for having us here today and for holding
5 this hearing.

6 I'm Alfie Charles, I'm Vice President
7 of Election Solutions for Pitney Bowes.
8 Previously I served seven years as Assistant
9 Secretary of State in the state of California,
10 and as Vice President of Business Development
11 and External Affairs at Sequoia Voting Systems.

12 As a student of state and local
13 election administration, I'm pleased to see New
14 York exploring ways to expand the opportunities
15 and the convenience for voting that people, the
16 majority of people throughout the country
17 already enjoy.

18 While others have spoken about the
19 importance of making voting easier, I would like
20 to provide the Committee with some background
21 about the various statutory schemes used around
22 the country and the various processes and
23 procedures that have been developed to ensure
24 that voting by mail is not only as secure as a

1 polling place ballot, but in many cases, much
2 more secure and controlled than either paper or
3 electronic ballots voted at the polls.

4 State statutes generally fall into four
5 categories;

6 There's the No-Excuse category, which,
7 I'm sorry, there's the Excuse-Required Absentee
8 Voting, which New York currently employs.

9 No-Excuse Absentee Voting, which about
10 33 states permit. They permit either No-Excuse
11 Absentee Balloting or in-person early voting.

12 Permanent No-Excuse Absentee Voting,
13 which allows a voter to request a ballot and
14 continue to receive that ballot by mail until
15 their address is updated or that's cancelled.
16 There are administrative benefits to doing that
17 for local administrators who no longer have to
18 validate the signatures each time that a ballot
19 is requested. States do that in different ways.
20 Some states do it for a calendar year's
21 elections, other states do it until it's
22 cancelled or until that address is updated.

23 And then there are All Mail Elections,
24 which the state of Oregon employs that, the

1 state of Washington effectively has that through
2 local option, and all of the local counties have
3 opted to do All Mail Elections.

4 The turnout in states using those
5 different methods of voting, has, I think is
6 instructive.

7 States that require an excuse to
8 request an absentee ballot in the 2004 election
9 had a 67 percent turnout.

10 No-Excuse Absentee Voting states had a
11 72.3 percent turnout.

12 Permanent No-Excuse Absentee Voting
13 states had a 75.7 percent turnout, and;

14 All Mail elections in Oregon, which is
15 a unique entity there, an 86 percent turnout.

16 In that same election, New York's
17 turnout was 62.9 percent, well below even the
18 average for states that require an excuse to
19 vote absentee ballots.

20 As you consider expanding opportunities
21 to cast a ballot, it's important to understand
22 the level of security and the comprehensive set
23 of checks and balances that are involved in
24 voting by mail.

1 In a typical no-excuse absentee voting
2 environment, voters must submit a signed
3 application for a mail ballot. Election
4 officials validate that the voter is registered
5 to vote, and they compare the signature on that
6 application to the signature on the voter's
7 original voter registration affidavit before
8 issuing a ballot.

9 There's no need for officials to
10 research or pass subjective judgment on the
11 legitimacy of a voter's reason for requesting a
12 ballot in a no-excuse absentee voting state.

13 Election officials use state of the art
14 mail security tools to ensure that only one
15 ballot is provided for each voter; that the
16 correct ballot style is provided to the voter,
17 and to ensure that voter registration rolls are
18 flagged so that voters who receive a mail ballot
19 are unable to vote at the polls unless they
20 surrender that mail ballot to a poll worker.

21 Election officials can also use US
22 Postal Service mail tracking technology to
23 follow each individual ballot through the
24 mainstream.

1 After a voter completes the ballot and
2 signs the return envelop, election officials
3 verify the signature and validate that the
4 ballot was issued by the election's office.
5 Once the signature match is complete, the
6 ballots are separated from the envelopes for
7 tabulation.

8 Because two signatures are verified for
9 each mail ballot, and because the ballots go
10 directly to the voters and directly back to the
11 office, chain of custody and identification
12 issues, which can be problematic at some polling
13 places, are avoided.

14 Election officials around the country
15 have praised voting by mail as a more
16 convenient, controlled method of voting that has
17 saved numerous jurisdictions hundreds of
18 thousands of dollars per election. The
19 automation available to help election officials
20 with these tasks helps ensure that the handling
21 of mail ballots is not only secure and
22 auditable, but also much less labor intensive
23 than standard poll site ballot collection and
24 tabulation.

1 One other method for increasing
2 opportunities to vote includes the creation of
3 in-person early voting locations. This is often
4 referred to as over-the-counter absentee voting,
5 and I think there's a distinction here between
6 early voting and there are different types of
7 it. So there's early in-person voting, which I
8 think is what the legislation talks about at a
9 county election office. There's also early in-
10 person satellite voting, which would be multiple
11 locations throughout a jurisdiction, which are
12 more complicated and difficult to implement for
13 an administrator because in a paper ballot
14 environment, it's hard to stock all of the
15 various ballot styles that people within a
16 county might need at those early sites, so
17 jurisdictions that have done a lot of satellite
18 early voting have generally used electronic
19 voting machines that load all those ballot
20 styles. That's not an option in New York. Or
21 they've used print on demand technology, which
22 allows those satellite facilities to print a
23 ballot for each individual voter. That is a
24 logistical, a level of logistical complexity

1 that has to be contemplated when you look at
2 expanding in-person early voting outside of the
3 election's office.

4 There are also issues of citing, so if
5 you're allowing people to vote in person at the
6 election's office, is that going to naturally
7 skew the ability of people to participate?
8 Those are issues that have to be addressed, and
9 in California, we had to look at one location
10 where there was a redevelopment issue on the
11 ballot. And the major instructed the election's
12 office to put all sorts of early satellite
13 voting locations in the area to be redeveloped,
14 and not in other, they were not in other places,
15 so if there are regional issues on the ballot
16 and one community has greater access because of
17 their proximity to an elections office, those
18 sorts of things can come up. It doesn't mean
19 it's not worth doing, it's just something that
20 needs to be taken into consideration.

21 We support the movement in New York to
22 expand the opportunities for people to vote
23 early and by mail. We understand there are both
24 constitutional mechanisms for doing that as well

1 as statutory options, and I don't think that the
2 state would be precluded from pursuing both of
3 those avenues simultaneously. We think that
4 it's great to see New York moving in that
5 direction. We'd love to work with you or
6 address any sorts of issues of logistics and
7 best practices that we've seen in other states.
8 We provide technology to the states that have
9 high percentages, like on the west coast, and
10 states that are just rolling this out and
11 expanding, like in the state of Ohio, so we'd be
12 happy to work with you on any of those
13 logistical issues or question you may have.

14 CHAIRMAN ADDABBO: Thank you, Mr.
15 Charles. Oh, we do have a question from Senator
16 Griffo.

17 SENATOR GRIFFO: Yes, Bill, if you
18 could talk about advocating more use of the
19 mail, obviously in the electoral process. The
20 postal service as a quasi-governmental public
21 benefit agency, I think, plays a intrigal role
22 in that. Recently though, there's been some
23 movement to discuss if we're going to use mail
24 more, that other organizations that have mail

1 interest be involved in that process. Now do
2 you think that could be problematic, or outside
3 of using the US Postal Services, by using the
4 other agencies that also deliver through mail?

5 MR. COOK: I'm not certain what you
6 mean by other agencies that deliver through the
7 mail.

8 SENATOR GRIFFO: Well if you FedEx,
9 UPS, I mean, I think --

10 MR. COOK: Well again, Senator, I think
11 one of the, if we're concerned about the
12 security of your ballots, the highest level of
13 security for your ballots is provided through
14 the United States Postal Service because we are
15 all, as employees of the United States Postal
16 Service, vetted with our, with criminal
17 background checks quarterly throughout the year
18 for every year that we're employed. We are the
19 highest secured employee that transports mail.

20 SENATOR GRIFFO: I understand that, and
21 that's why I bring this up because we recently
22 had this issue before our Committee, and I think
23 it's important, is we discuss using mail more
24 and what mode of mail, or method used in the

1 mail, and I agree with you, that the Postal
2 Service obviously is held to the highest
3 standards, and, so you would be concerned if
4 there were any efforts to redirect that to other
5 agencies that also deliver mail.

6 MR. COOK: I would believe, Senator,
7 that that would be a mistake, that the best
8 method of conveyance is the United States Postal
9 Service.

10 SENATOR GRIFFO: Thank you.

11 CHAIRMAN ADDABBO: I want to thank both
12 of you gentlemen for your time and testimony
13 today. Thank you, very much.

14 MR. COOK: Thank you.

15 CHAIRMAN ADDABBO: Our next panel,
16 Barbara Ehrenttrue. Barbara Ehrenttrue. Barbara
17 is a member of Citizens for Verified Voting.
18 And I apologize if I'm mispronouncing the last
19 name. And Toni Serafini, a member of the
20 Election Defense Alliance.

21 Either Toni or Barbara here?

22 Please state your name.

23 MS. SERAFINI: Toni Serafini.

24 CHAIRMAN ADDABBO: Thank you, Toni.

TONI SERAFINI

Election Defense Alliance

1
2
3 MS. SERAFINI: Hi. I'm here today for
4 three reasons.

5 First, as a member of Election Defense
6 Alliance, an organization deeply concerned about
7 secret vote counting, and to address
8 specifically my concerns about Senate Bill
9 Number 5112.

10 Second, as a New York State property
11 taxpayer who does not want my taxes wasted on
12 replacing our voting equipment to a less secure
13 system that has failed across our nation, and is
14 banned in my other countries.

15 Third, as an advocate for my elderly
16 parents who are 82 and 86 years old, and their
17 elderly friends and relatives who are upset that
18 they may lose the lever voting machines.

19 To begin, I'd like to commend Senator
20 Addabbo for the launch of these public hearings,
21 which I feel are critical to ensure New York's
22 voting system is one that citizens are right to
23 have confidence in. And to me, confidence is a
24 very important factor.

1 I feel most of the Senate bills
2 introduced have merit and are based on common
3 sense, like Senate Bill Number 1058 requiring
4 polling places to be accessible to the disabled.
5 But others, like Senate Bill 5112, requiring
6 that paper ballots have a box, oval or other
7 area that the voter can mark to alert the voting
8 system that all under votes are intentional, is
9 quite disturbing, because it is basically
10 admitting that computerized scanner counting our
11 votes can produce a different outcome than the
12 voter intended, and without any way for a voter,
13 poll watcher or election official to detect that
14 it is happening. Therefore, the bill is nothing
15 more than an attempt to put a security check on
16 a flawed system that cannot possibly be secured,
17 by its very own nature. These same optical scan
18 systems are banned in Denmark and Germany. And
19 across our own country, the failures, fraud and
20 vote rigging of these scanners are now endless
21 episodes.

22 I would like to point out, however,
23 that on lever machines it is not necessary to
24 have a place for intentionally not voting

1 because there is no way the lever mechanism can
2 under vote erroneously or by fraud.

3 Optical scanners are run by software
4 and can be programmed to do anything, even
5 corrupt things and undetectable things. Optical
6 scanners are too easily corrupted. One person
7 can change the outcome of an election and not
8 leave a trace. But not so with levers. They
9 are mechanical, and if properly maintained, are
10 the most honest voting system there is.

11 Next, on behalf of my elderly parents,
12 on November 2, 2006 election, my parents lost
13 two fundamental voting rights; their rights to
14 cast their ballot in private, and their right to
15 trust that their vote was counted as cast.

16 For the very first time ever, my
17 parents needed me to go with them to vote
18 because their polling site, the Rexford Fire
19 House in Saratoga County, switched their long
20 trusted and familiar lever voting to an
21 electronic DRE, which they had no understand of
22 or comfort with. Anything technical scares
23 them, as it does for huge numbers of older
24 people. Because my parents needed my

1 assistance, they were forced to give up their
2 privacy of their vote to me, or choose not to
3 vote at all. Excuse me.

4 This experience opened my eyes to how
5 challenging electronic voting can be for people
6 like my parents. Their levers have been very
7 simple for them to use.

8 This last special election, I was not
9 able to be with my parents to help them vote, so
10 they decided to go on their own. When I called
11 them to see how it went, my mother's reply to me
12 was, who knows, meaning she wasn't sure if she
13 voted right. My father's response to me was, I
14 pushed a button three times. Then my parents
15 began to argue back and forth in their native
16 Italian, that the other did not do it right,
17 that each other's vote did not count.

18 (Laughter)

19 I don't believe any citizen of the
20 United States should ever leave a polling site
21 feeling like my parents, confused as to whether
22 their vote was cast, or counted correctly.
23 Granted, they voted on a DRE, which are going
24 away. But when they are faced with paper

1 ballots and scanners, they will be somewhat in
2 the same boat, not knowing if their vote is
3 counted correctly.

4 This is not a position any American
5 should ever be in. I urge the Legislature to
6 keep the levers for my elderly parents and
7 everybody else's. They love them, understand
8 them, are comfortable with them, and trust them.

9 Lastly, it really upsets me as a
10 taxpayer that in a time of crisis, when this
11 Senate has critical basic human needs to
12 address, that this legislature would consider
13 throwing away our precious tax dollars on a
14 failed, untrustworthy scanner system when our
15 levers are the better, more secure equipment.
16 This to me is an unacceptable waste of taxpayer
17 dollars given all the evidence that has
18 accumulated against software based vote
19 counting.

20 Software based vote counting does not
21 protect a citizen's right to see their vote
22 counted, and undermines the spirit of
23 transparency and public nature of elections that
24 should be the goal of this committee and all

1 election officials.

2 For these reasons, I urge you to work
3 to keep the levers in New York State.

4 Thank you, for hearing my testimony.

5 (APPLAUSE)

6 CHAIRMAN ADDABBO: Thank you, Ms.
7 Serafini. Thank you, Ms. Serafini. Thank you,
8 for your time and testimony today. Thank you.

9 Our next panel Ruth Wahtera, American
10 Association for University Women, and Susan
11 Holland, American Association for University.

12 Good afternoon.

13 MS. HOLLAND: Hi.

14 CHAIRMAN ADDABBO: Please state your
15 name.

16 MS. HOLLAND: Susan Holland.

17 MS. WAHTERA: You want to go first?

18 **SUSAN HOLLAND**

19 **American Association of University Women**

20 MS. HOLLAND: Sure.

21 Hi, I'm Susan Holland. I'm a member of
22 the American Association of University Women,
23 and a member of the Election Transparency
24 Coalition.

1 I just have a couple of brief comments
2 on two of the bills; S1058 --

3 UNIDENTIFIED PERSON: Can't hear you.

4 MS. HOLLAND: 1058A, and S3250.

5 Regarding S1058A, which requires
6 polling places to be accessible to physically
7 disabled voters, New York already has accessible
8 ballot-marking devices, or BMDs, in every
9 polling site. If we need more BMDs to
10 accommodate more voters with special needs, then
11 by all means, let's make sure they get
12 installed. But, let's continue to count these
13 ballots on election night by hand, not by
14 computer.

15 On a related note, the idea of turning
16 on the optical scanner part of some of the BMDs
17 is very alarming. Optical scanners are too
18 easily corrupted. One person can change the
19 outcome of an election and not leave a trace.

20 Regarding S3250, The Early Voting Act.
21 Opening up early voting creates many nightmares:

22 Staff would have to be in place for 14
23 additional days. This could be a huge people
24 expense.

1 Having early voting in only one place
2 in each county favors certain populations.

3 If people who are voting early need to
4 go to the county seat, every type of ballot in
5 the county has to be available in one place.
6 The poll workers will need to figure out which
7 ballot goes to each voter. Afterwards, those
8 different ballots will need to be sorted, and
9 there will be added logistical problems with the
10 mandated three percent audit. This will add
11 more hours and more dollars.

12 The added security issues are enormous.
13 Where will the ballots be stored for those 14
14 days? Who will watch over the ballots? How do
15 we verify the honesty and integrity of the
16 ballot watchers?

17 The most secure way to vote and count
18 ballots is by using our lever machines.
19 However, even if the lever machines were put out
20 at the county seats 14 days ahead of election
21 day, other than security, which is a huge issue,
22 many of the other problems and expenses would
23 still exist.

24 I have a couple of quotes. What do

1 election officials have to say about software
2 driven optical scan and DRE voting systems:

3 Douglas Kellner, Commissioner and Co-
4 Chair of the New York State Board of Elections
5 said, "The voting industry sells crap, and that
6 is the problem."

7 And then also Nassau County Election
8 Commissioner William Biamonte, "All that's at
9 stake is the credibility of representative
10 democracy in New York State."

11 And on a final note about the levers,
12 levers are green, and saving them is fabulous
13 for the environment. Thank you.

14 CHAIRMAN ADDABBO: Thank you. Thank
15 you, Ms. Holland.

16 **RUTH WAHTERA**

17 **American Association of University Women**

18 MS. WAHTERA: Good morning. My name is
19 Ruth Wahtera, and I represent the Kingston
20 Branch of the American Association of University
21 Women.

22 Thank you for holding the hearings, and
23 thank you, also, for posting the videos on your
24 website. I had a chance to watch the Manhattan

1 hearings, and found them very interesting.

2 AAUW is an organization focused on
3 equity. For us, the right to vote is, and to
4 have our vote counted is sacred. We certainly
5 support accessibility of polling sites, and we
6 share your goal of increasing participation in
7 elections.

8 However, we believe that every decision
9 about our system of voting must be measured
10 against a set of criteria, or standards. And
11 although our branch has not been able to talk
12 about each of the issues, each of the proposals
13 that you've made, we think that you, in
14 considering them, you should think about these
15 standards as you're making decision.

16 The most important of those standards
17 is public confidence in the integrity of the
18 voting system. If a proposed change maintains
19 or enhances public confidence, then move the
20 discussion forward. If it doesn't, if it will
21 erode confidence, then abandon the discussion.

22 A second standard we think relates to
23 research and experience. We should learn from
24 what the research shows us, and what the

1 experience in other states have been. Let's not
2 adopt something that has already proven itself
3 to be flawed.

4 And a third criteria is whether a
5 proposal is cost effective. Can we accomplish
6 the same end for a better price for the
7 taxpayers?

8 So first and foremost, confidence in
9 the integrity of the system. Second and third,
10 cost and efficacy.

11 We also believe in a democracy it's
12 never too late to correct a wrong decision. So
13 I want to spend my time discussing why the
14 Kingston Branch of AAUW wants you to rescind
15 ERMA.

16 In the middle of this decade, many New
17 Yorkers, including our branch members, fought
18 fiercely against DREs. Under pressure to meet
19 HAVA requirements, the legislature passed ERMA
20 believing that "certification", and audits would
21 protect the integrity of our system. It's
22 become apparent now that we made a mistake.

23 The nature of software is that it's not
24 secure. Missing votes, inaccurate audit

1 reports, design flaws corrected with duct tape,
2 officials indicted for manipulating electronic
3 voting machines, companies withdrawing from our
4 own upstate pilots, and testimony and reports
5 from computer security experts; NTIS, the CIA,
6 and most recently the Department of Defense, all
7 contribute to convincing us that this is not the
8 time to abandon levers for optical scanners.

9 Certification does not address
10 security. The criteria the Election Advisory
11 Commission is using to certify optical scanners
12 does not guarantee that a system cannot be
13 hacked. And even without that guarantee,
14 scanner manufacturers have been unable to
15 produce equipment that meets certification
16 standards. The labs charged with certification
17 have been discredited when their own
18 certification was withdrawn under criticism that
19 they were using testing procedures provided by
20 the manufacturers.

21 This highlights a question that needs
22 to be revisited. Should we be putting our
23 voting system I the hands of private companies
24 who hide their code from public scrutiny and

1 whose incentives are to design systems that
2 require us to spend taxpayer money year after
3 year for licensing, maintenance, and upgrades?

4 There's growing sentiment among states
5 that have implemented software-based systems
6 that they should move to open-source software;
7 that our election system shouldn't be in the
8 hands of private entities.

9 Some of the brightest computer
10 professionals have been working feverishly on
11 open-source election software and encryption.
12 They will be the first to tell you that the time
13 has not yet come for electronic voting. In
14 fact, it is those who know most about computers
15 and software who counsel against premature
16 implementation of e-voting, not those who resist
17 change.

18 It's also become clear to us now that
19 the purchase price for optical scanners is only
20 the tip of the iceberg. For example, in
21 Columbia County, the election commissioners
22 recently noted that, had they used optical
23 scanners for the New York-20 special election, a
24 one-position race, software licensing would have

1 cost the county \$80,000, and paper ballots,
2 another \$20,000. That number will expand
3 exponentially in primaries and general
4 elections, and our smaller counties will find
5 the burden hardest to bear.

6 In this economy, you will be asking
7 taxpayers to assume the burden of millions of
8 dollars in operating and replacement costs when
9 our level machines, old as they may be, if
10 maintained, still work with nary a hitch. At
11 least two companies can provide parts, and even
12 machines that have been neglected in
13 anticipation of implementing scanners, can still
14 be refurbished at minimal cost.

15 Others, I'm sure, will argue that
16 levers lack paper ballots that are critical to
17 verify the vote. I just want to remind you that
18 New York abandoned paper ballots because of
19 election fraud. Without tight chain of custody,
20 which was not adequately addressed in ERMA,
21 paper ballots leave us open to election fraud
22 once again. And, without electronic counting,
23 paper ballots become cost and time prohibitive.
24 And we don't want electronic counting.

1 So, the members of our branch aren't
2 lawyers, we're not computer experts, we're
3 voters. And it's apparent to us that a system
4 of paper ballots counted by optical scanners is
5 not secure, cost effective, or even ready for
6 market. Continuing on our current path will
7 erode voter confidence. There's no reason for
8 New York to be another California, Florida,
9 Ohio, or Kentucky.

10 We urge you to rescind ERMA. Thank
11 you.

12 (APPLAUSE)

13 CHAIRMAN ADDABBO: Thank you. Thank
14 you, Ms. Wahtera.

15 Thank you, very much, Ms. Holland,
16 thank you, very much for your time.

17 Our next panel is Joanne Steele and
18 Barbara Murphy.

19 Good afternoon. Please state your
20 name.

21 BARBARA MURPHY

22 Voting Rights Activist, 2002 to Present

23 MS. MURPHY: Barbara Murphy. I'm in
24 Clifton Park, Saratoga County.

1 I've been a voting rights activist
2 since 2002, when I became aware of the mess in
3 Florida, only to look up and realize that my own
4 town was one of the two in New York State who
5 had, in thinking that they were being
6 progressive, had been bringing in eight
7 paperless touch-screen machines every year since
8 mid, early 1990's. So I am faced with having to
9 vote on a, the worst possible kind of election
10 equipment.

11 I have a computer programming
12 background, I'm not a lawyer, and I think the
13 whole Help America Vote Act has kind of smacked
14 us in the face, so to speak, so that we've been
15 reacting to it ever since. Many voting rights
16 activities have been running between the
17 federal, the state, and the local levels trying
18 to plug holes in the dike, so to speak, to see
19 where we can keep the worst offenses from
20 happening.

21 With that in mind, I worked to totally
22 ban touch screen machines such I have to vote
23 on. I don't vote on them, I have made sure I'm
24 going to vote absentee, which is not my next

1 favorite voting method, but I will not vote on
2 the machines.

3 So, at the time New York was
4 considering this problem, I guess I was one of
5 those advocating that New York State allow for
6 optical, paper ballot optical scan because it
7 was the lesser of two evils. And we've been, so
8 I think my town didn't know what it was doing,
9 it was thinking it was being progressive. The
10 state thought it was doing what it had to do to
11 take federal monies and use them, what it
12 thought might have been wisely. I was working
13 on the lesser of the evils available. And I
14 think we've gotten ourselves into a terrible
15 box.

16 Tomorrow, the Board of Elections is
17 going to be determining what to do with this
18 pilot program to roll out the machines that are
19 not certified, and put them into an official
20 election this fall to count, cast and count our
21 ballots officially. They say it's not official,
22 but it's official. And they're talking about an
23 incredibly minimal amount of oversight in terms
24 of counting, hand counting those ballots. In

1 fact, some of them won't be counted at all in
2 smaller sections, or election districts where
3 there's not -- close election has to be like one
4 percent or less between the two opposing
5 candidates, they're not going to be counted at
6 all. This is ridiculous. This is untested,
7 uncertified code, and the Board of Elections has
8 to respond to these DOJ, federal Department of
9 Justice regulations to push them to act swiftly,
10 and it's getting us into a terrible bind.

11 So tomorrow, I'm going from here to the
12 Board of Elections, to insist that if they use
13 those machines, they need to be 100 percent hand
14 counted, and they're still unproven. So I said
15 to someone at the Board of Elections, what
16 about, does New York State have a contingency
17 plan? Does the Board of Elections have a
18 contingency plan if something goes wrong with
19 these machines, if they get too expensive, if
20 they fail? And he said, no, we have all we can
21 do to get this system in place. Our hands are
22 tied by the current law, and the current law is
23 the state legislation, the ERMA legislation. It
24 is not the federal law. It is the state law,

1 and all I keep hearing is, the state legislature
2 doesn't want to revisit this law. Well I don't
3 know why it doesn't want to revisit it. As I
4 said, I think we're all on a learning curve.
5 And we all, including the legislature, need to
6 keep looking, relooking, at what has gone
7 before, and where we are now, and where we need
8 to open the box, so that we're not in a corner.

9 So, I've written some points here,
10 asking -- I'm not even going to comment on the
11 specific laws, because I think other people have
12 made many points about the legislation that's
13 being proposed.

14 I wrote here about, New York State
15 should have a specified contingency plan. If
16 the primary vote counting system fails, if it
17 shows to have major flaws, or it becomes too
18 expensive to replace at local expense when there
19 needs to be replacements. And all of those
20 points have been very well addressed by other
21 speakers. These situations have already
22 occurred in other states and countries after
23 introducing computerized voting.

24 I guess I've been conflicted lately

1 after seven years of being into this issue,
2 because I don't think any voting system is
3 ideal. Every system has its flaws. Paper
4 ballot has chain of custody. And mail, voting
5 by mail is terrible, especially if when you,
6 chain of custody problems and also having to put
7 it through possibly a central scanner, which is
8 even worse than an election district scanner.
9 It's further away from seeing eyes, so that's
10 got a host of problems.

11 The levers are, I'd say, about the best
12 we have at the present time. They have, they're
13 old and they need to be updated. Sometimes you
14 can't read what's on the -- coming off the back
15 because they're old. And I think that the --
16 one of the computer companies is one of the
17 companies that started the levers, and if they
18 wanted to push computers, they had every reason
19 to say we're not going to maintain the levers
20 anymore, we're going to go out of business on
21 maintaining levers. So I don't -- that doesn't
22 say that other enterprising people can't get
23 into the system of maintaining levers.

24 But I, you know, they aren't

1 transparent in the sense that every vote is
2 visible. The final count is visible. So
3 they're, they all have flaws, and we're, I think
4 we're dealing with the least worst, is what
5 we're looking for at this point.

6 So I've been conflicted because I'm
7 working to say if we wind up with computerized
8 voting, then the state should seek to own and
9 operate and have open source code. It still
10 isn't perfect, and I still like the idea of
11 doing something to retain the levers. My
12 thought is that the state should revisit ERMA.
13 The state should have a system in place where,
14 at state expense, the levers are warehoused if
15 the computers do happen to come into temporary
16 use, that they're warehoused for future use, so
17 that they could be taken out again and used if
18 we have a catastrophe with electronic voting.

19 And I, as I said, I think we do need a
20 full hand count, a full, 100 percent hand count
21 if these uncertified machines dare to come into
22 the September situation, which I think is a
23 disgrace because I think we're trying to work
24 with the Federal Department of Justice when it

1 is a state problem, it's not a federal problem,
2 it's a state situation created by ERMA.

3 So I'm sorry to be conflicted, I am
4 conflicted, and I guess I'm sounding conflicted.
5 I still want to get rid of my touch screens in
6 Clifton Park, and I've been willing to bite my
7 tongue because I think the broader statewide
8 picture is much more important than the one in
9 town, although in this last election, it was a
10 big component. Clifton Park and Half Moon were
11 a large component of this 20th ED race.

12 CHAIRMAN ADDABBO: Thank you, Ms.
13 Murphy. Thank you.

14 **JOANNE STEELE**

15 **Serve on Several Boards & Committees**

16 MS. STEELE: My name is Joanne Steele,
17 and I'm from St. Remy, New York, which is in
18 Ulster County.

19 I'd like to, I'm going to read my
20 testimony, which should be fairly brief.

21 I would like to speak to S5028, and
22 S2868A, which will make absentee voting much
23 more allowable, and consequently, if other
24 states are any example, will make absentee

1 voting much more popular.

2 My understanding is that absentee
3 ballots are currently counted by hand. I
4 believe that under ERMA, E-R-M-A, absentee
5 ballots will probably be counted by optical
6 scanners. They can still be counted by hand,
7 but they'll be an awful lot more of them.

8 I believe that optical scanners have
9 been proven over and over to be prone to
10 malfunction. And worse, malfeasance. Lever
11 machines are much more reliable and honest.
12 Even hand counting opens up the issues of
13 keeping the ballots 100 secure and safe. Part
14 of what has kept New York's elections so honest
15 is the limited use of absentee ballots.

16 One other serious thing about absentee
17 voting; anyone could sell their vote if they're
18 given the opportunity to vote absentee without
19 an excuse for not showing up at the polls. We
20 use absentee voting to allow those who would
21 otherwise not be able to vote, to do so. Thus
22 enfranchising everyone. But wholesale use of
23 absentee voting with no cause is an election
24 system that's out of control.

1 CHAIRMAN ADDABBO: Ms. Murphy, thank
2 you, very much.

3 Our next panel is Catherine Skopic, and
4 Helena Kosorek.

5 Good afternoon.

6 **CATHERINE SKOPIC**

7 MS. SKOPIC: Good afternoon.

8 Greetings, and peace.

9 And thank you, Senator Addabbo, and I'm
10 sorry, I didn't get your name, I know you're the
11 legislative assistant, but I didn't get your
12 name.

13 MR. KOGELMAN: Legal Council, David
14 Kogelman.

15 MS. SKOPIC: David?

16 MR. KOGELMAN: Kogelman.

17 MS. SKOPIC: Kogelman. Thank you.

18 MR. KOGELMAN: K-O-G-E-L-M-A-N.

19 MS. SKOPIC: Thank you.

20 A word of caution, before I read my
21 test-- brief testimony. And a reminder that not
22 everything that is new, and seemingly
23 technologically advanced, moves humanity forward
24 just because it is new.

1 For example, when asbestosis was first
2 used in buildings, it was hailed as a marvel
3 that would prevent fires. Of course, we now
4 know how deadly asbestosis is, and how
5 destructive it is to our lungs. Our very planet
6 is suffering from such poor decisions. Not
7 everything that is new, and initially seems
8 good, is.

9 Applying this to our voting system, old
10 faithful, our lever voting machine, in all these
11 years, she has never let us down.

12 We have both a hand count and a machine
13 count. The voting process is not dependent upon
14 electricity. If there were to be a power
15 outage, voting could continue, and votes would
16 not be lost.

17 We know how and where to store the
18 lever voting machines.

19 We know how and where to deliver the
20 lever voting machines. New voters can quickly
21 learn how to use the lever voting machine with a
22 displayed diagram.

23 Previous voters are familiar with the
24 level voting machine.

1 The lever voting machine was designed
2 to last more than a hundred years, and we have
3 lots of time left on them.

4 The lever voting machines are easy to
5 maintain and have low-cost repair, if necessary.

6 HAVA does not require the lever voting
7 machines to be replaced, and ERMA is
8 unconstitutional.

9 With so many people and necessary
10 organizations/infrastructures in need, given our
11 present economy, it would not be wise to
12 purchase new voting machines we don't need that
13 are not as reliable as the ones we already have.

14 The patented design of the lever voting
15 machine is next to tamper proof.

16 Given all this, I urge you to respect
17 our democratic process. I urge you to do all
18 you can to ensure that we have fair and honest
19 elections. The lever voting machine is the most
20 fair and honest voting counting mechanism we
21 have.

22 Therefore, I urge you and all the
23 decision makers of New York State to keep our
24 lever voting machines. Hold to our

1 constitution.

2 (APPLAUSE)

3 CHAIRMAN ADDABBO: Thank you, Ms.
4 Skopic.

5 Ms. Kosorek.

6 **HELENA KOSOREK**

7 MS. KOSOREK: My name is Helena
8 Kosorek. I don't represent a group. I'm just
9 an average American. However, I've been
10 following the voting machine issue for seven
11 years.

12 I've read HAVA, I've read the New York
13 State Law. I haven't read all the amendments to
14 it, but I will say that I've taken the time to
15 become involved, inasmuch that I actually went
16 to the sites, where the old cafeteria was in the
17 campus building where they were checking
18 machines for functionality. I've been at the
19 demonstrations. But I didn't go when there was
20 a big crowd, I just went by myself.

21 And, I would like to say that the
22 reason that I'm here is, that we have to do more
23 than just think in like flows of rivers about
24 technology, or about this or that. We have to

1 apply discrimination to things.

2 And I'm going to read my testimony.
3 It's brief, but I think I'd like to say
4 beforehand too, that when I was at the
5 functionality testing for the Sequoia scanners
6 and I think it was the ballot marking devices,
7 that I asked about the seals on the machines.
8 And they said, oh, the seals are recorded. This
9 number, if the seal were removed, it would have
10 a different, you know, it would be removed, it
11 would leave a mark, or if you broke this little
12 seal, then, you know, it would be proof that the
13 machine was tampered with. And I started to
14 think about all this little bit of details. And
15 I said to myself, well if I were an unscrupulous
16 company, I could make duplicate seals. I could
17 have seals with the same number. I could have,
18 one seal was the type you peeled off, and one
19 seal was the type, you had a little wire, and
20 once you opened it, the wire would be broken.
21 So you can make a duplicate little set with
22 wires, would have the same numbers.

23 So what do we have, do we have a big
24 magic show when it comes to technology and

1 companies that supposedly certify machines but
2 then really can't say they don't certify them?
3 In the end, I would also agree that ERMA needs
4 another look, maybe in a repeal. But here's
5 what I have to say about why I feel this is
6 important.

7 Hearing after hearing takes place
8 across our country, and yet our ability to be
9 governed, and to govern in the manner our
10 country was originally designed is dissolving
11 bit by bit. And you see that every day. How
12 much money do you think congress has, or the
13 president has? How many dollars do you think
14 they can print up? How many, or how many things
15 do you think they can control in the world? Do
16 you think those dollars really represent, I mean
17 reality, I'm getting off on a tangent.

18 Our country is turning into something
19 unrecognizable. Despite all the news of the
20 loss or manipulation of data, with regard to
21 credit card information and identifying
22 information of individuals, each of those being
23 related to money, and should be, therefore, be
24 secure; whereas there has also been repeated

1 news from other states about the unsecure nature
2 of the use of optical scanners, direct recording
3 electronics and tabulating equipment in their
4 computerized forms for voting. How is it that
5 each state continues down this road of relying
6 on computer technology to ensure we will have
7 true representative government?

8 There are two systematic methods that
9 have been confirmed to be effective for hand
10 counted paper ballot votes at the precinct
11 level, and with the proper chain of command
12 throughout, will protect the rights of those
13 governed as well as those wishing to run for
14 office and take part in the process of
15 governing.

16 Alternatively, lever machines, along
17 with a better chain of custody for the
18 collection of vote totals, and the totals being
19 made available at the precinct that very day,
20 would also protect our votes better than
21 computers.

22 Little by little, in innumerable ways,
23 you are losing your country, you are losing the
24 country, in which you grew up having faith

1 freedom was of value. Only you, each of you,
2 that means you, our legislators, can do your
3 best, your part, in protecting the freedoms we
4 have.

5 Helena Kosorek.

6 CHAIRMAN ADDABBO: Thank you, Ms.
7 Kosorek.

8 MS. SKOPIC: And I just to add, after
9 getting your names, I didn't -

10 (APPLAUSE)

11 CHAIRMAN ADDABBO: Thank you.

12 MS. SKOPIC: I didn't say my name was
13 Catherine Skopic, and I'm here as a citizen of
14 the United States, and New York State, and Chair
15 of the Environmental Task Force. Thank you.

16 CHAIRMAN ADDABBO: Thank you, Ms.
17 Skopic. Thank you, very much.

18 The final panel for today's hearing,
19 Teresa Dixon and Dennis Karius. Right.

20 I called you earlier, Dennis. Have a
21 seat.

22 MR. KARIUS: Thank you.

23 CHAIRMAN ADDABBO: Good afternoon.

24 MS. DIXON: Good afternoon, thank you,

1 for holding these hearings.

2 CHAIRMAN ADDABBO: Pleasure.

3 **TERESA DIXON**

4 MS. DIXON: I am Teresa Dixon. I am
5 with the Election Transparency Coalition Group,
6 and I just wanted to say, just off the books, so
7 I've very excited, and delighted, that Ireland
8 too has joined Germany and Demark, with regards
9 to this (clapping in background) dumping the
10 fraudulent electronic voting machines.

11 (Clapping)

12 So here it is now, here's my testimony.

13 It is a good idea now to allow poll
14 voters to work half days. It will probably be
15 much easier to find more poll workers that way.
16 I want to point out though, that if New York
17 switches to optical scanner machines, a minimum
18 three percent audit is mandated, because the
19 results cannot be trusted. It is to take place
20 after election night, when the ballots are no
21 longer under continuous observation. If poll
22 workers could work shifts, these hand counts
23 could take place at polls on election night,
24 which would make it much more secure. But this

1 means many more personnel hours, and if the
2 three percent audit turns up discrepancies, the
3 audit will grow to higher and higher numbers.
4 The personnel costs could escalate quickly. All
5 unknowns.

6 Let's stick with our lever voting. Our
7 lever voting machines tells us the results on
8 election night, without software, and they do
9 not require such burdensome audits or people
10 hours.

11 Related to this is the issue of
12 personnel needed for early voting. It only
13 takes a minute to vote on a lever machine.
14 Currently, delays at the polls, where they
15 exist, are not due to the machines, but rather
16 to insufficient numbers of poll books and poll
17 workers. Early voting can result in huge delays
18 as an entire country's voting system would be
19 concentrated into a single location without
20 enough staff or space to accommodate large
21 numbers of voters who decide not to vote on
22 Election Day.

23 Where is the evidence that early voting
24 increasing turnout or reduces wait times for

1 voters?

2 I'd like to make one more comment.

3 Leave you with a question actually: Why are the
4 optical scanners not just adding machines? Why
5 do they have programmable instructions in them?
6 Shouldn't they only be adding up votes? I ask
7 you to think about that. Very hard. Levers
8 don't lie.

9 Thank you.

10 CHAIRMAN ADDABBO: Thank you, Ms.
11 Dixon.

12 Mr. Karius.

13 **DENNIS KARIUS**

14 **Chair of the Voting Equipment Taskforce**

15 **ARISE**

16 MR. KARIUS: Thank you.

17 My name is Dennis Karius. I serve as
18 Chair of the Voting Equipment Taskforce of
19 ARISE, and I am here representing ARISE, which
20 is a coalition of congregations and community
21 groups dedicated to revitalizing our capital
22 region and our state through allied groups in
23 cities from Long Island to Buffalo.

24 I'm a resident of the town of

1 Guilderland, right here in the county or Albany.
2 And I'd like to start by thanking you, Senator
3 Addabbo, and David, for taking your time today.
4 And I really think this is very important, and
5 it goes beyond the eight bills that we were
6 asked to address.

7 I've been voting over the last four
8 decades, participating in our electoral process,
9 and it's been a very high priority of mine.
10 During this time, I've been very impressed by
11 the comfort and trust shown by our citizens in
12 our electoral process. Even after I graduated
13 from RPI with a degree in engineering, I was
14 very comfortable with our voting equipment, and
15 thankful that our voting booths were designed
16 when technology was in its infancy. Our simple
17 system of gears and levers could be visually
18 checked for mechanical integrity and any
19 defects, whether national or man-made, could be
20 easily apparent.

21 My commitment to election integrity
22 puts me in opposition to the first three bills
23 listed on your notice of public hearing,
24 specifically the Early Voting Act, S3250, No

1 Excuse Absentee Voting Bill S5028, and the
2 Explanation Elimination Act S2868A. I believe
3 that relaxation of good regulations would make
4 it easier for anyone with bad intentions to seal
5 votes.

6 Having said this, I do support S1701,
7 which requires, this is a quote, "requires
8 affidavit ballots to be counted if a voter
9 appears at a polling place in the correct county
10 but in the incorrect election district." I have
11 much more faith in our record keeping within any
12 county on Election Day than I do between
13 counties, or even between states, when some may
14 try to vote here by absentee ballot in October,
15 and again two weeks later at their winter resort
16 in Florida.

17 In fact, I support all the remaining
18 bills listed, that is S1058A, S2443, S5112, and
19 especially S1836A, which "authorizes the Board
20 of Elections to employ election inspectors to
21 work half-day shifts with adjusted
22 compensation." We are seeing a special
23 generation among us who are ready to retire as
24 inspectors willing to work from 5:30 in the

1 morning until 10 p.m. or later. As these baby
2 boomers retire, I think it will be critical to
3 accommodate future inspectors who are willing to
4 serve but refuse to work 16 hours or more, on
5 Election Day.

6 After graduating from RPI, most of my
7 career was focused squarely upon computer
8 technology. As society becomes more computer
9 savvy, I believe it will become universally
10 apparent that programmable machines are
11 inappropriate for our electoral process. I
12 understand that the Federal Constitutional Court
13 of Germany has just ruled out electronic voting
14 as unconstitutional, and other states. Other
15 countries, sorry.

16 We are close to forfeiting our election
17 security thanks to the "Help" America Vote Act.
18 I'm putting Help in quotes here, which was
19 enacted by the same congress that came into
20 power after the infamous 2000 Election. We were
21 right in accommodating people with disabilities,
22 as we have here in Albany County with the
23 Automark Ballot Marking Device in every poll
24 site. Beyond that, we should revise ERMA, New

1 York's Election Reform and Modernization Act of
2 2005, to keep our lever voting process in place
3 and consider a brand new generation of lever
4 voting with booths of clear plastic or glass,
5 for even more transparency than today's trusted
6 voting booths.

7 As a last resort, if our state
8 government is sold on optical scanners for New
9 York State, we need to mandate an official tally
10 of hand counting paper ballots conducted at
11 every poll site on election night in order to
12 confirm any unofficial tallies from these
13 optical scanners. It is not surprising that
14 optical scanners would be endorsed by any
15 election officials for ease of use, or by
16 mainstream media that wants to broadcast
17 election results by 11 p.m. after the polls
18 close. However, it is becoming universally
19 clear that optical scanners cannot be trusted
20 without verification. This is why proposed bill
21 number S1836A would be helpful since a second
22 shift of election inspectors could have the
23 energy to remain at the poll site until every
24 ballot is hand counted. With such hand counts

1 to verify any op scans, and such op scan results
2 to verify any official hand counts, New York
3 State could lose any reputation as a
4 dysfunctional state and return to its glory days
5 as the Empire State, for other states and
6 nations to use as a model.

7 This is an exciting time for New York
8 State. Last month when our state budget was
9 passed, we witnessed an unbelievable degree of
10 solidarity. Now we have an issue, which should
11 be high on the integrity list of any sincere
12 public official. Except for that minority of
13 politicians who feel that they can benefit from
14 corrupt voting systems, every Senator,
15 especially the good ones in this room and who
16 authorized these public hearings, should be
17 pleased by the potential to make a 50th state
18 dealing with HAVA a model for others to
19 duplicate.

20 Before the election of 2004, we
21 witnessed the CEO of a major voting machine
22 vendor announce that he was committed, "To help
23 Ohio deliver its electoral votes to the
24 President." Our reputation, their reputation

1 got so bad that the same firm decided it had to
2 change its name.

3 Today, our own Board of Elections
4 expects us to trust programmers of such private
5 firms that they won't manipulate source code.

6 They want us to trust those who
7 complied that source code, that it will be
8 dutifully compiled into equivalent machine
9 language with no alterations.

10 They want us to trust, they expect us
11 to simply trust election staffers that such
12 compiled codes of ones and zeros will be
13 carefully installed into each optical scanner
14 exactly as it was received.

15 They want us to trust all election
16 inspectors with the chain of custody of memory
17 cards, and the digital output of our votes in an
18 era where it's foolish to run a PC without
19 protection against viruses and spy ware.

20 One phrase that applies here was often
21 used by our former President, Ronald Reagan, who
22 said, "Trust, then verify." All we are asking
23 for you to do is trust the voters of New York
24 State, who are simply asking you to hand count

1 any paper ballots at the poll site immediately
2 after the poll is closed. If you cannot trust
3 New York citizens to properly count our votes,
4 and we cannot trust programmable voting
5 machines, then why can't we compromise and
6 return to the trusted levers, or better still, a
7 new generation of transparent lever voting
8 booths.

9 All we need is to repeal ERMA and its
10 mandate for computerized voting, and we are
11 asking you for your cooperation.

12 Thank you.

13 (APPLAUSE)

14 CHAIRMAN ADDABBO: Thank you, Mr.
15 Karius.

16 MR. KARIUS: Thank you.

17 CHAIRMAN ADDABBO: Ms. Dixon, thank
18 you, very much.

19 And that completes our hearing for
20 today, and again, I want to thank all who have
21 participated. Whether you agree with the
22 legislation or not, it's great that you're here
23 and that you're participating in a democratic
24 process, a part of our democracy, and will take

1 this again, show on the road. We're in Syracuse
2 on Thursday, and we'll be back here in Albany at
3 a later date with another topic, but certainly,
4 this opens a lot of communication.

5 If you feel you have more information
6 to forward to us, forward it to us. Don't wait
7 for an oversight hearing, forward us the
8 information, we'd be more than happy to have it.

9 But again, I thank you all for being
10 here and for participating. Have a great day.
11 Thank you, very much.

12 (APPLAUSE)

13 **(Whereupon, the proceeding in the**
14 **above-entitled matter was concluded)**