

**United States Election Assistance Commission**  
**Board of Advisors Meeting**

Held on

April 24, 2018

at

Hyatt Regency Coral Gables

Coral Gables, Florida 33134

VERBATIM TRANSCRIPT

The following is the verbatim transcript of the United States Election Assistance Commission (EAC) Board of Advisors Meeting that was held on Tuesday, April 24, 2018. The meeting convened at 8:31 a.m. EDT and was adjourned at 12:05 p.m. EDT.

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CHAIR JOHNSON:

If everybody will kind of gravitate towards your seat, we'll try to get started today, please. I do have one quick question before we get started. We have had one proxy designation from the gentleman from the National Governors Association to Mr. Poser. Are there anybody else that is holding a proxy for a member that could not be here today? Okay. Great. Thank you. So, we have two proxies, obviously secretary Lawson carrying over from yesterday, and the one to Gary Poser, your soon to be Secretary of the Board of Advisors.

So, thank you all for showing up. Hopefully you had a good night in Miami, and survived to tell the tale this morning, or is it one of those, what happens in Miami stays in Miami days? So, what we'll do, we're kind of moving things around a little bit as we talked about yesterday. So, we'll first check with our Secretary, Michael Yaki, to make sure we do have a quorum in place.

MR. YAKI:

Madam chair, we do have a quorum. The only change from yesterday as you know, Jeff McLeod has given his proxy to Gary Poser.

CHAIR JOHNSON:

Great. Thank you for that. What we'll move into now are the committee reports. I would like to call on Michael Winn, who is our Resolution Committee Chair, to report on any activity that might have happened overnight and early morning.

MR. WINN:

Madam chair, I did not receive any information about any changes in the resolution committee. It was all noted yesterday, so I think we're ready to move on.

CHAIR JOHNSON:

Great. Thank you. I want to really thank all the board members, one, for reading my multitude of e-mails prior to the meeting, especially the really long e-mail, and I want to thank you all for getting those resolutions in so that we could distribute it to all of you as soon as possible. I know that takes some time to draft those, and I want to thank everyone for doing that early. But please feel if you do have some other issue that comes up as we discuss these resolutions, obviously you are open to bring those up. I think next, we will move to the VVSG Committee Chair, which was Neal Kelley, for any updates and information he's received.

MR. KELLEY:

Good morning, thank you Madam Chair. This morning, I distributed to the membership the comments from Senator Ivey-

Soto from New Mexico. I think the comments speak for themselves, but I wanted to turn to the Senator to ask if he had any comments, or if he wanted to summarize his comments.

MR. IVEY-SOTO:

Thank you. Daniel Ivey-Soto. It's always dangerous to ask a legislation if he has anything he wants to say. I do think the comments speak for themselves, unless anybody needs me to go over it if they haven't had a chance to look at it, or if anybody has any questions.

CHAIR JOHNSON:

Yes, Jim?

MR. DICKSON:

I'm sorry, I haven't had a chance to look at it.

MR. IVEY-SOTO:

Certainly. So, very briefly, what the comment was, is that principle 15.4, which states a voting system with networking capabilities employs appropriate well vetted modern defenses against network-based attacks, commensurate with best practice, that a fair reading of that is that we may be -- is that someone could read that as an endorsement that tabulators could be publicly networked. And I understand that not all voting systems are tabulators, and I understand that not all networks are public.

It just seemed to me, that with regard to -- without getting into specific current technologies, there needed to be something in there that would suggest that a tabulator would not be in a -- connected to a public network, and so the language that I suggested in concept, and I made sure to clarify it was in concept, was that perhaps to add at the end, or as a separate principle, provided that a voting system that tabulates votes is not connected to a public network.

MR. DICKSON:

Thank you.

CHAIR JOHNSON:

Thank you, Senator. Were there any questions on that?

Okay. Perfect. Neal?

MR. KELLEY:

Thank you, Madam Chair. In addition to that, I received two sets of comments, one from Ricky Hatch of Utah, and one from Alysoun McLaughlin of Maryland. The comments received from Ricky Hatch are, I would probably categorize them as style, and the ones from Allison McLaughlin were a little bit more lengthy under principle number 6 and principle number 8.

Ricky Hatch, for the benefit of the membership, had a gap in his membership, so he was not a part of the original comments or e-mail chain leading up to the meeting, but I did want to turn it over

to the Chair and ask what your direction would be on either including these in the overall spreadsheet for the VVSG comments, or submitting them through public comments.

CHAIR JOHNSON:

So, the question obviously the Senator's comments are included. Ricky's comments, I think we agreed yesterday to include, he's a new member. The question I want to pose to the group. Alysoun is not a new member. By virtue of fairness, because yesterday we kind of made the rule where new members, everyone else can go through public comment. I do want to ask the group what your thoughts are on Alysoun's comments, or if you would like either of them to say what their comments are.

MR. IVEY-SOTO:

Can we hear what their comments were?

CHAIR JOHNSON:

I think that would probably be best. Ricky, if you could briefly summarize your comments, please.

MR. HATCH:

Absolutely. Mine was, and it's probably a little bit nitpicky, so I don't think it's worth spending too much time, but it deals with principle 11, and principle 14. The principles, I think, for the VVSG, focus on the actual voting system itself, and there are two points, 11.1 and 11.5, that actually refer not to the system but to the

implementation of the system. In other words, 11.1 says access privileges, accounts, activities and authorizations are logged and monitored and reviewed periodically, and my suggestion is, if we're looking at the system itself, principles relating to the system itself, it can't log -- it can't monitor and review. It can only provide that so that they can be monitored and reviewed later.

My suggestion was to change the word "and" to something like "so they can be" -- access privileges, accounts, activities are logged so they can be monitored and reviewed periodically. It was a subtle distinction, but I thought it would be clearer.

The other changes are similar in nature to that. 11.5, talking about revoking access to system assets. Change the word "are" to "can be" and then on principle 14 with system integrity, the last point, 14.4 talks about software updates are authorized by an administrator prior to installation. My thought there is, if this is a logical control built within the system, then we should specify that here. If it's not built into the system, then we may want to strike that line, simply because that's outside of the system -- the authorization by an administrator. That's a procedural control that would be in place that doesn't need to be in the VVSG, but I actually like the idea of having it built into the system that it requires a confirmation, yes, I am the administrator of this implementation and I approve this software update.

CHAIR JOHNSON:

Thank you for that summary. Any questions on those comments, does anyone has? Okay. Alysoun, do you want to describe your comments, please.

MS. MCLAUGHLIN:

Sure. The gist of my comments has to do with language access. I have two -- the first for guideline 8.2, which reads the voting system meets currently accepted federal standards for accessibility. My comment is consider adding end language access to this guideline or creating a separate guideline requiring that the voting system provides jurisdictions with the ability to make information available to minority language communities from the beginning to the end of the voting process, consistent with the requirements of Section 203 of the Voting Rights Act, and then to put a finer point on the challenge of what is a voter verifiable ballot and what is a cast vote record. For guideline 6.2 which reads, voters can mark their ballot and verify and cast their vote selections and other associated cast vote records without assistance from others. My comment is that the requirements that correspond to this guideline must be developed in a manner that recognizes the needs of minority language voters. Election officials particularly in Section 203 coverage jurisdictions, must be able to meet any ballot verification requirements for voters who use other languages to

read and mark their ballots in the same manner as for voters who read and mark their ballot in English.

CHAIR JOHNSON:

So, any questions on what Alysoun eloquently read for us on those comments? So, the other question is, just like I said, out of fairness, because we had the rule yesterday, what are the thoughts from the group to have Alysoun's comments added to the comments that will be coming from the Board that we'll be voting on, soon? Yes, Senator?

MR. IVEY-SOTO:

Since we are actually meeting in a Section 203 jurisdiction, I think it probably would be good for us to include those, and certainly they are not -- it seems to me that with regard to each of the comments, they are not of such dramatic change that that would require a significant amount of reworking.

CHAIR JOHNSON:

Yes, Greg?

MR. MOORE:

I would just agree with the Senator on that point.

CHAIR JOHNSON:

Okay, great. Any other comments? Okay. Great. Thank you, Alysoun. Thank you Ricky for putting in those comments,

thank you. I think that will make our comments more meaningful.

I'll turn it back over to Neal.

MR. KELLEY:

Thank you, Madam Chair. I will put these comments together and submit them under separate cover, which will be included in the complete package of the original comments. With that, I'd like to turn back to the resolution if that's okay with the chair.

CHAIR JOHNSON:

Yes, just to let you know, there are a couple people that need to, because of flight schedules, they need to leave a little earlier, so the request was, since we had this hour on the agenda for VVSG, that we take the VVSG resolution discussion and do that now versus waiting until a little bit later in the agenda with the other resolutions that we have. Is there any opposition to that change? I guess I'm requesting to amend the agenda to deal with this resolution now. Can I have a motion to make that formal?

MR. YAKI:

Moved.

MR. WINN:

Second.

CHAIR JOHNSON:

First by Michael Yaki, second By Michael Winn. All in favor say aye. All opposed? Great. Thank you very much for that accommodation. [unanimously approved]

MR. KELLEY:

And just as an administrative note, Ryan Macias is putting those additional comments on the screen for the body. I'd like to turn to the resolution which is 2018-01, and I would with pleasure of the executive committee, read into minutes the resolution itself. Now therefore be it resolved that the Board of Advisors recommends to the United States Election Assistance Commission to consider the draft VVSG 2.0 principles and guidelines for full adoption, considering the comments offered by the board, and that the EAC adopt within the testing and certification program quality and program manual a provision providing for the ability of VVSG 2.0 requirements and test assertions to be updated in the absence of a quorum of the EAC commissioners, and with that I'd move the resolution.

CHAIR JOHNSON:

Do we have a second? Jim Dickson is the second. So now I'll open it up for discussion. I'll give you some time to read it. Any questions or comments? David?

MR. BEIRNE:

I've got a couple comments and maybe a question here. In terms of it being resolved, the last line where it talks about in the absence of a quorum of the EAC commissioners, there's a couple things in play, because we talked about yesterday the fact that the EAC currently lacks a quorum, so VVSG 2.0 technically cannot even be adopted until there is a quorum of commissioners.

So, I'm a little confused in terms of what the relative value is of this statement, and also it goes back to our discussion yesterday in terms of what our guidelines -- what is the role of the EAC going forward. I guess that's where I'm struggling in terms of understanding that, what's the relative benefit?

CHAIR JOHNSON:

Yes, Gary?

MR. POSER:

Yeah, I think it's -- I think there's a recognition that we don't currently have a quorum, so they can't even do the adoption of the VVSG, but that is also then further, I think -- it shows why there's a need to have something in place for if we don't have commissioners to do the updates of the requirements and test assertions. So I think, you know, when it's talking about adopting within the testing and policy certification manual, that needs to be adopted with a quorum as well, and so it seems to me that we're really just asking that when there's a -- when there is a bullet to adopt a VVSG, that

when the commissioners also adopt their program policy manual, that they include within there something to deal with the absence of a quorum of commissioners so that the testing assertions and the requirements can be updated, if that ever comes to be the case.

CHAIR JOHNSON:

David?

MR. BEIRNE:

I have a request for a friendly amendment here. What I would propose is that, along the same line -- the last line where it talks about EAC adopts within the testing certification program quality and program manual a provision providing for the ability of VVSG 2.0 requirements -- let me come back to you when I have it -- (inaudible) I was just restating the sentence on the screen. I did not propose any additional language just yet.

CHAIR JOHNSON:

Just a clarification, you're not doing a friendly amendment.

You're not doing an amendment.

MR. BEIRNE:

I need a few more minutes to think about my friendly amendment.

CHAIR JOHNSON:

Okay. Are there any other comments? Yes, Jim?

MR. DICKSON:

I need -- you would think I'd be able to do this by now. The test certification piece is where the rubber will really hit the road. We -- I'm in support of this because this is where we will see innovation as time elapses, as new products or as -- come online, I think we need to have some kind of flexibility here for the EAC, because the absence of quorum is not a rare phenomenon, unfortunately.

I'd also point out that as often products must be modified because of state law changes, and having a process that allows for our moving ahead with changes in the certification to accommodate when state law changes, is really important, otherwise we're going to have election officials between a rock and a hard place in terms of what they may be -- what they're going to be using. So, I think some kind of expedited system is essential.

CHAIR JOHNSON:

Senator Ivey-Soto?

MR. IVEY-SOTO:

Thank you. You know, I spent part of the night last night talking to Cliff about how to get around quorum, and apparently we never got to enough margaritas to get to him giving me an answer that I -- that would satisfy me. But having slept on it, and now in the morning, I have to confess that I'm increasingly uncomfortable with

the phrase that comes after the semi colon, that is highlighted there.

For those who cannot see the screen, the phrase that says and that the EAC adopts within the testing certification quality and program manual a provision providing for the ability of the VVSG to put in requirement test assertions to be updated in the absence of a quorum. I am concerned about an official Advisory Board of the EAC taking a formal position suggesting that a quorum of a federal commission is not necessary for action. And whatever offline conversations we may have, and whatever flexibility ends up being built in in a reasonable manner, it just -- it very much concerns me for us to be taking a formal position, having established that we have a quorum this morning, first, right? That's the first thing we did. For us to take a formal position that a quorum of the commission is not necessary for action. The only reason we would say that if -- there's a presumption first that quorum is necessary. Because otherwise we wouldn't be saying that. It concerns me that we are saying that formally. And so, if it would be in order, I would like to just try and move that we strike everything following the semicolon.

CHAIR JOHNSON:

I do know there's a couple other people that want to speak.

MR. IVEY-SOTO:

I would be happy to wait on that motion, that's fine.

CHAIR JOHNSON:

Okay. Thank you for your patience. Neal?

MR. KELLEY:

I appreciate the Senator's comments, and I think they're valuable comments. The concern that I have is that we are going down the path of where we were several years ago, and this actually can have a negative effect on innovation and stall the process of certifying new systems. And I think there's some real concern among the industry at large, among my colleagues, about this issue. I think it also comes down to whether this internal policy issue within the EAC of, you know, what level of staff involvement or movement is going to take place absent a vote of the commission.

Maybe that's not territory we should be treading in, but at least this puts it down on paper and says, this is our advice, based on past experience. It doesn't bind the commission, it's simply advice. I would continue to --

CHAIR JOHNSON:

Thanks Neal. Greg?

MR. MOORE:

I would be also opposed to eliminating that language because we've been through this before when there's not a

quorum, and I would hate for us to have come all the way to Miami and braved the heat and leave not making a definitive statement that we believe these guidelines should go forward with or without a quorum, since there's so many people that would use this action that we would take, possibly negatively, to say we may not have officially been able to give the authorization to the EAC to go forward.

CHAIR JOHNSON:

Barbara?

MS. SIMONS:

I also oppose the elimination of the last clause. We know that a lot of -- there's going to be a lot of movement in the next few years with replacing old voting technology, and I think it's very important that the VVSG 2.0 be the model that's used by vendors when they develop new systems, and I agree with the previous comments about encouraging innovation.

CHAIR JOHNSON:

Thank you. Gary?

MR. POSER:

I guess I would reply to a couple things to the Senator. I think one of the first things the commissioners did when they did have a quorum again was adopt some policies as to how the office would continue to operate in the absence of a quorum. And so, I

don't think there's -- I don't think there's a lot new there. They put other things in place to handle there not being a quorum. I think the other part about the presumption that there needs to be a quorum, I think that's what brought this on in the first place. That we were all presuming there wasn't going to need to be a commissioner vote on the requirements and test assertions piece, and that's why we had split the -- into two different documents, and so it was really the presence of all of a sudden making it look like there did need to be approval of the commissioners, which brought about this part of the resolution as well.

CHAIR JOHNSON:

I will say -- David, I will get you in a second -- just as a point of information, not going either way, if you'll beg my indulgence. I will say there -- having been involved in the Standards Board and Board of Advisors for a number of years, I will say the issue of a quorum has come up a lot over the years, and it is not unprecedented that something that something that either Board would pass would have some -- would have a notation dealing with an absence of a quorum. Just a point of information for you all. This would not be the first time this board or other boards have dealt with that concept. David?

MR. BEIRNE:

I think we're clear in terms of what the intent is. The question -- I would echo concerns from the Senator. In terms of what you're setting the precedent for -- the absence of a quorum without specificity, because there's no qualitative characteristic in terms of an update being a substantive update versus a non-substantive update. And this goes back to my weedy discussion yesterday, what is the role of the federal advisory committee or committees in terms of adopting guidelines and modifications to the guidelines? I think you're running into a real concern here in terms of how much you're empowering others to take action without any type of oversight. In terms of -- we know what the current process is, there is that RFI process that does allow for some interpretation, that does allow for some exercise of discretion, but that's a constraining principle. I don't see a constraining principle in here.

I would offer this friendly amendment, after the semi colon and the highlights, striking that and inserting, further, we request the EAC to draft a strategy for the consideration of updates to VVSG 2.0 requirements and test assertions to be updated in the absence of EAC commissioners. To be updated in the absence of a quorum of EAC commissioners. This basically would be giving -- my feeling on this, and I can restate that, is that given the discussion yesterday, it is a very nebulous concept put before us in terms of the assertions.

CHAIR JOHNSON:

I just want to make one question point. I know you have your friendly amendment, and I know we're discussing that. We also have our Chair of our VVSG committee that would like to comment for a second. Do you want to hear those comments, or do you want to deal with your –

MR. BEIRNE:

If the comments are from Neal Kelley, no, I do not. (laughter)

CHAIR JOHNSON:

They are. And I simply do that, so that everyone has full information before we're asking you to vote, if that's acceptable.

MR. YAKI:

As a point of clarification, if I can understand this correctly, the distinction between what you are offering and what Mr. Kelley put on the board, is that you are basically restating the question of the EAC should adopt policies to deal with their lack of quorum with regard to these things, versus Mr. Kelley's, which is that it should be adopted without a quorum.

MR. BEIRNE:

My intent here is to make the recommendation that the EAC develop a clear concise strategy for how they will maintain continuity in the absence of a quorum of EAC commissioners rather than empowering them to do so through this resolution.

CHAIR JOHNSON:

Neal?

MR. KELLEY:

I'm not sure it's still a friendly amendment, but I'll continue. The question I have really, is for staff, and that is, I think I need some clarification on the current policy for moving items through test assertions, or if there's changes that has to go before the commission, correct? If they're substantive. And then that goes back through the federal advisory committee process.

MR. HANCOCK:

Neal, hey, this is Brian Hancock. So, the current process, the commissioners, we mentioned this yesterday, the commissioners obviously vote on -- have voted on the previous iterations of the VVSG, okay? They have also voted on the current iterations that expire this year of our testing and certification program manual and laboratory accreditation program manual. Beyond that, staff implements everything else on a daily basis.

MR. KELLEY:

That's helpful. So, my question then is, just a little bit further, if this were to be adopted by the commission as it's currently stated, would the process of changes still go back through the federal advisory committee absent a requirement to be voted on by the commission, or would it only remain at staff level for review?

CHAIR JOHNSON:

Brian, did you hear that? Or Ryan?

MR. MACIAS:

Based on the presentation yesterday, it would be that the updates would go back through the Advisory Boards, the VSGLs and the registered manufacturers, so those who are participatory in the program.

MR. KELLEY:

Mr. Beirne, does that not address some of your concerns or maybe I'm not reading it completely?

MR. BEIRNE:

No, it does not address it, only from the standpoint of the Ryan's comment -- the federal advisory committees can be involved in a public comment process. That does not necessarily mean you're actually having a formal federal advisory committee process in play. You wouldn't have us convene, for example. We could review substantive changes to the requirements, if that's what you're suggesting, that it's a modification. But without a quorum of EAC commissioners, they won't be able to adopt it, right? That's the formal process for a federal advisory committee process. That's why I was talking about a hybrid. What you're suggesting is a hybrid approach, where the federal advisory committees would just be members of the public, if you will, providing comments on a

30-day period or something like that. That's entirely different than I think what we envisioned for substantive changes to a requirement.

MR. KELLEY:

I guess I would need to see it in print to absorb it.

MR. BEIRNE:

As would I. That's the friendly amendment part. All I'm asking, make sure that the EAC can formalize what you're proposing from your remarks yesterday, so we have a better sense of how this would operate, because the bottom line is, we already lack a quorum, right? Without that third EAC commissioner, no action can be taken on 2.0.

CHAIR JOHNSON:

Barbara?

MS. SIMONS:

I just have a question. If the goal is for the EAC to do an action now, like formalizing what to do when there's no quorum, and the EAC currently has no quorum, how can the EAC do that action? Isn't this sort of a Catch-22?

CHAIR JOHNSON:

Michael?

MR. YAKI:

I think we are in a bit of a Catch-22, but I think that the -- what Neal, Mr. Kelley was attempting to do was basically state a

principle regarding the fact that the EAC needs to do something to allow testing and innovation to continue in the future, should there be other issues of absences of quorum, which I think is perfectly reasonable.

And I don't think that at this point it's really up to us to go into the weeds about how -- what that policy states or how it should be, simply that we want there to be a policy, and that that policy should have as its end goal the ability of testing and certification program quality and program manual to be updated if there is an instance of lack of quorum, but how that -- what the EAC does, what that policy is, is going to be left to EAC.

And that, I think, is one of the problems that we're trying to divine what they may or may not do, ultimately, we can't. But certainly, you have commissioners here who have heard what we have said, they understand what our concerns are, but this is ultimately going to be an EAC decision. We're just saying, you know, darn it, when you finally do get a quorum, let's not have VVSG languishing around should someone drop off and there be no appointment in the future. On that, I'd like to move the question.

MR. IVEY-SOTO:

Whoa whoa whoa. A couple of us waited. That's bad faith.

MR. YAKI:

It's not bad faith. I'm moving the question.

MR. IVEY-SOTO:

I could have made my amendment earlier and I was asked if I was willing to hold off, and I said yes, I would hold off.

MR. YAKI:

The question just ends debate. We can start with your motion.

CHAIR JOHNSON:

The question just ends debate. So now we have Mr. Beirne's amendment potentially, and we'll come back to you because he had his earlier and paused for a moment, and then we'll come back to yours for a vote. There will be votes on both --

MR. IVEY-SOTO:

I understand that, but I would actually like to have a discussion on each of these. I get we all want expediency, that's the whole point of what we're discussing right now. I would also like for us to have some deliberation about this.

MR. YAKI:

Moving the question is a closed question, it requires two-thirds consent of the body. We can have that if we can do so, or we can say, let's keep the debate going. Otherwise there will be a roll call, a two-thirds vote to close the question. It's your call, Madam Chair.

CHAIR JOHNSON:

The question has been called, so I think we can just for the sake of order on the floor, I think we can do a vote on the question. Just to make it definitive one way or the other. I should have brushed up on Roberts rules. There is no vote actually on a question. Was there a second on the question, the call for question?

MR. STARK:

I'm out of order, but I'm confused.

CHAIR JOHNSON:

A question has been called on debate, so we would be coming back to the amendment, proposed amendment by David Beirne. That would be what we would come back to for a potential vote up or down on that amendment and then move to the second one.

MR. STARK:

I was hoping, since we're in a room full of attorneys, someone might be able to give advice on the legal status of this stuff and actually have some guidance. We've heard opinions in various directions, but I don't know where this stands legally.

MR. MOORE:

Point of information, there is a requirement for a second on any motion. So, there's no second on the floor.

CHAIR JOHNSON:

That's what I'm coming back to, thank you. If there's no second for the call of the question. Yes, Linda?

MS. LAMONE:

Linda Lamone. I'll second the motion.

CHAIR JOHNSON:

There is a motion and a second on the call for question. So there has been a desire to vote on that call of question, which takes two-thirds. All in favor, show hands. Show of hands all in favor of –

UNKNOWN:

Can you repeat what we are voting on?

CHAIR JOHNSON:

You're voting on the call of question, which is to end debate, which would then revert back to David Beirne's proposed amendment.

MR. KELLEY:

Then we would get to the Senator's comments as well.

CHAIR JOHNSON:

And then we would go to the Senator's comments, and then once those are discussed and dealt with, we would go back to whatever the resolution is at that point. So, we have a motion and a second on the question. All in favor, say aye -- I'm sorry, raise your hands. Counting the proxies at that point? I have a proxy and so I was two hands. So, all in favor, say aye, raise your hand

again. So, we did not get a two-thirds vote to close the question. So, just as a reminder, what we are talking about, debate-wise at this point, is the VVSG and the current thing on the floor is David Beirne's suggested amendment. David?

MR. BEIRNE:

A quick question for Ryan. What is your envisioned timeline for the proposed testing and certification program manual based on some notional sense of whenever 2.0 would be adopted? You do require 2.0 adopted first, correct? What's the sequence and timeline for where we are with this testing and certification program manual?

MR. MACIAS:

So, the policy manual will take a vote by the commission. So, it would be a quorum. Based on what comes out of this, there may be amendments, there may be changes to that document, but it takes a vote by the commission because it is a policy.

MR. BEIRNE:

And until there's a third commissioner, we have no timeline that we can really even envision.

MR. MACIAS:

Correct.

MR. NEWBY:

If I may –

CHAIR JOHNSON:

Yes, Brian Newby.

MR. NEWBY:

Brian Newby. The lack of quorum creates some timing to that issue, so it's not unreasonable to think they might be voted on at the same time. There might be some delay but it's possible. I don't think you'd have to necessarily have a year lag from the time VVSG is approved before the policy. If we go a few more months before a quorum, we should be able to prepare as much as we can from staff to present it in a way that once we have a quorum, we can have expedited meetings, vote. They might be very similar in time.

CHAIR JOHNSON:

Greg?

MR. MOORE:

Greg Moore. I want to remind our Advisory Board members that the last absence of a quorum, if I'm not mistaken, was four and a half years, and the EAC went several years, if not currently, without a quorum. So, we could be coming up this approval for four years, which will -- which could take us conceivably into the 2020 cycle, and this is something I think this advisory board would be wise not to allow to transpire. If there is other interpretations of this act aside from the people in this room, it could be something we couldn't reverse easily.

CHAIR JOHNSON:

Thank you. Ricky?

MR. HATCH:

Ricky Hatch from NACO. I'd like to request, if we could document up on the screen, David's amendment, so we could look at the actual proposed language.

CHAIR JOHNSON:

David, could you restate that so we can make sure that we can get the proposed language?

MR. BEIRNE:

Yes.

CHAIR JOHNSON:

And hold on a second for technology.

MR. BEIRNE:

Okay. Further, we request the EAC draft a strategy for the consideration of updates to VVSG 2.0. requirements and test assertions to be updated in the absence of the EAC commissioners, or to be updated in the absence of a quorum of EAC commissioners. Further request that the EAC draft a strategy for -- you could say for updating VVSG 2.0 requirements and test assertions in the absence of a quorum of EAC commissioners. I'd rather have -- my hope here, rather than instructing them to adopt, I think there needs to be some level of transparency back to the federal advisory committee, is my basic point. I'd rather see

inclusion of a notional strategy that's more concrete for how this future consideration of test assertions could -- because what we were hearing yesterday was that the commissioners themselves voting on test assertions.

CHAIR JOHNSON:

Senator Ivey-Soto?

MR. IVEY-SOTO:

Thank you. Two things. One, just simply, the to be updated in the last line is not necessary because we say updating in the prior line. And so, David, I think to be updated should be struck.

MR. BEIRNE:

Yes. I'm with you.

MR. IVEY-SOTO:

And second of all, I'm better with this. I would vote for this. I would not vote for the other. And so -- and so I appreciate the thoughtfulness about this. Here's the thing. I know we're all frustrated. And the problem that I have is, our frustration should not lead to a degradation of the basic rules for process. Election people are process people. If we need to find different strategies, we need to find different strategies. If we need to go back to MASA and have them start suggesting uniform state laws, or coordinated state laws, you know, that may be necessary. And I certainly think it's appropriate for us at some point to have our officers draft a letter

to the leaders in Congress about the importance of having a quorum of the EAC, and for us to push for that. You know, this, I'm -- I can live with this. I just -- our frustration, though, should lead us to be appropriately creative about doing process correctly as opposed to our frustration leading us to decide that process is not important. And as especially being election people, we really process matters. But I can support this. Thank you.

CHAIR JOHNSON:

Any other questions? I know we've been around the world, so we have a friendly amendment offered by Mr. Beirne. Did we have a second on that? I apologize.

UNKNOWN:

I'll second it.

CHAIR JOHNSON:

You seconded that. I thought it was missing. A motion and a second on this much. Gary for comment?

MR. POSER:

Gary Poser. I prefer the word "adopt". I think just having the EAC draft a strategy, so we get a quorum. They draft this strategy to try and bring back to us to get further advice, and then they could lose a commissioner and no longer have a quorum by the time it comes back to adopt one, and we are still back in that same position where we can't do anything.

I think the -- I don't know that we've ever been asked to comment before on the program manuals or the policy manuals as well. I think the commissioners have done that. That is part of their duties. I think that is part of the proper process, is for the commissioners to be adopting policies, and so we're just recommending to them that when they adopt that policy, they include within there a method to deal with the absence of a quorum for these updates. So, I prefer that the adopt wording myself.

MR. IVEY-SOTO:

A quick question, if I may. Would "create" work for you?

Create a strategy?

MR. POSER:

I guess if create infers that it actually is in place. That could be something -- I'm more amenable to that than just drafting a strategy.

CHAIR JOHNSON:

Michael?

MR. YAKI:

I oppose the amendment. I think that part of what we do is express a policy position. I think that our policy position has been, through the years, and yes, there may be a little frustration in it, but it has to do with the fact we need to get VVSG up and running. There needs to be able to update it on a continuous basis. There

needs to be a way to continue its innovation in the -- hopefully an improbable instance in the future of a lack of quorum. I don't think that what Mr. Kelley drafted precludes anything that has been said by anyone here whether they may choose to draft a strategy, and run it by us, they may not, but, in any event, we are expressing a position as an Advisory Board to the commission, and I think that Mr. Kelley expresses that position stronger, and still gives the commission the latitude to decide exactly how it wants to go ahead and do it.

CHAIR JOHNSON:

Neal?

MR. KELLEY:

Thank you. Actually, I like the word "create" better, if that's what -- if we're headed down the path. It seems to me we're doing the same thing, if we're adopting a provision or creating a provision? I'm not sure if that fulfills David's concern overall because David -- changing draft to create is substantive, I think.

MR. BEIRNE:

It certainly is substantive. Not as substantive as "adoption". Encouraging the adoption is a policy statement, a statement that is not clear. I think that's where I'm still trying to hedge in terms of, I need to understand what the strategy looks like, what are the constraints that will put into place, and the bottom line is, we can

talk about flexibility with VVSG 2.0, but that flexibility will not exist until it can be formally adopted by a quorum of the EAC Commissioners. So, all of this is notional. So, to your point, Mr. Yaki, this is all notional. There is no flexibility until such time as there is a quorum. This is an embrace of saying, we lack that quorum. I also don't believe in writing blank checks.

CHAIR JOHNSON:

Philip?

MR. STARK:

If we do want to allow things to be updated, perhaps we shouldn't hard wire 2.0 into it, and talk about the VVSG more generally, so we recommend adoption of 2.0 principles and guidelines, and then the strategy for updating the principles and guidelines and the requirement and test assertions for VVSG blank rather than VVSG 2.0, because the next version might be 2.1.

MR. BEIRNE:

I can accept that. Strike any reference to 2.0.

CHAIR JOHNSON:

Does the seconder accept that? Just for clarification, it would take out the --

MR. STARK:

Take out the numerals 2.0 there, and I would also add the principles and guidelines there, because we like to be able to

update both the principles and guidelines and the requirements and test assertions. If that's the intent of this amendment in the first place. To allow the commission to make incremental updates to things without a quorum, then that's the intention.

MR. IVEY-SOTO:

Federal code --

CHAIR JOHNSON:

Senator Ivey-Soto?

MR. IVEY-SOTO:

I apologize. The USC requires specific adoption of guidelines by the commission. I just checked the language.

CHAIR JOHNSON:

Alysoun.

MS. MCLAUGHLIN:

A clarification as well here. Perhaps I'm just being dense, but I'm wondering, I hear the distinction between the words "adopt" and "draft". I also hear what to me feels like the more substantive difference between "provision" and "strategy", and I'm wondering, David, would you mind restating at least for my benefit, if not for the rest of the group, what the kinds of things are that you see being necessary to include in a strategy that would not be part necessarily of just a provision?

MR. BEIRNE:

What I would -- any consideration of a future strategy that would pass my smell test would be basically making sure that this is not a bypass to what is written in the U.S. law. That it embraces the notion, and respects the role of the federal advisory committee process, to consider changes to VVSG guidelines or requirements, including substantive modifications, and making sure there's a constraint in place for non-substantive or -- non-substantive interpretations that are more indicative of an RFI process ,and understanding that interplay between what is subject to the federal advisory committee process versus what is not. These are substantive policy changes that I'm seeing for the first time, and the only thing I have to go on is a presentation from yesterday.

CHAIR JOHNSON:

Okay. Any more comments on this amendment, proposed amendment to the main resolution? Yes, Senator Ivey-Soto?

MR. IVEY-SOTO:

Could we clarify what the final language is before we vote? My understanding is, we're removing 2.0, that there was no objection to that. There is objection to removing 2.0? Okay, never mind. Thank you. And then, was there any objection to swapping out "create" for "draft"?

CHAIR JOHNSON:

So, this is the amendment proposed by David Beirne, seconded by Ivey-Soto, you two are the ones -- it's your amendment proposal.

MR. IVEY-SOTO:

I understand that but --

CHAIR JOHNSON:

But there may be member opposition when the vote comes along, really, that decision is ultimately up to the --

MR. BEIRNE:

Right. I was accepting of the second strike of 2.0. I'm also willing to accept create in lieu of draft.

CHAIR JOHNSON:

Ryan, if you can make those proposed changes to the draft amendment.

MR. IVEY-SOTO:

And I'll just, madam chair if I may, since we follow Roberts rules of order, once debate has begun, it actually belongs to the body. So, even if we agree, an objection from somebody else would require formal action of the body.

CHAIR JOHNSON:

Correct. Thank you. Is there any more discussion? Are there any objections to the proposed amendments that are reflected?

MR. MOORE:

A clarification, are we voting for just the amendment --

CHAIR JOHNSON:

Just the amendment.

MR. MOORE:

Or for the original language that was proposed this morning  
when we started?

CHAIR JOHNSON:

Just the amendment.

MR. YAKI:

Just the amendment. If this amendment fails, then we go  
back to the main one.

CHAIR JOHNSON:

So, this again, this vote is just on the proposed amendment  
by David Beirne and seconded by Senator Ivey-Soto. Okay. Are  
we ready for a vote? Question? Okay. All in favor of this proposed  
amendment that you're seeing on the screen now, please raise your  
hand. We're going to do hand votes, so we can make sure we get  
a count. If you have proxies, raise two hands. All in favor of this  
proposed amendment, please raise your hands high so Cliff can  
count, please. All opposed? The motion fails. Now we're back to,  
it was -- I think it was 8 to 13 -- 8 yes, 13 no. So, now we're going to  
go back to the other proposal that was on the floor. This is again a

proposed amendment, back to Senator Ivey-Soto. You had the original. If I recall correctly, it was simply to strike that last phrase "in whole" which would be the highlighted phrase of –

MR. YAKI:

Go back to the original one. Go back to Neal's original one.

CHAIR JOHNSON:

So, it would be striking the highlighted portion, which would be in that the EAC adopt within the testing and certification program quality -- program quality and program manual, a provision providing for the ability the VVSG 2.0 requirements and test assertions to be updated in the absence of a quorum of the EAC commissioners. It would be striking that entire sentence from that. And so, that is -- we have a motion by Senator Ivey-Soto. Do we have a second on that one? David Beirne. seconds that motion. So, we have a motion and a second on the striking of that proposed ending phrase of the resolution. Any discussion? Yes, Senator Ivey-Soto?

MR. IVEY-SOTO:

So, where David was perhaps more surgical, this is a little bit more sledgehammer, and I recognize that. Here's the thing. If we're going to recommend the drafting of VVSG 2.0 principles and guidelines for adoption considering the comments offered by the Board, it would be good for us to have a clean resolution stating

such. If we want to then, separate from that, ask the EAC to work on -- how do you keep things updated if there is no quorum? As a separate resolution, that's fine. And, again, I would certainly support, and in fact after this, at some appropriate moment, I might even make a motion asking our officers to draft letters to the leaders in Congress about the importance of having a quorum of the EAC and the stifling of innovation that happens without that.

But I just think that it is very dangerous for us to combine the two in the same resolution, and I think it is also very dangerous for us to say straight out what we're saying, which is that we're asking them to adopt a provision for them to continue to update things in the absence of a quorum, which as David pointed out, is effectively a blank check, because we don't know the scope of that provision, and we don't know the scope of the updates.

I agree with everything single person who expressed their frustration. I agree with every single person who wants the innovation. I just have a problem with us effectively saying, and please, by the way, without telling us how big the truck is that is going to be headed through the hole that we're creating, please find a way to get around federal law. I just -- that's how I interpret what is there. Thank you.

CHAIR JOHNSON:

Okay. Thank you. I'm going to call on Mary for some clarification.

MS. BRADY:

Mary Brady from NIST. I think you do have some sense of how big those changes can be, because if you're adopting VVSG 2.0, the principles and guidelines, you cannot go outside the scope of the principles and guidelines.

CHAIR JOHNSON:

Thank you for that point of information. David?

MR. BEIRNE:

The scope of the proposed guidelines themselves are so ambiguous in nature, that is kind of the underlying concern I have between the interplay between what is the VVSG 2.0 principles and guidelines in terms of the size of the truck, it is enormous. And that's the gist of the comments that I've put forth in terms of -- before the Board of Advisors, was the striking of qualitative terms that can be defined by any number of attorneys in terms of state of the art, what does state of the art mean, things of that sort. While I can appreciate those are an overall framework, that framework is -- that has a lot of latitude already associated with it.

CHAIR JOHNSON:

Just as a clarification to just remember we're voting on an amendment -- I'm sorry, discussing and potentially voting on an

amendment to the main resolution, which would remove the last phrase concerning absence of a quorum in summary. It would remove that last phrase, just for clarification, so everyone knows what we're voting on, because I know it's getting confusing and thanks for your patient. Linda?

MS. LAMONE:

Linda Lamone from NASED. Could you clarify for the members what the Standards Board did with regard to this issue, please?

CHAIR JOHNSON:

Yes, it is my understanding, and that is in the right-hand side of your folder or packet, the Standards Board did include, while their resolution might be slightly different in some respects because it's a different Board. This language mirrors the language that the Standards Board included and ended with their -- I should say ended their resolution with. So this language simply mirrors what the Standards Board put in place, and for those of you that may not be familiar with what -- and I should have said this earlier, what the EAC Standards Board is, that the other board created with the Help America Vote Act that is made up of one state and one local election official. So it's an entire Board consisting of two people from the states and territories for those that are not familiar, but this

proposed language that the amendment is proposing to strike does exactly match what the standards board included. Jim?

MR. DICKSON:

Say that again please? Striking that makes us different from...?

CHAIR JOHNSON:

Yes, Jim, I apologize. Striking that entire phrase would make ours different from what the Standards Board passed last week.

MR. IVEY-SOTO:

Where in this document? Where are you seeing the exact same language?

UNKNOWN:

It was an amendment to the resolution.

MR. BEIRNE:

This was inserted in here?

UNKNOWN:

Yes.

MR. BEIRNE:

Madam chair, I just want to point out something in terms of the Standards Board resolution. David Beirne, Federal Voting Assistance Program. On Page 2 of the resolution, this is exactly the type of constraint that we don't have in our resolution. On Page 2, Section 3, subsection two. It talks about respecting the role of

the Standards Board under HAVA, and preserving with regard to implementation and modification a more detailed technical procedures and standards employ. This is exactly the tone in which the constraint applies. That is what I've been pushing for to say, we do not have that to the Senator's standpoint. If we want to express that, we should do it in a separate resolution to provide a more nuanced approach. (multiple inaudible voices) Sorry, based on the amendment, I guess it's reading as --

MR. KELLEY:

I think the amendment replaced that, David.

MR. BEIRNE:

Yeah, so, well, No. 2 still holds. No. 3 was changed, correct.

If I'm reading this correctly.

MR. IVEY-SOTO

-- and 3 becomes 4, so 3 is still if there.

MR. BEIRNE:

That's correct. Thank you. My point remains.

CHAIR JOHNSON:

So, just as a reminder, what is before us right now that we're discussing is the draft resolution. This would be an amendment to the draft resolution to strike the last phrase that's highlighted in yellow, which is the section that deals with absence of a quorum as a summary, my own summary.

So that's what we have before us. We have a motion and a second to strike that language. Is there any more discussion on exactly what is before us? Are we ready to vote on this again? The amendment before us is to strike the last phrase which deals with absence of a quorum? All in favor say -- say aye and raise your hand at the same time. For striking that last phrase, if you're going to vote yes, no would be not striking that phrase. Just a clarification. So, all in favor of this proposed amendment, please raise your hand and raise it high so we can get a count. All opposed, please raise your hands. 2 voting for strike the language and 16 voting against. So, the motion fails.

So, we are now back to the original motion, which is on the original resolution as proposed by the VVSG committee, which, as a note, would include the original language dealing with absence of a quorum on the EAC, as a clarification. Any discussion on that, the original resolution, including the absence of a quorum language as stated -- as provided to you yesterday -- as stated again this morning, originally as it was proposed? Any discussion? Yes, Jim? Can somebody please help Jim with the microphone? Sorry, Jim.

MR. DICKSON:

I'm asking, I guess, David and the Senator, if we were to craft language similar to what the Standards Board said about

being engaged in the process, would that make you guys comfortable with this?

MR. IVEY-SOTO:

You know, I would be comfortable.

CHAIR JOHNSON:

Senator Ivey-Soto?

MR. IVEY-SOTO:

Yes. I would be comfortable if we were to adopt the same resolution the Standards Board did, substituting Advisory Board for Standards Board in the body.

CHAIR JOHNSON:

Is that a motion -- an amendment to strike the entire language and insert new language? Is that what you're proposing?

MR. IVEY-SOTO:

I think you all are about to exclude me from future meetings (laughter), but why not? And I won't belabor it with -- I would move as a substitute, the amended Standards Board resolution that was adopted, striking within the body Standards Board and inserting Advisory Board.

MR. YAKI:

Board of Advisors.

MR. IVEY-SOTO:

Board of Advisors, thank you.

MR. DICKSON:

I would second that. Maybe we can move ahead here.

CHAIR JOHNSON:

Neal?

MR. KELLEY:

I'm just going to say that it says the same thing, and with all due respect to my colleague, Brad from Indiana, he's a little more robust than I am, so perhaps that's why -- for instance, we're talking about being efficient. Yes, I think we all agree we should be efficient, but I don't -- I don't oppose it because it accomplishes the same thing. I just wanted to get that on the record.

CHAIR JOHNSON:

Neal is correct, it really is just a difference in styles to a large degree. I'm going to call on -- I'm going to call on Gary, who is also on the Standards Board, who was present there for a second David, and then I'll come back and get you. Gary?

MR. POSER:

Gary Poser. NASED. I don't oppose switching the language, either. I just wanted to point out that maybe Neal want something in there regarding submitting the comments that have been received by the Board of Advisors. There's nothing to that within the Standards Board resolution.

MR. KELLEY:

I would be amenable to that. I think that's appropriate.

MR. IVEY-SOTO:

Likewise.

CHAIR JOHNSON:

Are there a first and seconder? There's not a nice way to say seconder -- agreeable to that. I believe I have had head nods and verbals that they would be agreeable to the suggestion that Gary made about including the comments, our spreadsheet. The comments that people provided with that.

Let's just circle back here a second. So, what the proposal is, with a motion and a second, is to substitute the entirety of the Standards Board resolution in lieu of the current drafted resolution from our – from the VVSG committee, substituting, obviously changing out Standards Board to Board of Advisors, and including a section that states in the comments that are attached to the resolution, and that's not how it's going to be formally worded. Hopefully it will be worded much nicer than that. That's what we're discussing right now. Just as a clarification. I think Alysoun had some comments?

MS. MCLAUGHLIN:

I wanted to point out a language issue. I guess this is a question to the sponsor of the amendment. The Standards Board

amendment to resolution 2018-01 says to renumber the current Section 3 as Section 4. I believe that ought to be subparagraph three and subparagraph four. Is that correct?

MR. IVEY-SOTO:

Three would become four.

MS. MCLAUGHLIN:

There is no Section 4. It is a subparagraph, correct?

MR. IVEY-SOTO:

Actually, my understanding is, this is on Page 2, and it is -- it is titled Section 3. There's a new Section 3 that's added, and Section 3 becomes titled Section 4. I see, yes. Oh, I see. Correct. Yes. Right. We're all talking about the same thing.

CHAIR JOHNSON:

Okay.

MR. IVEY-SOTO:

Three becomes Four.

YAKI:

Madam chair, can I read this for clarification? So, what I believe the amendment on the floor is, is as follows: So, Section 1 of the resolution would remain the same. Section 2 would remain the same, with the substitution of Board of Advisors for the Technical Guidelines Development Committee, and Section 3 would consist of subsections 1 and 2. Section 4 would -- I actually

believe should not be the amended Standards Board amendment because the point of what people said about the comments is actually encapsulated in the Mr. Kelley's resolved paragraph, and I would simply say we take that paragraph, where the last clause mirrors the Standards Board, the first clause requires a comment and simply substitute that in for Section 4 of the Standards Board's amendment. Right? So that's what we'd be voting on. It would be Section 1, with the change of TGDC to Board of Advisors. Section two would be -- remain the same. Section 3 would be -- stay the same with Section 1 and 2, except changing out Standards Board with Board of Advisors. Actually, I'm sorry. TGDC does not change in the first section. Standards Board would change to Board of Advisors in subsection two, and new Section 4 would be the resolved clause in the resolution proposed by Mr. Kelley today. Correct?

MR. KELLEY:

Correct.

MR. IVEY-SOTO:

That gets us there.

CHAIR JOHNSON:

What he said?

MR. IVEY-SOTO:

Yea, that gets us there.

MR. YAKI:

That's the amendment -- that is the substitute amendment on the floor to the main motion.

CHAIR JOHNSON:

Okay. So, is that clear as mud sometimes? Any discussion. I believe the first, and then second, have agreed?

MR. IVEY-SOTO:

Sections 1, 2, 3, with the appropriate editorial changes of body, and then Section 4 is what is on the screen of what Mr. Neal provided. That's fine.

CHAIR JOHNSON:

Everybody clearer on what we're going to be asking in mere seconds for you to vote on. If you vote aye or yes, you're voting for that, that we just discussed. If you're voting no, you would be voting against that, and then we would go back to the original resolution as proposed by the VVSG committee. Is that clear? David?

MR. BEIRNE:

Does anyone have a clear reading of this aside from the descriptions of the changes? Somebody can read it into the

record? I'm not a big believer in blank checks, but yet I keep getting asked to vote on one. Let me put it this way -- can we put it on a screen? Are we all clear on the actual technical substantive changes and actual verbiage being proposed?

(simultaneous inaudible speaking)

MR. YAKI:

Okay. I can read it.

CHAIR JOHNSON:

For the sake of time and desire, please read it. Quick question between the author and the person -- Senator Ivey-Soto -- the whereas clauses, should they be from ours or FROM theirs?

MR. IVEY- SOTO:

I'd love to have something included from us but -- (laughter)

MR. YAKI:

Okay then, title. This is Advanced Voluntary Voting System Guidance. (VVSG) 2.0 whereas the Election Assistance Commission (EAC) is an agency of the United States federal government created by the Help America Vote Act; and whereas, the Elections Assistance Commission Technical Guidelines Development Committee unanimously voted for approval of the draft of the VVSG 2.0 principles and guidelines on September 12, 2017; and whereas the Elections Assistance Commission Board or Advisors VVSG Committee has reviewed and commented on the

draft VVSG 2.0 principles and guidelines and has submitted those comments to the full board for review and comment. Now therefore be it resolved by the Board of Advisors of the Election Assistance Commission that Section 1 of the United States Election Assistance Commission Board of Advisors recommends to the United States Election Assistance Commission that the proposed modifications to the Voluntary Voting System Guidelines recommended by the Technical Guidelines Development Committee on September 12th, 2017, be adopted by the commission, Section 2, the United States Board of Advisors further recommends that the modifications be designated as, "Voluntary Voting Systems Guidelines 2.0", to reflect the (inaudible) nature of the modifications. Section 3, the United States Elections Assistance Commission Board of Advisors further recommends the United States Election Assistance Commission in its consideration of the recommendations and modifications take into account the following. Subsection one, the schedule and procedures to implement Voluntary Voting Systems Guidelines 2.0 should be as efficient as possible to ensure a smooth transition to the new guidelines. Subsection two, the role of the entire membership of the Board of Advisors under HAVA should be respected and preserved with regard to the implementation and modification of more detailed technical procedures and standards employed to conduct the certification of voting systems under

Voluntary Voting Systems Guidelines 2.0. Section 4, that the Board of Advisors recommends the United States Election Assistance Commission to consider the draft of VVSG 2.0 principles and guidelines for full adoption considering the comments offered by the board; and that the EAC adopt within the testing and certification program quality and program manual a provision providing for the ability of VVSG 2.0 requirements and test assertions to be updated in the absence of a quorum of EAC commissioners, period.

CHAIR JOHNSON:

That deserves a round of applause. (applause)

MR. YAKI:

I'm leaving the Secretary position. (laughter)

CHAIR JOHNSON:

Gary, he has set the bar high. Okay, so, what Michael Yaki just wonderfully read into the record and for everyone's sake is what we're being asked to vote for. That is the amendment to replace the original resolution with this language, which, for point of order, does include quite a bit of the original resolution. It just includes some subsections, so it's sort of a child of the two. Okay, so is everybody really clear? Would we like Michael to read that again? (laughter) You did such a good job. Maybe you can replicate that. Okay, so is everybody -- discussion, everybody ready to vote? Keep in mind what you're voting for. A yes vote

would be for the amendment to enact what Michael Yaki just read in total. A no vote would be to not adopt that, and to go back to the original resolution as proposed by the VVSG committee. Okay.

So, everyone in favor of the amendment, please raise your hands and raise them high so we can get a good count. Thank you very much for doing that. All opposed to that, please raise your hand. So, the vote was 20-1 for the amendment, which substitutes that entire -- that language in its entirety. Okay.

MR. IVEY-SOTO:

So, now we still need to vote on final adoption.

CHAIR JOHNSON:

We voted on the amendment, congratulations. And now we need a vote on the resolution as it stands now with the amendment. Again, that includes the marriage of the Standards Board and ours together for a resolution. That is what that includes. So, any discussion on the revised resolution? Okay. All in favor, please raise your hands and raise them high. So, thank you for that. That is 21 yes. And all opposed? Zero. So, give yourselves a round of applause. (applause) Thank you. Thank you very much. I'm going to just request from Neal, is there anything else to report and to act on from the VVSG subcommittee?

MR. KELLEY:

No Madam Chair, but I officially resign as the chair of the  
VVSG. (laughter)

CHAIR JOHNSON:

Noted on the record, there is no resignation. That statement  
will be stricken from the record. That is not happening. Yes,  
Senator Ivey-Soto?

MR. IVEY-SOTO:

I just wanted to thank the body for indulging the discussion.  
This is very important, and how we proceed is very important, and  
so I just wanted to say thank you.

MR. JOHNSON:

Let me ask a quick question. Yes, Jim?

MR. DICKSON:

Jim Dickson, I really want to thank the committee, the VVSG  
committee. I know from talking to several people on it during the  
process, this was a monumentally challenging task, a lot of detail, a  
lot of thought, some contention, and I want to thank our recently  
resigned Chair for doing an outstanding job.

MR. KELLEY:

Thank you, Mr. Dickson. I appreciate that.

CHAIR JOHNSON:

I echo that to everyone. Personally, by the way, that's a fun  
committee to be on, so when that comes back around, everybody

wants to join. Thank you. Thanks, Neal. Thanks to the committee. I echo Jim's comments. How about this? How about we do a quick 10-minute break? Is that agreeable to everyone, to stand up? That was a heavy subject that we dealt with very well. So, we'll do a quick 10-minute break and we'll come right back and go into Mr. Pilger's discussion on DOJ activities for '18. 10-minute break and we will be back at 10:07.

(Break)

CHAIR JOHNSON:

If we can have everybody make their way to their seats, please, we'll go ahead and get started. We have quite a bit left that we need to accomplish before we all jump on a plane and fly back home. So, I would like to recognize Greg Moore, who wanted to provide some information and to pass that on to everyone and speak a few words. So, if everyone can please give Greg your full attention, I would greatly appreciate that. Thank you.

MR. MOORE:

Thank you, Madam Chair. If I could get everyone's attention really quick. A point of personal privilege. Last night we were informed that the author of the National Voter Registration Act, Congressman Al Swift passed at the age of 82. He was the architect of the bill that I know I spent about six years working on, both before I was on the hill and then afterwards, but he steered that legislation through

as a representative from the state of Washington, and as the Chair of the House Administration Committee.

So as an appointee of that committee, I want to just make sure we recognize his contribution for his years of dedication to this issue and thank him and thank the House Administration Committee for all their work over the years, in steering us through the National Voter Registration Act, which is a precursor to HAVA. Anyone else who worked with him is welcome to say anything. I just wanted to make sure we went on record acknowledging that from last night.

CHAIR JOHNSON:

Anyone else wish to comment on that? Thank you, Greg for informing us of that. He did Yeoman's work in getting that passed over a series of years. So, we are very appreciative of that. Jim?

MR. DICKSON:

Jim Dickson. The Congressman was a true gentleman. For those of us who went through the contentious HAVA process, there was controversy on motor voter, but Congressman Swift, in a gentle and thoughtful way, had a process that was really a joy to be part of. And we all owe his grace and thoughtfulness. Thanks.

CHAIR JOHNSON:

Thank you. Thank you, Jim and thank you Greg for bringing that to our attention. That was very important to know. Now I'm

going to turn this over to Richard Pilger from our DOJ board member, to talk about their 2018 election activities. Thank you.

MR. PILGER:

Good morning, everyone. I am Rich Pilger. I am the DOJ criminal elections guy. I am going to talk to you about the noncontroversial subject of federal involvement with your state election processes.

I'm going to talk a lot about what we don't and can't do that may go against the grain of what bureaucrats are supposed to be doing, but first and foremost, I'm going to repeat this point a couple times. We at the department recognize and have recognized for decades, the important principle of federalism that constrains the entire Federal Government in this area.

Elections in all the 9,000-some jurisdictions are the business of states and localities. The Federal Government, our involvement, is the tail on the dog. I don't mean that in a disparaging way, I love dogs. I think the highlight of the meeting was getting the chance to walk Mr. Dickson's service dog out to the road median. That was a good time out there with the dog, but I want to tell you a few ways that we get involved and don't get involved, with an emphasis on don't.

I'll tell you my favorite story from having this gig. I was a corruption prosecutor for about 20 years, and I've had this gig for

about eight years. And I thought I'd heard it all, but then during the 2012 election cycle, I'm getting a lot of calls as the election approaches, it's kind of nonstop. I've got the switchboard operator headphone on, and I'm taking call after call, and I get a call from NORAD, the receptionist said. NORAD. And I'm thinking, great, this is going to be the easiest call all day, the military, aside from the Military Assistance Voting Project -- in the Pentagon, I don't deal with that. I can tell them, not me, go somewhere else. What I hadn't counted on was hurricane Sandy had just come through.

If you all remember, Sandy hit the East Coast a week before election day. And what I wasn't thinking about, as the call came in, was President Obama, who I had seen on the news I think the night before this call, saying, we are going to help people recover from hurricane Sandy, and no red tape is going to get in the way. I think that's a direct quote.

So, a colonel comes on the line from NORAD, he's out on that mountain somewhere in Colorado Springs. He's down there, he's bomb proof, he's storm proof, and he says to me, we have a problem with the polling places in New Jersey in particular. They don't have electricity. And I'm thinking, this is going in an unexpected direction. And then he says, but we have generators, and we could help them out. I'm thinking, great, we can help them out. And then he says, but there's this statute that says if anyone

sends an armed federal officer to the polls, they commit a five-year felony. And so, we can't do it. And I think, I know this statute. I deal with the statute all the time. That can't be right. Let's talk this through. There must be a solution. How about you leave your guns behind? No, we can't go anywhere without our guns. [laughter] I'm like, really? Okay. Have you been federalized? Yes. Can you de-federalize yourselves? Can you report to the governor? I think it was – it still is Chris Christie. Report to the governor, de-federalize yourself. Can't do that, once we're federalized, we're federalized. Okay, can't get there from here. At this point in the conversation, I remember the President of the United States saying, no red tape shall get in the way, and I am the red tape, because this colonel is asking me to let people -- let federal soldiers with guns go to the polls.

Well, in 1864, Abraham Lincoln signed that law that says it's a felony for the military or any armed person, federal person, to go to the polls, more specifically, for someone to send them there, station them there. And this colonel wants this to happen. And I want it to happen. And the President wants it to happen, but the statute is in the way. So, with no case law and no statute, no regulation, nothing but being the Director of the Election Crimes Branch of the Justice Department, I say, wait a minute, don't they have touchscreen voting there? Yes, they do. So those polls

without electricity, they're not taking any votes, right? No one's voting, right? Right. I declare it not a polling place. Go hook them up and then leave. That's how they did it. (applause).

It does bring us to a serious point, and one of our colleague members brought this up. What can the feds do when there is an attack on a polling place, when there's violence at a polling place, when there's bomb threats at a polling place? And this does happen. Bomb threats in particular are an issue. And there are reports. There's a report during two presidential elections that a bomb had gone off at a polling place, and I'll tell you about that. Or a shooting. Reports come in that there are shootings at a polling place. Can the Federal Government do anything? On the same rationale that the electronic voting machines were not -- no longer a polling place when there's no electricity, my view is, when there's an emergency like that, and the polling has stopped, that any federal agent or officer can do whatever they need to do. And this is what I teach to federal law enforcement. If you get a call, bomb threat, you get a call, active shooter, do what you would do for that situation. If you roll up on the scene though, and people are walking in and out, cheerfully voting, turn around and go home, don't get hoaxed.

So, the bottom line is, and to address the most serious concern for election administration, which is violence, if you as

election administrators or the people you're talking to as election administrators, think you can't just call 9-1-1 and expect -- anyone and everyone with a gun to respond, don't think that. The Federal Government will respond to that kind of emergency. But they will walk away, they have to walk away, to the extent that something's happening that hasn't stopped the polling. That's going to be your regular state and local police dealing with the situation, which takes me to the most common complaint that comes in to the FBI, and all the way up the chain to the people sitting around in (inaudible) with a big board in the war room, which is that someone is campaigning to close to the polls, and they won't listen to the election administrator, and there's been some kind of a fracas, or the two tables out front are smacking each other around.

The feds aren't going to respond to that. What we're going to do is, we are going to use a process I'm going to tell you about to get the state and locals to respond as quickly as possible. To hand that complaint off as if it had come in to 9-1-1 locally. They're the ones to do that. It's cops in squad cars, it's a radio car coming up and separating the two people at the table, or assisting the administrator to tell someone to go back outside the election area line, the campaigning line.

Here's how we do that. We set up a task force in each jurisdiction. We have people trained both at the U.S. attorney's

offices all over the country, and in the FBI divisions all over the country, to understand what they can and can't do, what federal election crime is, we'll talk more about that later, and what it isn't. And then we very importantly train them for what we call the election day watch program. And we encourage them to form a task force with election administrators, and very importantly, local law enforcement, state and local law enforcement. So, ideally they will collocate with the people who can get the radio car out there, and if the complaint comes in through the wrong door to the FBI about someone campaigning too close to the poll or one table went over and smacked somebody at the other table, instead of having that bounce around in the Federal Government, it'll hit that task force, the FBI hits that task force who will turn to the person to their left or right and say, do you know about that, and if they don't, we tell them about it and we hand it off, and it gets dealt with that way. So, the long way around of saying, we have a big machinery that we try and put together that when people knock on the wrong door, it doesn't get held up. If there's any complaints about that kind of thing, it gets to the right people quickly.

Now I want to make a plug. This is me checking up on the FBI. So, I have to rely on the FBI to put together their task forces, but they're pretty busy. And in a few jurisdictions, I have heard from some of you during this conference, they may just make a courtesy

phone call and they may just trade phone numbers. That's not optimal. To the extent you hear about that – Board members you have my contact information. Please let me know if you hear about that, because I can make one phone call and that will be redressed quickly.

Also, if you should be the one hearing about this, hearing from the FBI, hey, we want a task force and you've never heard from the FBI, give me a call or e-mail and let me address that.

I'll tell you, one of the best task force operations we've had has been in Nevada, where a very talented FBI agent who cared a lot about this issue, did a great job, and I think one of your organizations here gave him an award for it. He had everybody in the same room, and a really serious thing happened. A call came in that a bomb had gone off at a polling place. Of course, everyone's hair stands up and we're thinking terrorism, and is this going to kill voting across the country. We have to get on top of this before the story breaks. That's all part of our thinking. We need to get the information and figure this out before it turns into a general panic. And it was one of those situations where, this guy a friend of mine, Mike, he turned to the person to his left and said, what's the explosion? The person to his left says stand by, and within a minute came back and said a drunk driver hit a telephone pole and a transformer exploded. And we had that correct information to put

out on a national level because the national people started calling and asking about, is there terrorism in Nevada? Before it could escalate, before people could become afraid.

And we have, in particular response to some of the cyber threats, done a lot better job, and DHS spoke to this a little bit, incorporating the EAC and the commissioners into our ability to pump out messaging across the election administration's space. That's one of those buzzwords now. Space. We will play a game, actually, sometimes. We have bingo cards with the buzzwords like space and lane and bucket. If we're on VTC, we quietly play the bingo game until we get bingo.

But EAC is very important to us, especially with the new cyber threats and the national importance of them, to getting messages pumped out, to getting ahead of incorrect news stories, to make people aware that things are being handled properly. More specifically, here's how it works. When you see on TV or in Dr. Strangelove, the war room, there is actually one of these war rooms in the FBI building. It's called CIOC. They've got every news channel on like a panoramic half circle around you. And it looks like Houston mission control. Everybody's got a computer and a desk and all this, and everyone's got the headphones on. And we do that the entire time the polls are open, for every federal election. Not just the Presidential, we do the midterms, too. And all these

task forces are out there, and they're talking to us if they have a question. If the training sunk in, they can handle it with the state and locals, and we don't need to hear about it until later. But if it's something they're unfamiliar with, something new and different or something that's an emerging issue like cyber threats, we take it in at CIOC and then we talk to whoever else we need to talk to.

So, as an example, in the last election season, the intelligence community had become aware of cyber threats from a certain country and everybody was primed for cyber events. When a couple of cyber events happened or apparent cyber events, some in North Carolina, some in Colorado, the field was ready to help us gather the information for that. Specifically, the one that gave us the most agita, and the one that had me on VTC with the National Security Council. I think they had a guy with a button that turns off the lights in Moscow on the VTC, but it didn't have to happen because our FBI election crime coordinator in Colorado, working his task force contacts, got the information very quickly from Colorado state election administrators that their system having gone down, their public facing registration system I believe it was, had crashed a couple times, but it was an internal technical glitch. And that was explained to the FBI cart team members in terms they could understand, and say yes, we're confident this is the issue, and we sorted that out within about 20 minutes.

We additionally, in the last election, had DHS participating in the program with us. They have talked to you a couple of times already. If you're wondering what the difference is between the DHS program and the DOJ program, I'll say it's all one program. The only real difference is, DHS emphasizes preparedness, best practices to avoid problems, assessment of risks, notification of threats. DOJ typically takes the lead on response. That's all part of a Presidential policy directive that's way too boring to get into. But we work together in terms of response to an incident.

We need to bear something in mind, though. If there's a cyber incident, if there's an emerging threat so we don't know what it might be, it could be something at the polls. As Barbara reminds us very often, there are vulnerabilities at the polls. We might get a call on election day that there's been some kind of attack, say in a swing jurisdiction, that has the machines doing screwy things. We want to try to help, and what we need to do to help is find out from you all, from the election administration community, what do you want? What do you think we can do to help? And then we have to assess, can we do that without appearing to influence the election? So, it hasn't happened yet where we tried to scramble an FBI cart team or DHS people in an incident response, but we're available to try and think of a way to help.

Let me tell you what we can't do. We can't help in a way that looks like the feds have taken over the polling. FBI agents, they're not going to leave their guns behind. They're just not going to do it. They're never going to do it. I have asked them every way I can to do it. They're not going to do it. So, if there's a computer issue at a polling place, and you'd really like FBI cart to come in and help you do that, you've got two problems to bear in mind. One is, FBI probably won't put their guns down and go. They might. I can be persuasive in the moment. But even if they do, we have what we call the noninterference policy lurking behind every possible federal intervention in an election problem. And this is fundamental.

The government, through DOJ policy, will not do anything that makes it look like we are interfering with the election, even if we're not. And to that end, I want to read you something from this book, the second greatest story ever told, which is available on the internet. If you google public integrity section, there is a picture of this book, and you can read as much or as little as you want of it. It's a book that's been around for decades. It just got updated at the end of last year, but some language that has not changed in all that time is at the beginning. And this is under the federal role. Prosecution, not intervention. And we say the principle responsibility for overseeing the election process rests with the states, with the significant exception of violations of the Voting

Rights Act, and that's the Civil Rights Division, not the criminal division, involving denigration of the of the right to vote based on race, ethnicity, or language minority status. The federal government plays a role secondary to that of the states in election matters. It is the states that have primary authority to ensure that only qualified individuals register and vote, that the polling process is conducted fairly, and that the candidate who received the most valid votes is certified as the winner. Translation: The federal government does not exist in this space to ensure the right outcome. That is not our job. And in fact, I'm going to talk to you a little bit about some of the toughest calls we have to make around that issue. But they do come back to this fundamental principle. That's your job. The winner of the election in your state is up to you. It's not our job to fix a problem that occurs, even a problem that's occurred is caused by a third-party. It is not our job to make sure the outcome comes out right. It's our job to hold people accountable afterwards, and thus the federal prosecutor's role in matters involving corruption of the process by which elections are conducted, focuses on prosecuting individuals who commit federal crimes in connection with an election.

Deterrence of future similar crimes is an important objective of such federal prosecutions. However, this deterrence is achieved by public awareness of the department's prosecutive interest in and

prosecution of election fraud, not through interference with the process itself. So, coming back to the idea that, like a FBI cart to come into a polling place. Well, how does that look? Are you shutting down the polling place? (inaudible) And how does that look to the world? Does it look like the federal government is interfering, and perhaps fixing the result of an election? Because there's cynical people out there who are going to say that. And, we are going to assess that case by case. But just to manage your expectations, there is a presumption against doing it. There is a presumption against making it appear that the federal government has taken over even a single polling place. There is very good reasons for that. Its not my policy, although I agree with it, and I am explaining it to you with some passion I hope, because I agree with it. It's a policy that goes back and has been thought through for forty some years.

Let me tell you the worst hypothecial I can think of. It's not hypothetical, it's happened. It looks the worst for the Justice Department. I'm just going to put it out there, because you all ought to know it. The public should know it. What if information comes in to the FBI, to me, and they say we want to open a case because we picked up some information on a wire tap that they are going, they have an inside the polling place scam to dial up the votes for one candidate, and dial down the votes for another

candidate on a machine. They have an election official who is going to do that. And it's going to happen in the upcoming election. Well, we have a noninterference policy. And what we are going to do pursuant to that policy about making sure that that doesn't happen is probably nothing. We are going to let that happen. Its not our job to make sure the right person wins. This is uncomfortable. This is difficult. Just saying the words to you is difficult for me. But this has been thought through for decades.

What we're going to do, instead of jumping in and doing something about what we heard on the wiretap, is we are probably going to let it happen. If we can find some covert way to get evidence of it while it is happening, we are going to do that. But we are not going to prosecute it until you are done and have certified the election. That's the noninterference policy. They may win, the candidate may win who benefits from this, and they find themselves indicted soon thereafter as possible. But what we are going to do pursuant to the noninterference policy is, we are going to let you finish your election process. We are going to wait for the certification. We are going to wait for any election contest that goes into state court. We are going to take all the information from that, and then we are going to lock people up. A question?

MR. HATCH:

In that instance, does the DOJ view sharing that information with state or local election officials as part of the interference?

MR. PILGER:

Good question. And again, this is case by case. I just wanted to give you the worst-case possibility to manage your expectations.

Under my predecessor Craig Donsanto, a hero of the Justice Department who started the book and may be familiar to some of you. We did very very little to gather evidence or to try and disrupt any kind of scheme. We are still doing very little to disrupt, but we are investigating covertly. There was a lot that Craig didn't think was a good risk, but that I have been okay with and it worked out. Where we feel confident that we can gather our evidence with your help, we may bring you in to the fold on a covert investigation. We may do a covert investigation without you. It comes down to a fact-sensitive analysis of how confident we are that the news will not get out that the feds are interested.

Let me add something to this discussion in case you're disheartened about the government not protecting your elections. There's plenty of people who if they knew that the federal government would get involved on the allegation that that kind of polling place fraud was happening, would jump us into jumping in and visibly investigating something, and then would use that to say,

our opponent is under federal investigation. We can't have that. We can't have that. The way the policy works now, that's never going to happen, because we have a policy – you know don't even try and jump us. We're not going to do it. And if you go out and say there's a federal investigation because you sat down and told us about something, we can't stop you from doing that, but you may see a press release the next day, saying no, we are not investigating this. We have a noninterference possible. We're not doing anything about it. We have to give that speech to a lot of people who come in giving us complaints. It doesn't mean we won't take the complaint. We always will, but pursuant to the noninterference policy, we're not going to do more than take the complaint except very covertly. Barbara?

MS. SIMONS:

I too find your example disturbing. There's, of course, a change between now and 40 years ago, which is that election fraud can be committed with no evidence that it happened, because you can have software that self-erases afterwards, things like that. Especially if you don't have paper ballots, or you don't look at the paper ballots. So, I would hope, in keeping with what was just said, that you would at least pass information on to the state and local officials for them to investigate, if possible, but your remedy that the wrongly winning candidate would then risk being arrested doesn't

necessarily follow to me, because you can have fraud committed with no links to the actual candidate. You might get the wrong person elected, and still have no recourse.

MR. PILGER:

That could happen, but we operate under federalism, and our role is secondary. To the extent that you are concerned that the feds are being held back by that, the primary remedy under the federalism that underlies our entire constitutional system is to talk to your state and local law enforcement counterparts and ramp up their ability to respond. In our task force situations, we can perhaps pass the information to state and local law enforcement so that they can actually get in and disrupt it. We don't care. If the state police in Kentucky, who have been a great partner, want to disrupt a vote buying scheme, God bless them. Have at it.

The problem for us is, the Federal Government cannot be seen to intervene in or try to affect an election result. And there's always a way to spin it that way if it becomes public that we're looking at it. Now, there's a lot of thought going on about foreign, that is overseas, not permanent resident aliens, foreign based aliens posing cyber threats to the -- in the ballot fraud space, and we define that at DOJ as the process by which voters are registered, and the process by which votes are cast and tabulated. To the extent we identify a scheme like that, there's a lot of thought

going on about the noninterference policy, and we're going to be dealing with this, I think, case by case on whether we need to, through the mechanisms that DHS identified, get more involved than we have been comfortable with previously. Question? Yes sir.

MR. DICKSON:

Jim Dickson. First, I find this reassuring, so thank you for your work. You mentioned that you do the off-year elections. Do you gear up for special elections for House or Senate races, and do you gear up during the primaries or only in the general?

MR. PILGER:

Jim, it depends on what you mean by gear up. We have this program that's functioning all the time. It functions for purely state elections. A lot of our constraints on what we can do come from whether there's a federal candidate on the ballot. We do have some tools though, especially the civil rights offenses and the travel act for vote buying, that we can apply even in odd year elections.

So, we're always available to intake a complaint in the election crimes space, and we may or may not be able to do something about it. The whole big CIOC war room stay up all night thing, we only do that on election day, when the volume, the traffic is just unbelievable, and we need that kind of all hands-on deck effort.

MR. DICKSON:

Jim Dickson again. With more and more early voting, and vote by mail, is there thought going to the notion that maybe some of that activity might need to be take place in a wider window to include early voting?

MR. PILGER:

Well, I question the predicate. The activity is happening. We're all connected to each other, so I talk to the FBI on almost a daily basis, DHS, we all know how to reach each other. A particular allegation can be dealt with just in the ordinary course of us dealing with each other in our own offices. The big show, as I like to call it, where we do Houston mission control, that's when the volume is too much to handle without people being next to each other.

That really only happens in a very difficult way, difficult to manage way, with the Presidential elections. We go beyond that now, and do every federal election, general election day. Is there a question over here?

MR. RITCHIE

Mark Ritchie. You mentioned in North Carolina, in regards to a disruption of a poll vote situation? Can you elaborate a little bit?

MR. PILGER:

I'm trying to remember, because, we ended up deciding that it was not in our lane. That it was more in the glitch lane. I just remember it because it was one of the things that came in that we

couldn't figure out right away, and so it got on the radar up at the National Security Council, and everybody wanted to delve into it. But it ended up being something that we didn't need to prosecute, and that the local administrators took care of. I just spent a lot of the day talking about that issue to various people. Yes, sir?

MR. IVEY-SOTO

Two things. Daniel Ivey-Soto. The first is that I appreciate very much your noninterference policy. I actually live in a federal district where our US attorney a few years back was given great pressure by members of Congress to interfere just prior to an election, and he refused to do so. And that whole issue kind of played out locally for us in terms of the noninterference and the way that it was trying to be used in a political manner. And so, it really is very important.

The second thing is, I'm trying to find the second greatest story ever told. I keep finding stories about either Pope John Paul II or presumably Jesus' sister. Is there a little bit more information that could actually get us to that? I'm very interested, in particularly the part that you read about the noninterference policies.

MR. PILGER:

I'm sorry, I went a little fast there. So, if you Google Public Integrity Section, that's my home unit. The very first, the official website, I think it's at the top of the list, just click there and go to our

public facing internet page. On the front page, there's a little icon of this book. I'd give you the url to the PDF of the book, but it's a URL. This is federal prosecution of election offenses. Eighth and best edition. [laughter] Edited by me.

CHAIR JOHNSON:

Okay. So, in (inaudible), if we could take one more question, or if you have statements that you want to go through to kind of keep us on schedule?

MR. PILGER:

I'm sorry to cut off questions. Let me just not leave you with the idea that we don't do anything. We do a lot. We come along behind, and I'll tell you about a couple, quickly, a couple of the kinds of things we do.

The most common ballot fraud is vote buying. We get after that no matter how much the bribe for the vote is. We will go after cases predicated on a \$20 payment. We will go after cases predicated on a case of beer. Because, if there's vote buying going on, it's going to come back to a candidate. It will usually come back to a state or local candidate. It's not going to be about the federal race, but as long as there's a federal candidate on the ballot, we have jurisdiction. We'll predicate on those small dollar amounts, those hand-to-hand transactions, just like a drug case, and we will work our way up.

I want to mention briefly some yeoman work that one of my colleagues at the Public Integrity Section did in this area. She went down to McAllen, Texas. She was not thrilled about that. McAllen is typical of the kind of place where this happens. It has a poverty problem. It has a little bit of an isolation problem. And she went down there and worked these hand-to-hand cases, complaining more or less bitterly to me about having to do that. Made the cases. Got up through what they call (inaudible) down there, who are the middlemen, got up to the candidates, got up into the school board, which was the target of the scheme, and got into, unsurprisingly, some core federal corruption. The stuff I used to do, involving hundreds of millions of dollars of education funds.

So, we take these cases very seriously. We are not shy about predicating on low dollar amounts and we will go after them and work them as far as we can get them.

We will do -- this is a controversial subject, so I'll watch my words. We do alien voting cases, and we want to hear from you all if you identify alien voters. The scope of the problem is subject to much debate, and I have no comment on that. What I will say is, when we find out about someone who deliberately voted, knowing they're not supposed to be because they're an alien, we will go after them. We have some challenges in that area to the extent that some of our statutes require us to prove the vote for a federal

office, and it's a secret ballot, so in the absence of a confession, it may be more or less difficult for us to prove the person voted for, say, the office of President twice. But where we can prove it, almost all, I'm always interested in going after those cases. I'm interested in hearing from you about those cases. Our field offices, they kind of drive the bus on whether they're going to devote the resources to it. I encourage them to do it. I think in the current environment, they're very likely to take it up, and we do want to hear about that.

At the same time, I recognize, and I know the comment is coming, I'll preempt it. I understand that aliens, especially illegal aliens, really don't have much interest in coming to the government's attention by breaking even traffic laws, but we are here to do something about it when we find it. And we encourage you, if you're seeing this in the administration of your voting roles, let the FBI in your jurisdiction know.

MR. KELLEY:

So, when that does occur, what is the distinction between the local prosecutor and your investigators wanting to take that on versus it going to your office?

MR. PILGER:

Very good question. The states may or may not have a good statute for that. We have a range of statutes. We have

misdemeanor statutes and three-year felony statutes and five-year felony statutes. We have a lot of flexibility to deal with the alien voter. And that's a good thing. There are going to be some cases where there's maybe a sense of some confusion, maybe somebody at the DMV misled the person, but we're still going to hold them accountable. We may want to consider a misdemeanor there. And then we get the person, we've had this person, it was a Brit, in Florida who was voting deliberately illegally, knew it was illegal and was bragging about it. And then got divorced, and I think his ex-wife told us about it (laughter) and then the five-year felony is entirely appropriate. So, I hope that answers the question. I'm over time so, thank you very much. [ applause]

CHAIR JOHNSON:

Thank you, Richard, and I will put a good plug in for DOJ. Most of my election years came from Kentucky, as their election director, and so we worked very very closely with our US attorneys, the FBI, Craig Donsanto and several people from DC on a multitude of vote fraud cases, and as Richard just said, they are local races, their school board, local races. Some people were selling their votes for students at a college for five dollars and a peach fizz. That was the code. You go in to food mart and get a

peach fizz drink. Who else would drink that, right? Get \$5. I do want to just say thank you on behalf of the past, and I'm sure the future, if you work with them and you get those relationship built up, they're extremely helpful, and they are very cautious and for a reason, and get your state police and various things involved but thank you.

MR. PILGER:

Thank you. And a last note, don't be afraid to come in with an off-year election on vote buying because we have pioneered a way to do that using the federal travel act and state statutes as a predicate.

CHAIR JOHNSON:

Very nice. Yes. Shane. Quickly.

MR. SCHOELLER:

Shane Schoeller. A quick question. We do have local food businesses that will say if you voted, we will give you X Y and Z if you come in. I am curious. What is the law on that?

MR. PILGER:

Well, that's a felony. (laughter) We call this the Ben and Jerry's felony. (laughter) The first time, Craig took this up and I think made the wise decision that the most we'll do is send a warning letter.

Hey, you may not know this, but this is a five-year felony, why don't you knock it off, and they usually stop.

MR. SCHOELLER:

And they were national companies by the way, when I say local, locals in terms that -- I had a very angry e-mail from somebody because we didn't have an I Voted sticker, so they did not get their free item from X Y and Z Place. So, I chose not to respond to it at the time, but I was curious. Thank you for clarifying that.

MR. PILGER:

My favorite of those is, I usually send the warning letter very quietly, again, noninterference. We usually hand deliver to a candidate, if a candidate is involved, so that it doesn't leak out through a disgruntled person who opens the mail. But there was a candidate in New Jersey who was married to the guy who owns world wrestling entertainment. I think the name is McMahon if I remember correctly, and they were going to give out free T-shirts at the polls. So, I sent my little warning letter, you may not be aware of this but this is a felony, knock it off. And had it carefully delivered, discreetly delivered. They went public with it. Black helicopter man is interfering with our right to give out T-shirts, but I got a great headline out of it. I forget the paper, but it was justice smacks down WWE. (laughter) Thanks again. [ applause]

CHAIR JOHNSON:

Thank you, Richard. That was very informative, and we appreciate getting that update on DOJ and we're all going to buy that book. It's good to have. If nothing else, it's good to show to somebody, right, when they're at your door, here's a federal offense?

Okay, so, now, we will move into the other resolutions that we had filed with us that you all have copies of, that we did go over yesterday, and the sponsors did discuss their proposed resolutions.

So, we will go with, is Jim Dickson? Jim, there you are. I'm sorry. You were hidden back there. Jim, so we will bring yours up, and so in your packet, that would be, I believe, resolution 2? That was handed out this morning. Okay. Resolution 2 from in your packet yesterday is the one that he wishes to discuss today.

So Jim, I'm going to turn that over to you for explanation on your proposed resolution.

MR. DICKSON:

Thank you. This resolution echoes a resolution that was passed by the TGDC unanimously. It is not going to increase cost or -- and it does not say that only valid marking devices can be used. It speaks to how a device, whether it's a ballot marking device or something yet to be designed must be accessible.

We deliberately fashioned this to echo the language of the TGDC so that when the commissioners finalizing the VVSG, it will be clear that the entire process of marking, reviewing, and casting a ballot is accessible.

I know that this has been a controversial issue, and it was thoroughly, almost endlessly discussed in the TGDC, but it was a unanimous vote by the TGDC, and we're asking the Board to approve this language. And so, I urge my fellow board members, this is the clearest, cleanest way to assure that the next iteration of voting system standards are accessible to all types of disabilities. I think that that's, so I urge you to vote.

CHAIR JOHNSON:

We have a motion from Jim Dickson to approve the resolution that he has explained and is on the screen. Do we have a second?

MR. KELLEY:

Second.

CHAIR JOHNSON:

Neal Kelley does the second. Neal Kelley. Jim Dickson. And so, now we are open for discussion. Neal.

MR. KELLEY:

Thank you. Neal Kelley. Jim, I definitely support this resolution. I just have a question of clarification. In the TGDC resolution, I think it was the same language

MR. DICKSON:

It was.

MR. KELLEY:

Okay. But there was no distinction between the ability to cast an in-person ballot privately and independently versus an online marketing device privately and independently. And I don't think you are willing to make that distinction. Correct? You're just saying it has to be offered.

MR. DICKSON:

Yes.

MR. KELLEY:

Okay. Just wanted to clarify.

CHAIR JOHNSON:

Mark. I think and then Barbara will come back

MR. GUTHRIE:

Can the secretary read the language? Possibly?

CHAIR JOHNSON:

The entire resolution?

MR. GUTHRIE:

Just the be it resolved?

CHAIR JOHNSON:

Okay. Michael?

MR. YAKI:

I did my quota for the day. Just teasing. The resolved. This goes to Jim's original resolution which says be it resolved that if a voting system utilizes a paper record to satisfy auditability principles, and associated guidelines, the voting system must also provide a mechanism that enable voters with disabilities to mark their ballot and to verify and cast their printed vote selections privately and independently period. Correct Jim?

MR. DICKSON:

Yes.

CHAIR JOHNSON:

Okay. Did everybody get that? And now we go to Barbara.

MS. SIMONS:

Okay. As everybody knows, yesterday we discussed a friendly amendment I had submitted. Jim objected to that friendly amendment, said it wasn't friendly because of the reference to the ADA, Americans for Disabilities Act, the ADA because there has been a court ruling from the ADA that says that its sufficient for

voters with disabilities to have assistance in voting and he objects to that and I understand his concern.

So, yesterday, after the meeting, several of us spent quite a bit of time working together to come up with a compromise resolution. The concern that I had with this resolution and the ADA was maybe not the best way of addressing it is the fact that it talks about the voting system must also provide mechanisms and it appears to me, and I think to some others, that this means that, it's at a minimum ambiguous, at a minimum. That every single voting system must provide these mechanisms. That would rule out hand marked paper ballots. And that is my number one concern.

So, yesterday we got together, and we worked on a resolution that has been handed out that I thought Jim was still supportive of, because I haven't heard anything from him until just now. That you have, that has just been passed out that says, offered by Jim Dickson and Barbara Simons. I guess Jim is no longer offering it, and that resolution, which I felt addressed Jim's concerns, it removes all references to the ADA. Says, be it resolved that when paper ballots are used, every voter must be provided a means to mark, verify and cast a ballot privately, independently, and accurately. That addresses the concerns of voters with disabilities, in my opinion.

If at some point there's a desire to go into greater detail, I'd be happy to work with Jim on some sort of follow-up resolution, but this version, which was passed by the TGDC, I think without proper vetting, because I don't think they appreciated this phrase the voting system must also provide. I think that is really -- that raises a lot of red flags for me.

CHAIR JOHNSON:

So are you offering, are you putting forward an amendment to go to what you just read.

MS. SIMONS:

I don't understand why this has been -- I thought we had a different resolution here. This is what was passed out. I don't know why we are discussing the one that is on the screen.

CHAIR JOHNSON:

The information provided us by Mr. Dickson was that he wanted to go with his original resolution this morning. Jim, would you like to provide some response?

MR. DICKSON:

Yes. The voting system -- I hear her, Barbara's concern that it says paper has to be accessible. I don't think that that's what it

says. It says the voting system. And as I think we all know, when a jurisdiction deploys a voting system, it can be, and often is appropriately paper plus a device. That the two of them are defined as the system. So, I don't -- this does -- the way I read it, I think the way we intended it, and the way that TGDC saw it, that this does not exclude paper. I think that that is not the intent. That is not what it says. We're talking about what we see often, and what we've seen pretty much across the country, which is that a system gives the voter the choice of using either a device or paper and a pen or pencil.

CHAIR JOHNSON:

We'll go to Phil first and Linda.

MR. STARK:

Philip Stark. I'm surprised and disappointed that the hour that we spent negotiating in good faith last night apparently has come to naught. My concern with the language is the ambiguity of the term voting system. And while I understand that it isn't Jim's intent in putting this forward to insist that hand marked paper ballots are unacceptable, I think that this could be read in that way.

I think the term "voting system" is a term of art. I understand that VVSG does define it in some way. I remember seeing the elaborate schematics last time we were together, but I would, I can't vote in favor of this because there is, because of the ambiguity,

there is a reading that would make it necessary for all voters to use a particular technology to cast their votes, which could make it less accessible for some voters. I absolutely support the idea that there needs to be a mode of voting that is accessible for all voters, but I don't think it's the same mode for all voters.

CHAIR JOHNSON:

Thank you, Philip. I'm going to call on Linda Lamone and then I will come back over here, who is also on the TGDC.

MS. LAMONE:

Thank you. Linda Lamone from NASED. Yes, I am also a member of the TGDC. I would like to implore my colleagues to vote in favor of this motion, because is in fact what the TGDC adopted after probably over a year of negotiations between the computer science information technology people and the disabled community specifically, David Wagner, who I am sure a lot of you know and respect well, and Diane Goldman, who are both on the TDGC worked very very closely together and with their colleagues to come up with this language, and I would strongly urge that we follow suit. Thank you very much.

CHAIR JOHNSON

Secretary Ritchie.

MR. RITCHIE:

Mark Ritchie. Having a good decade at being pitched over and over and over and over and over by equipment people, I can assure you this language proposal will be certainly used to argue that paper systems must be replaced. No doubt about it in my mind.

CHAIR JOHNSON:

Thank you. Jim? I believe you had your hand up?

MR. DICKSON:

Yes. I just want to just say that's not our intent, it does not say that. We are comfortable with people voting on paper with pens. As for last night, we did discuss it. I made it clear at the end of the conversation that I am accountable to others, and that I would send the language that we had drafted to the people to whom I'm accountable to, and that I was not endorsing the statement. After e-mails back and forth and phone conversations, my constituents said they wanted to go with the language that took a year to develop from the TGDC, which is what we did, and so I urge people to vote yes on it.

CHAIR JOHNSON:

Yes, Mark?

MR. GUTHRIE:

Primarily because of Linda's comments, I am going to support Jim's amendment, or his resolution, but I really am

concerned. I should say I'm very grateful that Barbara and Philip and Michele worked hard to try to come to a compromise here, and I was hoping that could have been achieved. I wanted to note that.

Thank you.

CHAIR JOHNSON:

Thank you, Mark. Any other discussion on this resolution?

We have a motion and a second on the resolution. Greg.

MR. MOORE:

Are we voting on Barbara's amendment or just on Jim's language?

CHAIR JOHNSON:

I did ask that question early on, from Barbara. If she was making an amendment or not, and I didn't get an answer that she was nor a second.

MS. SIMONS:

In that case I'd like to make an amendment.

CHAIR JOHNSON:

So, you're now making an amendment to go with the language which we will read again please, or someone.

MS. SIMONS:

My amendment is to go with the language that we negotiated in good faith last night.

CHAIR JOHNSON:

Could you read that again please for the membership.

MS. SIMONS:

So, the whereas' are identical to these, so hopefully I don't have to read them.

CHAIR JOHNSON:

No, just the part you're changing, please.

MS. SIMONS:

Be it resolved that when paper ballots are used, and by the way this has been handed out to everybody.

CHAIR JOHNSON:

It was the one handed out this morning. It was highlighted in yellow, the little phrase change?

MS. SIMONS:

When paper ballots are used, every voter must be provided a means to mark, verify and cast a ballot privately, independently, and accurately.

CHAIR JOHNSON:

Thank you. Do we have a second for Barbara's amendment? Yes, Philip Stark is doing the second. We have a motion and a second on the amendment to change the be it resolved section to what Barbara just read, which is on the paper that was handed out this morning that was highlighted in yellow. So, that is what you are voting on. A vote yes would change that

last be it resolved section to what she read. A vote no would not change it, and we would go back to the original language that you're actually seeing on the screen right now. Michael?

MR. YAKI:

I have a question. Actually for Mr. Ritchie. Why do you come to the conclusion that you just did a few minutes ago?

MR. RITCHIE:

This is Mark Ritchie. In almost all my conversations where equipment companies and other technologists were coming in to pitch me. They were citing any particular thing that they could find to argue that paper ballots were either out of date or were not going to be allowed, and the way this language is drafted would give that opportunity for someone to come in and say to us, Secretary of State or whomever, in this case this paper ballot voting system that you use is in violation of or is not consistent with this recommendation that either this body or some other body has made. It's about how companies and others choose to use words. It's why in this whole meeting for a day and a half we've been very careful about words. If we're not careful about these words, somebody will have to sit and listen to an argument, not too far in the future, that their paper system is in fact not allowed.

MR. YAKI:

May I follow up, Madam Chair? So, to the proponents of both these, for the proponent of the amendment and the proponent of the original motion, what is, what would be the difficulty in combining the two, that said something along the lines of be it resolved, if a voting system using paper ballots, every voter must be blah blah blah blah blah, and if a voting system utilizes a paper record, blah blah blah blah blah? Is there a problem with that? Mr. Ritchie, is that something that straddles both lines so someone can't say it's one or the other?

MR. RITCHIE:

Absolutely.

MR. DICKSON:

I'm lost. Absolutely there's a problem or absolutely it's okay?

MR. RITCHIE:

It would be fine.

MR. YAKI:

In other words, Mr. Ritchie is saying he would not be in a position -- he does not feel it would create a position where only one type of system would be used if the language that I just threw out there, which I've not yet throwing out there, because I want to hear from Barbara and from Jim, but the idea would be that if we're

to ensure that the word voting system encompasses both paper ballot and paper record, would that necessarily be a big problem?

CHAIR JOHNSON:

Jim?

MR. DICKSON:

Would it work to say, to add to my original language, best practices calls for each voter to be offered the choice of voting on paper or with a device?

CHAIR JOHNSON:

Barbara?

MS. SIMONS:

Well, I am confused by a couple of things. First Jim's suggestion about each person being offered the choice, that, to me, I mean there is an underlying theme here which is that ballot marking devices are being widely pushed now. They're very expensive. And for example, the state of Georgia, there was almost legislations that would require everyone in the state of Georgia to vote on ballot marking devices, even when these things are phenomenally more expensive than hand marked paper ballots.

So, I don't know quite what a choice would mean because for many voter's hand marked paper ballots are quite sufficient. But more to the point, I don't know what the difference is between a paper ballot and a paper record. When we talk about hand marked

paper ballots and ballots produced by a marking device, I don't quite see the difference, and I don't know how to make the distinction. I'm quite willing to try to add some language that will make it clear that hand marked paper ballots are considered legitimate voting systems. I am just not quite sure how to engineer that language. Maybe somebody smarter than I can come up with it.

CHAIR JOHNSON:

David, I think you had a comment and raised your hand.

MR. BEIRNE:

Yeah. There was an interesting turn of phrase in the original amendment provided by Jim Dickson versus Dr. Simon's, and it was the one that talks about -- in the original resolution from Mr. Dickson, there is a reference to mark their ballot and to verify and cast their printed vote selections privately and independently.

That is a turn of phrase, as I recall, that kind of embraces some flexibility that we are not trying focused on one single type of solution for voting systems. And there is a nuance here between what the language, the focus on actual ballots, and ballot of record. And I think we see it on another resolution we will be considering. That is a term of art in terms of what that means, in terms of whether it's a full-face ballot, the official ballot of record, is it the interface. Is it a reflection in terms of maintaining accessibility, and

I would offer that Mr. Dickson's resolution gives that more of that flexibility to embrace whatever the state may require. But it's signaling what is the minimum acceptable level of accessibility that that community is looking for. So, I would definitely be in support of the original resolution offered by Mr. Dickson.

CHAIR JOHNSON:

Yes, Senator Ivey-Soto?

MR. IVEY-SOTO:

I appreciate the tonality as you called on me. I just wanted to answer Barbara's question, which is that it all depends how the state defines ballots, and in some states the ballot is what is inserted into the tabulator. In other states, the ballot is what the voter marks regardless of what is inserted in the tabulator, and there are other states where a ballot, and separate from the ballot there is a paper record. So, we have different iterations and they are actually quite distinct.

CHAIR JOHNSON:

Thank you for that good clarification. So, we have a motion and second on an amendment to, and that is now up on the screen. The amendment would be to remove what is there now in the be it resolved that section, to this language that is highlighted in yellow that is on the screen now. Any other discussion on that? If not, I

will call for a vote, so just remember a vote yes on this amendment is to strike the original language and puts this language in its place. A vote no would be to not strike the original language, and we would go back to discussion on the original resolution. All in favor of the amendment to strike the language and replace it with what's been highlighted in yellow, raise your hand, please. All of those opposed, raise your hand, please. The motion fails. A vote of 7 yes, 13 no.

MR. MOORE:

Would you call for abstentions, please?

CHAIR JOHNSON:

For abstentions of the vote? Did anyone abstain from the vote? Yes, I'm sorry. Greg did, as did Richard Pilger. Did I miss anybody? Okay. Yes, Linda?

MS. LAMONE:

I make a motion to adopt the resolution 2018-2 as proposed by Jim Dickson.

CHAIR JOHNSON:

Okay, we have an original motion, and a second already on the floor to approve the resolution as presented by Jim Dickson. We do already have that motion on the floor. Thank you, Linda though.

MR. STARK:

May I propose a different amendment? Could we add some language to the effect that this language shall not be construed to prohibit the use of hand marked paper ballots, as a component of a voting system?

CHAIR. JOHNSON:

We have a motion to include some language to say it does not, help me, it does not preclude the use of hand marked paper ballots as a component of a voting system. Is there a second on that motion for the amendment?

MR. YAKI:

Second.

CHAIR JOHNSON:

Michael Yaki seconds that. Okay, so we have a motion and a second on that language. Jim, I think I saw your hand.

MR. DICKSON:

I would accept a friendly amendment if, let me explain. If it says voters are to be offered the choice of voting on paper or with a device, and the reason why this is very important to us is, in every election, we get lots of people who go into the polling place and are pressured or prohibited by the poll worker from using the device. There's actually somebody in the room who has experienced this. So, it seems to me it makes it clear to say the voter shall be given the choice of using paper or the device, makes it clear that it

doesn't restrict paper, but it also addresses a very serious problems that we deal with in every election. Philip, does that language make you comfortable?

MR. STARK:

Philip Stark. Jim, thank you very much for that. I have a couple of concerns about it. One is that it feels like that's weighing in on election administration rather than on voting systems, and I don't know whether that's within our purview at all. I would also want to work on the wording of that.

CHAIR JOHNSON:

So, the motion before us is the motion, the original motion to include, the amendment I should say before us, is to include language that states, in the be it resolved section that does not preclude the use of a hand marked paper ballot? That is the original motion by Philip, seconded by Michael Yaki. That is what is before you right now is that amendment. All in favor of that amendment, please raise your hand.

MS. MCLAUGHLIN:

I don't understand what the amendment is. What does it read?

CHAIR JOHNSON:

The amendment, Philip.

MR. STARK:

The amendment would add a sentence at the end that says,  
this is not, this is not to be construed --

MR. YAKI:

This language shall not preclude the use of --

MR. STARK:

Of voter marked paper ballots as a component of a voting  
system. Hand marked.

MR. DICKSON:

Can I have the language repeated, please?

MR. YAKI:

This language shall not preclude the use of hand marked  
paper ballots as a component of a voting system.

CHAIR JOHNSON:

Neal?

MR. KELLEY:

I just wanted Jim to articulate his concern with that language,  
because that seems much more acceptable to me, but I want to  
give Jim that opportunity.

CHAIR JOHNSON:

Jim?

MR. DICKSON:

I don't have a problem with that language. I would like to be  
able to have the language address a real serious problem, and

there are jurisdictions that do offer every voter the choice. We don't get complaints there. I don't think that this is not us dictating election procedure. This is a recommendation to the EAC on what the systems stance should be. And I can't imagine that the EAC is going to dictate an election administration procedure. What I'm proposing instead of this language is just, in addition to it, making it giving the commissioners the option of pointing out a best practice, which is all they would do they would never dictate a practice; they would simply point out a best practice.

CHAIR JOHNSON:

Paraphrasing here, Mr. Stark, Philip. I don't believe you were, in the earlier discussion, I don't believe you were agreeable to that? You are comfortable with what is on the screen?

MR. DICKSON:

I'm comfortable with this addition. I am disappointed that we can't address the serious problem here, and I wonder why that's not acceptable.

CHAIR JOHNSON:

Alysoun?

MS. MCLAUGHLIN:

Jim, I just want to clarify your position as well. Do I understand that you would feel more comfortable if it said

something like, provided that an accessible option is also available,  
at the end?

MR. DICKSON:

Let's just, I accept this addition. Let's just move on.

CHAIR JOHNSON:

Okay. So, again we're voting on the amendment proposed  
by Philip and seconded by Michael that includes the highlighted  
yellow language.

MR. DICKSON:

I think if I accept it we don't need two votes.

CHAIR JOHNSON:

I want to make sure that everybody knows the terms. Does  
the seconder of that original motion, Neal, are you comfortable with  
that, too?

MR. KELLEY:

As long as Jim is.

CHAIR JOHNSON:

And Jim says he's comfortable. Great. So, now we are  
voting on the resolution. The original resolution has now been  
added to include the highlighted language at the end.

So all in favor of that, please raise your hands. All opposed?  
Okay, one? Anyone abstain? One abstention. So that passes, the

motion does pass 20-1-1. Thank you all very much. Now we will move on to Mr. Stark's resolution to add to propose.

MR. SCHOELLER:

Excuse me. Don't we have to vote on the motion as amended or was that both?

CHAIR JOHNSON:

I'm sorry. It was a friendly amendment so the original motion maker and seconder did agree to have that changed, so just one vote. But thank you for asking us. If everyone has Mr. Stark's -- he has two resolutions. We'll take the first one. Those were passed out to you yesterday, and as far as I'm understanding, I don't believe they have changed. And it is now motion 3 and it is up on the screen.

MR. STARK:

Thank you. Forgive me for not understanding the order of procedure or whatever. This is an opportunity for me to speak in favor of it?

CHAIR JOHNSON:

Yes, If you would like to -- I'm sorry, if you would like to talk about your first -- the first one that's up on the screen, and just

explain another little bit about it, because it seems like it's been a long time since yesterday.

MR. STARK:

It does feel that way. So, the new VVSG guidelines Section 9.1 says that an error or fault in the voting system software or hardware cannot cause an undetectable change in election results.

This is the principle of software independence. It's basically the definition of that, and currently the only technology that can provide that is paper, curated paper. Obviously, you have to take care of the paper as well. The second says, the voting system produces readily available records that provide the ability to check whether the election outcome is correct and to the extent possible identify the root cause of any irregularities.

The first part of that clause also requires paper records. The 9.3 says voting system records are resilient in the presence of intentional forms of tampering and accidental errors. Again, that requires paper records. And 9.4, the voting system supports sufficient audits, and if the purpose of the audit is to ensure that the outcome is correct, that also requires paper records. There may someday be a technology that would allow us to do without paper records but for now that system, this basically requires paper, and so I was hoping we could make it clear that for now this requires paper being able to keep the VVSG at a high level, evergreen, so

that if someday there is a technology for which, that could supplant paper, its tamper evidence, tangibility, human way to recover from errors and so forth we could adopt it, but meanwhile to just enunciate the fact that this means that voting systems need to have to have a voter verifiable paper based record. I noticed that in the resolution I used the word paper ballots. I did not mean it as a term of art, and perhaps there will be some discussion on that.

CHAIR JOHNSON:

Great. Thank you, Philip. Any discussion? We have a motion. I'm sorry, we have a motion by Mr. Stark. Is there a second on this one. Second, Barbara does the second. So, discussion. Yes, Senator Ivey-Soto.

MR. IVEY-SOTO:

On the last point made by Mr. Stark. I am wondering how they would feel about just striking the word ballots? Could we just simply say not to certify a system that does not use voter verifiable paper as the official record of voter intent?

MR. STARK:

Paper, paper records, does paper make sense to everyone grammatically without using it as an adjective? I would accept that as a friendly amendment.

MR. YAKI:

Or even say that does not use a voter verifiable paper record.

MR. IVEY-SOTO

Well, we are saying as the official record. Right?

CHAIR JOHNSON:

The suggestion is to strike out the word ballots, correct?

MR. IVEY-SOTO:

Yeah. Change paper from an adjective to a noun.

CHAIR JOHNSON:

Okay.

MR. STARK:

That is acceptable to me.

CHAIR JOHNSON:

Is that acceptable to the secondary? Yes. Any discussion on this proposed resolution? Linda?

MS. LAMONE:

Linda Lamone. NASED. What worries me about this resolution and what it is instructing the EAC not to do, is that it sends the message to people out in the community that may or may not be already in the voting system developing or manufacturing, that you need not explore any innovation whatsoever, unless it absolutely involves paper, and we don't know

what's coming in the future, and I think that it's very shortsighted to limit ourselves at this point.

CHAIR JOHNSON:

David.

MR. BEIRNE:

I've got a couple of concerns on this one. The insertion, already an interpretation on the use of the term software independence that has come up before, but that is not expressly stated in principle 9.1. And then also to suggest not to certify any system that does not use paper ballot or paper record as the official record of voter intent, is tying it to a to a state rule provision.

The states, that is a direct injection into the election administration process. That is not something that really is subject to I would say the parameters of the certification program itself.

CHAIR JOHNSON:

Senator Ivey-Soto?

MR. IVEY-SOTO:

So, recognizing [inaudible] the concerns that David just raised, I would encourage people to vote for this. By striking the word ballots, so we use paper as a noun instead. We are still permitting innovation to take place. We're not restricting people to the use of paper as the ballot. So, there's still innovation, but we are saying that we must be able to recreate an election in a manner

that is not dependent upon the technology. And under what is currently available, this is not part of the principles. This is the resolution that is valid for now until we pass another resolution or something else comes up, but I think it's incredibly important that elections be able to be recreated without depending upon the technology.

I don't know of any other way right now of recreating an election that doesn't depend upon the technology without involving an independent record and the medium that we use right now for an independent record is paper. So, based upon that, I would urge people to vote for this.

CHAIR JOHNSON:

Okay. We, I think -- Gary, did you want to comment? Or was that just a shrug? Okay, Patricia.

MS. TIMMONS-GOODSON:

Pat Timmons-Goodson. Commission on Civil Rights. I intend to vote in favor, but for some reason the advise wording gives me pause. Wondering whether we simply want to recommend (inaudible) the word advise is giving me some concern.

CHAIR JOHNSON:

So, perhaps replace advise with would recommend? Is that what I understand?

MS. TIMMONS-GOODSON:

I guess that is where I am going.

CHAIR JOHNSON:

Okay, I just want to clarify. Philip?

MR. STARK:

That would be fine with me. I thought as the advisory board, we advised, but recommending is fine, too. [ laughter ]

MS. TIMMONS-GOODSON

That would make sense. (inaudible)

CHAIR JOHNSON:

Okay. Okay. Shane:

MR. SCHOELLER:

Shane Schoeller. Senate Rules. I think that we just went through this process of selecting election equipment, but as I visit with constituents back home, the one thing that does give them certainty is a paper trail, and that seems to go across people of any political stripe, regardless of their background. I think the other thing that concerns me is that when we would have an election that hangs in the balance at the national level, and you don't have a paper trail that you can go back to, there's going to be a lot of questions to how that vote is verified. As I talk to people, regardless

if you about a seat for local city council, county governments, state legislature, federal. When you are dealing with seats of power, There are often times, unfortunately, as the DOJ mentioned earlier, Richard, people will try to play games with that in terms of trying to change the outcome intentionally, so at least if you have a paper trail, as he said being able to go in and change the machine total at the end of the day.

We have, as you know, a post-audit that I'm able to visit with about voters and I always let them know, we have a certain percentage of races that we hand recount, so we can verify the machine count. And when I tell that to folks, they have a much better confidence in terms of what we have done when we certified that election. So, I think that in the role of federal government, there is a role in terms of, this is the part that I think we have to have a discussion about, is when it comes to the post-audit, there has to be a standard nationwide when you have national elections. Something that everyone can look to and say, okay, we understand that you can use whatever machine you want, et cetera, you can use the technology you want, but there has to be a standard in terms of post-audit. Paper has worked for thousands of years, and I think it will continue to work in the future. So, when I see the Department of Justice, when I see Fortune 500 companies who have their information hacked into and changed for example or

used, I think that we have a duty to the voters to give them something they can have certainty about after they cast their ballot, if something is done in terms of the electronic record the day of the election. And that is why I support this resolution. I think it's a good thing to do. Thank you.

CHAIR JOHNSON:

Neal?

MR. KELLEY:

Very quickly, Madam Chair, I'm just a little confused. Only because the principle itself, the overarching principle, is that a system must be auditable, and the voting system is auditable and enables evidenced base elections. I have a paper trail in California. I don't know how I would do it other than with a paper trail. So, I'm wondering if this -- I understand Philip's intent, but does it belong more in the requirements, and to David's point, you're not subverting state law or you're not trying to force that down the state's throat.

CHAIR JOHNSON:

That's a good point. Ricky?

MR. HATCH:

In talking with one of the voting system vendors, they indicated to me, and you may correct me if I'm wrong, that the state of Colorado actually uses the scanned image of ballots as the

official record. If that is in fact true, this would be going against what has been established by the state of Colorado as interpretation of what the official record is.

CHAIR JOHNSON:

And in the audit, they are using the scanned images to pull the ballots, but they are pulling actual paper ballots. They are actually pulling the paper and doing a risk limited audit from it.  
Gary.

MR. POSER:

Gary Poser. This time I did raise my hand. Minnesota uses paper and I am perfectly, very satisfied with that. But as I am here representing NASED, I feel I need to say that I think this is really something that should be left up to the states to determine. What type of equipment they want to use and regardless, even though it would be great to have a federal standard for looking at all of that, we don't have one single system that every state is required to use for their voting system, and I think that is important for that to be left up to the states, and so I'm going to oppose this amendment simply because I think it should be left up to the states as to what equipment they will use.

And I will also, for the record state that the proxy I had did not give me any direction on what to use for this particular

resolution, so I will be abstaining for the Governor's Association vote.

CHAIR JOHNSON:

Philip.

MR. STARK:

Philip Stark. So, states of course are still free to use whatever equipment they want, and they are free to have their own certification programs, et cetera. The issue is what the EAC will certify. There are states that have their own certification programs and choose to do it their way but the only way right now to be consistent with the VVSG is to use paper.

CHAIR JOHNSON:

Gary?

MR. POSER:

Gary Poser. [inaudible] I forgot to add in my previous one. I am also unclear here as to the intent of, is it to advise the EAC immediately not certify any system that does not use paper because VVSG 2.0 won't be adopted until we have a quorum either, so I'm not sure where our advice is currently with the current certification process.

CHAIR JOHNSON:

I just want to make a point. I know people have flights and we are over schedule, and I'm not limiting debate at all. I am

simply saying if you are leaving and you would like to vote on these, please remember proxies. We've had quite a flurry of proxy activity. Remember, if you are leaving before we can vote on these, proxies are available if you so choose. Jim, I believe you had your hand up?

MR. DICKSON:

Yes. I'm going to vote no and I want to echo what was just said, but I want to, -- the national standards is a dangerous -- we need EAC commissioners, and I'm afraid that this could be used in Congress to argue against the appointment of commissioners because the argument would go something like, this thing that came out of the existing EAC through the Board of Advisors talks about national systems for recounting, and I think that would make it harder for us to get commissioners.

CHAIR JOHNSON:

Thank you. Senator Ivey-Soto?

MR. IVEY-SOTO:

I just want to talk about states' rights for a second. States' rights are incredibly important, and a state is free to do what it chooses to do. What's our role here today? Our role here today is Board of Advisers for the United States Election Assistance

Commission. The question today is what should the United States Election Assistance Commission, what do we recommend, not advise, but recommend, that they certify, or not certify, and they will do what they choose in the end?

A state is free to purchase and adopt a federally certified voting system, or a voting system that is not federally certified. That is the state's choice. This does not interfere with that state's choice.

CHAIR JOHNSON:

Okay. Secretary Ritchie?

MR. RITCHIE:

Having been involved in a few recounts, paper is an essential element, and at a national level, I'm going to be a very strong advocate for this resolution because I believe, as a national advisory body, it's the question of the people's trust in the system, and which paper is at the moment the only real possibility that we have.

CHAIR JOHNSON:

This is the resolution. The friendly amendment to take out ballots, what's highlighted, will not be there, at the risk of perhaps losing a quorum even with proxies. I'm going to ask for a quick proxy update. Really quickly.

MR. STARK:

I accepted a friendly amendment to change advise to recommend.

CHAIR JOHNSON:

Thank you for that reminder. Sorry about that. Okay. So those two things, let's do a quick proxy check, so people understand who is voting for who. And please understand, I, like Gary, do not have directions from Secretary Lawson on this, so I will be abstaining from that, but voting on my behalf. Just to let you know I'm not voting twice.

MR. STARK:

Sorry, now it's not quite grammatical. Forgive me. It's Philip. Sorry. So, we recommend that the EAC not certify.

CHAIR JOHNSON:

Are we good with that right now? Okay, Michael, can you give us a proxy update?

MR. YAKI:

We have, Mr. Hatch has the proxies of Linda Lamone to vote against this resolution. (inaudible) Ricky Hatch has a proxy. You have a proxy. Mr. Stark has a proxy. Gary Poser has a proxy. And

Patricia Timmons-Goodson has a proxy. Actually, Mr. Hatch has two proxies.

CHAIR JOHNSON:

Two proxies. Okay. Great. I appreciate that, Michael. So, all in favor. I believe we have discussed this. I don't see any hands raised, so all in favor of resolution 2018-3 proposed by Philip Stark. This is in favor of this please raise your hands. So, all against that, please raise your hands. All abstentions? Three abstentions. Four? What was that vote total? 11? 11 in favor.

MR. YAKI:

How many abstained? That can't be right. That's more people than we have. Can we, we have to redo this.

CHAIR JOHNSON:

Okay, can we – let's – Okay, how about this? I know this is real confusing because we have all these proxies. How about we do the ayes again just to make sure we get this right, because this might be close. So, for the resolution raise your hand. If you have a proxy, just one proxy raise both. You've got Nine?

MR. YAKI:

No, no, Barbara can't vote because [inaudible] Okay, let's start – do it again. (Counting)

CHAIR JOHNSON:

Okay, everybody raise your hand high if you're going to vote yes in this case. Okay, so we have 10 ayes. How many noes? 8. How many abstentions? 4 abstentions. So, the motion does pass.

MR. YAKI:

10-8-4. That's okay. It was a Chicago vote.

CHAIR JOHNSON:

Thank you. All right. Philip, do you have a second resolution?

MR. STARK:

Thank you. Philip Stark again. The next resolution concerns accessibility and usability, again. The idea is to try to be in harmony with VVSG 2.0.

One technology that is being marketed very heavily right now is ballot marking devices that produce a summary ballot that includes selections only with very often with a quite abbreviated name of the contest or description of the contest. And my concern is that there has not been much, if any, usability testing of those sorts of summary ballots to ensure that voters can effectively verify their votes using them. If we just assume that because it's paper, it's going to be okay for voters without disabilities.

Personally, I had gone through the exercise of voting using technology like that for a complicated ballot, sort of a California style ballot, and then going back and trying to verify my selections,

and my memory was not good enough to tell whether any contests had been omitted from the summary ballot, nor from the brief descriptions or the abbreviated names of the contests, to recall how I intended to vote when I went in and looked at the summary ballot.

My concern is that, before these get promulgated very widely there be additional testing to ensure that this medium for producing a piece of paper really does satisfy the requirements of the VVSG, and in particular, that while it's possible to design a full-face hand marked paper ballot that is unvoteable and unverifiable, that somehow if you do the best job you can with both of these, that it's not substantially worse. That's the intent of this resolution, is that testing happens before systems start to get approved.

MR. YAKI:

Madame chair may I make a quick grammatical suggestion for the first sentence, instead of the colloquial "we" that it say that the Board of Advisors, and then in deference to Ms. Timmons-Goodson, recommends that the EAC not certify.

MR. STARK:

I accept that as a friendly amendment.

CHAIR JOHNSON:

Do we have a second for that proposed resolution? Second, Senator Ivey-Soto. Right there at the last minute under the wire.

Okay, so we have a motion and a second. Do we have any discussion on that, the proposed resolution? Yes, Jim?

MR. DICKSON:

I oppose this resolution. I'm deeply sympathetic to the issues that you raise, and I absolutely believe that it needs to be researched. But blocking the certification of equipment, which is already being used in many jurisdictions, including my own, will create huge problems and huge expense. I wonder, would you accept amending this so that what we're calling for is researching the problem and seeing what the effect is, eliminate the not certified clause until we have the research?

MR. STARK:

My concern is partly that we're going to end up in a situation much like what happened after the original HAVA and the promulgation of DRE's, where a bunch of equipment got purchased and ended up creating new problems, and then there was no longer funds available to buy equipment that solved those problems.

There would have been less expensive, more reliable, auditable systems, if we hadn't jumped in. I'm actually hoping so slow things down a little bit to understand whether there is a problem and how big it is before jurisdictions start spending a bunch of money on systems that might ultimately turn out not to be usable by a majority of voters.

CHAIR JOHNSON:

Neal?

MR. KELLEY:

Thank you Madam Chair. Neal Kelley. Like the previous resolution, I oppose it because we're going down a path that's not helpful, in that we're carving out certain circumstances or situations not to certify systems, and state's rights aside for a second, there are some states that rely solely on the EAC certification and do not have certification programs in their states. So, for that reason I would be opposed

CHAIR JOHNSON:

So, yes, Senator Ivey-Soto?

MR. IVEY-SOTO:

Just very quickly, I would point out that is a state decision. If they choose to rely upon the feds, they can choose not to rely on the feds. That's their choice. And second of all I do think this is incredibly important again, just because what the voter casts does not list every candidate, it's a problem. And certainly, without research it's a huge problem. It's a great sexy thing to sell, but it's a huge problem. Thank you.

MR. KELLEY:

Can I just follow up on that? I agree with you senator. I do agree with what you're saying. I just think it belongs in a different

place within the EAC, that is in the requirements and test assertions, etc. With further research.

CHAIR JOHNSON:

I do not see anyone else having raised their hand or notated that they want to talk. So, this is the resolution. We have had a couple of friendly wording changes that I believe are reflected.

At this point, all in favor of this resolution, please raise your hand and raise them high. A vote aye is a vote for the proposed resolution. So, 9 for. For those wishing to vote against, please raise your hand or hands. And those wishing to abstain? And we do have two abstentions. So, the motion passes -- or it fails, excuse me. The motion to approve -- it's been a long day right. The motion to approve fails.

MR. YAKI:

Nine in favor, 11 against. 2 abstentions.

CHAIR JOHNSON:

So, the motion fails. So that, unless there are other resolutions anyone has. Yes, Jim?

MR. DICKSON:

I would ask a simple yes vote that we request our officers to send a letter to Congress and the White House, saying we need a full commission.

CHAIR JOHNSON:

We have a motion and a second by Jim Dickson, was the motion maker. Senator Daniel Ivey-Soto was the second. The motion on the floor is to request the officers of the Board of Advisors to send a letter to Congress.

MR. DICKSON:

And the White House.

CHAIR JOHNSON:

And the White House requesting a full commission. Yes, Mr. Pilger.

MR. PILGER:

I have a concern that is maybe for the general counsel here that we may not be permitted to lobby Congress in this way.

CHAIR JOHNSON:

Thank you, that was going also to be my question. I would personally view that as lobbying. Do we know where Mr. Tatum is located to get clarification? Did he just leave for his flight?

MR. YAKI:

Or we amend it to say if permissible by the general counsel.

MR. IVEY-SOTO:

(inaudible) off mic

MS. TIMMONS-GOODSON:

(inaudible) off mic

CHAIR JOHNSON:

Okay. How about we do a combination? How about this?

That we say that it be altered if agreeable. That it be altered to say that the officers send a letter to Congress and the White House requesting a full commission if permissible. I'm trying to get that if permissible because we do need legal counsel weighing in on that before it's drafted.

MR. IVEY-SOTO:

[inaudible] Just simply informing of the constraints of not having a full commission. And then it is up to them to do with that information. If permissible.

CHAIR JOHNSON:

Okay. If permissible. I really want to add that if permissible. I know none of us want to do something we shouldn't be doing.

MR. DICKSON:

I accept the change. So, its not a lobby. We're informing them of the problem, if permissible.

CHAIR JOHNSON:

Yes, Mr. Pilger.

MR. PILGER:

And just so this doesn't get drawn out, maybe we could agree to leave that to Counsel to the Commission to determine, if it's permissible.

MR. DICKSON:

That's fine.

CHAIR JOHNSON:

Correct. I'm sorry. Yes, thank you for that clarification. That would make sense. If permissible per the EAC General Counsel. Thank you. So, any discussion? All in favor say aye at this point. Opposed? Nay? Abstained? Perfect. Richard Pilger does abstain on that one. [inaudible] Okay. So, one quick thing. A couple of quick things. Do we want to swear in the officers while we're here? Do a quick swear-in of the officers? So, if you all would come down to the front, I think that will work.

I just want to say thank you to everyone for a great meeting. Lots of patience. Thank you for letting me be Chair for this past year. I appreciate it. Thank you. [applause]

CHAIRMAN HICKS:

If someone could take a few pictures that we can give to the communications staff, that would be great. Anyone with a phone?

Raise your right hand. [Swearing-in ceremony] I, state your name, do solemnly swear or affirm, that I will support and defend the Constitution of the United States of America against all enemies, foreign and domestic, that I will bear true faith, and allegiance to the same. That I take this obligation freely, without any mental reservation or purpose of evasion. And that I will well and faithfully discharge the duties of this office, on which I am about to enter, so help me God. You're sworn in. [ applause]

CHAIR JOHNSON:

With that, and no further business, I say we are adjourned.

Safe travels home. [ applause ]

[Meeting adjourned]