

**United States Election Assistance Commission**

**Standards Board Meeting**

Held on

Thursday, April 19, 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) Standards Board Meeting that was held on Thursday, April 19, 2018. The meeting convened at 8:51 a.m. EDT and was adjourned at 4:28 p.m. EDT.

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[Call to Order]

CHAIRMAN KING:

Good morning, I call this meeting of the U.S. Election Assistance Commission Standards Board to order on April 19, 2018. Welcome to all of you in attendance. We're very pleased that you were able to brave the weather to come to Miami in April and hope that you've enjoyed the hospitality of the folks here and especially the hotel staff and others who have gone to great lengths to make our meeting an efficient and successful one. So, we'll proceed on with our business. I understand we have some reports from committees that met shortly before we convened, so I will recognize Gary Poser to provide (inaudible) -- here we go.

MR. POSER:

So, the Proxy Committee met this morning. We reviewed 19 proxies that absent members have provided to members who will be present, and they were all found to be sufficient. That's the report of the Proxy Committee.

CHAIRMAN KING:

Thank you, Gary. I'll report as chair of the Resolutions Committee that we met briefly to determine that Resolution 2018-01 is in conformity with statute and in proper form according to counsel for the EAC. So that is our Resolutions Committee report to this body. At this time, we'll have a video welcome to our host from Representative Ileana Ros-Lehtinen. If we could have that video proceed that would be welcome.

VIDEO:

Hi, I'm Congresswoman Ileana Ros-Lehtinen, and I'm so thrilled to welcome the United States Elections Assistance Commissions' Advisory Boards to the great city of Miami, which I am so proud to represent here in Congress.

The EAC Standards Board and Board of Advisors play an important role in advising the commission and its work to support election administrators across our nation. Your gatherings this month are especially important as the nation prepares for the 2018 election and looks ahead to the next presidential election in 2020.

The U.S. Congress recently approved \$380 million dollars in funding for states to improve the administration of elections for federal office. As our nation's elections infrastructure ages and we face new challenges, including security threats, this infusion of funds seeks to help election officials across the nation provide secure, efficient, and accessible elections for the voters they serve.

To keep our elections secure, I've also introduced the House companion to the Van Hollen-Rubio bill. The defending elections from threats by establishing the Red Lines Act, better known as the Deter Act.

What does this bill do? Well, the Act uses powerful national security tools to hold accountable those that have attempted to disrupt our democratic process, and also to dissuade hostile foreign powers from meddling in our future elections by ensuring that the costs outweigh the benefits.

I know these are some of the important issues that you will be discussing during your meetings this week. As Americans on the front lines of administering and defending our elections, you are providing essential work, and I want to thank you for taking the time to serve as an advisor to the U.S. Elections Assistance Commission. The EAC is an unparalleled resource for election officials charged with administering the most fundamental part of our democracy, the vote.

Again, thank you for coming to our piece of paradise. While I hope you are able to accomplish all that is on your agenda for this gathering, I also hope that you will take time to explore our vibrant city. Best wishes for a successful meeting and safe travels as you journey home. Thank you.

CHAIRMAN KING:

Thank you. We all appreciate that welcome, I'm sure. It is a great pleasure to be in Miami with all of you to do our business. At this point, I'll begin by recognizing Christy McCormick to lead us in the pledge of allegiance.

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[Christy McCormick led all present in reciting the Pledge of Allegiance.]

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CHAIRMAN KING:

At this time, we'll have the roll call to determine a quorum. Sally Williams has been elected as secretary pro tem and will perform that function. Let me give a couple of instructions before we begin. If you are holding the proxy for a member, when that member's name is called, please respond by saying here by proxy and identify your name, and that way we will show that the individual is properly represented.

I also want to take a moment to note that our proceedings are being transcribed, and it would be helpful to our transcriber, Mr. Joseph Bobby Lee, if you would be certain to give your name and your jurisdiction before you begin any remarks. So whether that's in discussion we have later on or any other reason that you have to address the body, please help him with that. And, of course,

remember for the sake of his sanity in performing the transcribing to not speak while others are speaking so he can capture the conversation.

CHAIRMAN KING:

We will begin the roll call.

MS. WILLIAMS:

Marci Andino

MS. ANDINO:

Present

MS. WILLIAMS:

Kyle Ardoin

MR. JONES:

Here by Proxy by H. Lynn Jones of Louisiana

MS. WILLIAMS:

Lori Augustine, Josie Bahnke

MS. THOMPSON:

Here by proxy, Carol Thompson

MS. WILLIAMS:

Lynn Bailey

MR. GOINS:

Here by proxy, Mark Goins

MS. WILLIAMS:

Kenny Barger

MR. BARGER:

Present

MS. WILLIAMS:

Rachel Bledi

MS. BLEDI:

Present

MS. WILLIAMS:

Sheri Brewer, Katie Browne, DeAnn Buckhouse

MS. BUCKHOUSE:

Here

MS. WILLIAMS:

Bryan Caskey, Nikki Baines Charlson

MS. CHARLSON:

Here

MS. WILLIAMS:

Melanie Clark, Dana Corson, Carri Crum

MS. CRUM:

Present

MS. WILLIAMS:

Timothy DeCarlo

MR. DECARLO:

Here

MS. WILLIAMS:

Jared Dearing

MR. BARGER:

Here by proxy, Kenny Barger

MS. WILLIAMS:

Dana Debeauvoir

MS. DEBEAUVOIR:

Here

MS. WILLIAMS:

Veronica Degraffenreid

MS. DEGRAFFENREID:

Present

MS. WILLIAMS:

Robert Dezmelyk

MR. DEZMELYK:

Present

MS. WILLIAMS:

Michael Dickerson, Heather Doxson

MS. DOXSON:

Present

MS. WILLIAMS:

Debby Erickson

MS. ERICKSON:

Present

MS. WILLIAMS:

Julie Flynn, Rina Fontana Moore, Kari Fresquez

MS. FRESQUEZ:

Present

MS. WILLIAMS:

Kristin Gabriel

MS. GABRIEL:

Present

MS. WILLIAMS:

Robert Giles

MR. GILES:

Present

MS. WILLIAMS:

Michael Gill, Joseph Gloria

MR. GLORIA:

Present

MS. WILLIAMS:

Barbara Goeckner

MS. GOECKNER:

Present

MS. WILLIAMS:

Mark Goins

MR. GOINS:

Present

MS. WILLIAMS:

Jackie Gonzalez

MS. GONZALEZ:

Present

MS. WILLIAMS:

Lance Gough

MR. GOUGH:

Present

MS. WILLIAMS:

Lisa Harris Moorehead

MS. HARRIS MOOREHEAD:

Here

MS. WILLIAMS:

Steve Harsman, Wanda Hemphill

MS. HEMPHILL:

Present

MS. WILLIAMS:

Stuart Holmes

MR. GILES:

Present by proxy, Bob Giles

MS. WILLIAMS:

Tim Hurst

MR. HURST:

Here

MS. WILLIAMS:

Keith Ingram

MR. INGRAM:

Here

MS. WILLIAMS:

Joseph Iseke

MR. ISEKE:

Here

MS. WILLIAMS:

Katherine Jones, H. Lynn Jones

MR. JONES:

Here

MS. WILLIAMS:

Neal Kelley

MR. GILES:

Here by proxy, Bob Giles

MS. WILLIAMS:

Douglas Kellner

MR. KELLNER:

Present

MS. WILLIAMS:

Brian Kemp

MR. GOINS:

Here by proxy, Mark Goins

MS. WILLIAMS:

Jay Bradley King

MR. KING:

Here

MS. WILLIAMS:

Ken Kline

MR. PARROT:

Here by proxy, Dennis Parrott

MS. WILLIAMS:

Dave Kunko

MR. KUNKO:

Here

MS. WILLIAMS:

Susan Lapsley, Uiagalelei Lealofi, Justin Lee, Paul Lux

MR. GILES:

Here by proxy, Bob Giles

MS. WILLIAMS:

Shirley Magarifuji, Elaine Manlove

MS. MANLOVE:

Present

MS. WILLIAMS:

Jonathan Marks

MR. MARKS:

Present

MS. WILLIAMS:

Walter Martinez, Walter Velez Martinez, Bernadette

Matthews

MS. MATTHEWS:

Here

MS. WILLIAMS:

Maria Matthews

MR. POSER:

Here by proxy, Gary Poser

MS. WILLIAMS:

John Merrill

MR. GOINS:

Here by proxy, Mark Goins

MS. WILLIAMS:

Alice Miller

MS. MILLER:

Present

MS. WILLIAMS:

Carol Morris

MR. KING:

Here by proxy, Brad King

MS. WILLIAMS:

Baretta Mosley

MS. MOSLEY:

Here

MS. WILLIAMS:

Maria Pangelinan

MS. PANGELINAN:

Here

MS. WILLIAMS:

Dennis Parrott

MR. PARROT:

Here

MS. WILLIAMS:

Chad Pekron

MR. PEKRON:

By proxy, (inaudible)

MS. WILLIAMS:

Chrissy Peters, Jerry Pettit

MR. PETTIT:

Here

MS. WILLIAMS:

Louise Phaneuf

MS. PHANEUF:

Here

MS. WILLIAMS:

Sandy Pinsonault, Chris Piper

MR. PIPER:

Here

MS. WILLIAMS:

Gary Poser

MR. POSER:

Here

MS. WILLIAMS:

Steven Reed, Peggy Reeves

MS. REEVES:

Here

MS. WILLIAMS:

Terry Rethlake

MS. WHITAKER:

Here by proxy, Genevieve Whitaker

MS. WILLIAMS:

Greg Riddlemoser

MR. RIDDLEMOSER:

Here

MS. WILLIAMS:

Hawley Robertson

MS. ROBERTSON:

Here

MS. WILLIAMS:

Derrin Robinson

MR. ROBINSON:

Here

MS. WILLIAMS:

Rob Rock

MR. ROCK:

Here

MS. WILLIAMS:

Jan Roncelli

MS. RONCELLI:

Here

MS. WILLIAMS:

Doug Sanderson

MR. KING:

Here by proxy, Brad King

MS. WILLIAMS:

Ramone Allende Santos, Rudy Santos

MR. SANTOS:

Present

MS. WILLIAMS:

Kai Schon

MR. SCHON:

Here

MS. WILLIAMS:

William Senning, Dwight Shellman

MR. SHELLMAN:

Here

MS. WILLIAMS:

David Shively

MR. SHIVELY:

Here

MS. WILLIAMS:

Howard Sholl

MR. SHOLL:

Here

MS. WILLIAMS:

Jim Silrum

MR. KING:

Here by proxy, Brad King

MS. WILLIAMS:

Eric Spencer

MR. VALENZUELA:

Here by proxy, Ray Valenzuela

MS. WILLIAMS:

AJ Starling, Anthony Stevens

MR. STEVENS:

Here

MS. WILLIAMS:

Sherrie Swenson, Michelle Tassinari, Fiti Tavai

MS. WHITAKER:

Here by proxy, Genevieve Whitaker

MS. WILLIAMS:

Aulii Tenn, Carol Thompson

MS. THOMPSON:

Here

MS. WILLIAMS:

Steve Trout

MR. TROUT:

Here

MS. WILLIAMS:

Raymond Valenzuela

MR. VALENZUELA:

Here

MS. WILLIAMS:

Dennis Von Allman, Linda Von Nessi

MR. GILES:

Here by proxy, Bob Giles

MS. WILLIAMS:

Patty Weeks

MS. WEEKS:

Here

MS. WILLIAMS:

Justus Wendland

MR. WENDLAND:

Here

MS. WILLIAMS:

Brittany Westfall

MS. WESTFALL:

Here

MS. WILLIAMS:

Genevieve Whitaker

MS. WHITAKER:

Here

MS. WILLIAMS:

Sally Williams

MS. WILLIAMS:

Here

MS. WILLIAMS:

Meagan Wolfe

MS. WOLFE:

Here

MS. WILLIAMS:

Patricia Wolfe, Brian Wood

MS. WESTFALL:

Here by proxy, Brittany Westfall

MS. WILLIAMS:

82 members are present. We have a quorum.

CHAIRMAN KING:

Thank you very much. We'll begin our business by recognizing the two individuals to my left who all of you, I trust, are familiar with and have enjoyed a wonderful working relationship with over the years.

The Election Assistance Commission, as I had the opportunity to say yesterday, has lived up to its name. It has certainly assisted so many of us and so many of our colleagues in conducting the election administration tasks that go unnoticed, unsung, and we hope are not on the front page of the Wednesday morning paper or websites.

And so, with that, I'll recognize Thomas Hicks, Chair of the Election Assistance Commission for opening remarks.

CHAIRMAN HICKS:

Welcome, everyone, especially our new members. It's finally great to be here in Miami. We want to thank you for coming and your dedication to the EAC Standards Board.

The field of election administration is vastly evolving, demanding more from its election officials with each election cycle. Our agenda today reflects many of the challenges election officials have faced in recent years. We continue to seek guidance in and beyond 2018. Your insight about these issues serves as a key resource to our commission.

During this time of great challenges and opportunities, the EAC works to help America vote by expanding the resources we offer to election officials and voters alike. In 2017, the EAC Commissioners collectively traveled to 41 cities in 26 states to attend or present at conferences, visit local election offices, attend public hearings and meetings and lead workshops and round tables for election officials.

We began 2018 with the EAC summit to highlight a spectrum of issues that state and local election officials will face as they work to administer, secure accessible and effective federal elections this year. The event featured keynote speakers with expert panelists who addressed topics such as election security, voting accessibility, and how to use election data to improve the voter experience.

The commission also provided tools and resources to election officials to help strengthen their ability to serve millions of American voters. For example, through public forums, round tables, partnerships, and other engagements, the EAC encourages voters to have historically faced accessibility issues at the polls. Voters with disabilities, we offered round tables, public forums, and unique resources such as our voting card.

Limited English proficiency voters, we offered a language summit, translated materials, and best practice documents. Overseas voters, we offered base visits, cooperations with FVAP, and other resources.

Most recently, the EAC announced the availability of \$380 million in 2018 HAVA election funds to support election activities to approve the administration of elections for federal offices. Marking the first time new appropriations for HAVA grants since fiscal year 2010. This much needed funding will provide states with essential resources to secure and improve elections systems. The EAC is committed to making the funds available as soon as possible, meaning two days ago, and we expect this money will be deployed in a meaningful way to support the 2018 election.

I want to once again extend my deep and sincere appreciation to all of you on the Standards Board. I want to thank

Commissioner McCormick for her work to make this meeting possible. And pass this on to you for your opening remarks.

VICE-CHAIR MCCORMICK:

Thank you, Chairman Hicks. Ditto to much of what you said. I just want to welcome the members and our esteemed guests here to Miami, this is round two. We don't have a government shutdown this week. Thank you all for your patience while we were dealing with that, and that you have dedicated yet another few days to coming down to Miami to be with us. Especially during this primary season. I know you all are extremely busy, so we sincerely appreciate you taking the time to be with us.

We have important work ahead of us these next couple of days. As Commissioner Hicks alluded to, we are in a new environment, yet again, in elections. We are all required now to review everything that we do with an eye towards security, and I think this is a great opportunity for us to do so. We may have dodged a bullet in the 2016 elections. We know that the vote count was not altered in any way, but we need to be on guard for any possible attempts to interfere with our elections and our democracy.

So, thank you all for all the hard work you're doing. I know you're working overtime now with limited resources. So, thank you for that.

We at the EAC are here to support your work. That is our middle name, Assistance. So, we want to be of any assistance we can to help you with these important tasks for this coming year. And it will soon be 2020, which is hard to believe, but it will be upon us very soon. We look forward to your input over the next couple of days and your perspectives.

So, thank you for speaking up and telling us your thoughts and we can't do our work to help you unless we know where we can help you and how we can help you. I want to extend a thank you to our staff, led by Brian Newby, our Executive Director, and especially to Robin Sargent, who's back in the corner. Robin is going to hide now [laughter], but Robin worked 24 hours a day over the last few weeks to get this all together. She did an amazing job. So many details and logistics to put this together, and Robin was on top of it with so many of our other staff. Henry doing IT, Shirley, our communications folks, Brenda and Natalie over there.

I'm not going to be able to name everybody, but I just want to thank the staff deeply for all their hard work putting these meetings together here in Miami. If we can do anything at all this week to help you while you're in Miami, please let us know. We're at your disposal.

Again, thank you so much for being with us, and I look forward to a great couple of days. Thank you.

CHAIRMAN KING:

Thank you very much to both Chairman Hicks and Vice-Chair McCormick for your remarks. We'll have the opportunity to visit further with you, but certainly appreciate your warm welcome to us. We're going to begin the introductory business of our meeting by a retrospective look at the minutes of April 27-28, 2017. Those were provided to the members earlier. Let me begin by asking if there is a motion to approve the minutes as presented for purposes of discussion.

MR. POSER:

Gary Poser, Minnesota. I'll move.

CHAIRMAN KING:

Is there a second?

MR. SANTOS:

Second, Rudy Santos, state of Colorado.

CHAIRMAN KING:

Thank you. Is there any member who needs additional time to review the minutes or has points for discussion about them? If so, please speak now. Hearing none, all those in favor of approving the April 27-28, 2017 minutes of that meeting, please signify by saying aye. Aye. Opposed nay. The ayes have it. Thank you.

[Unanimous affirmative vote]

CHAIRMAN KING:

We also have a motion to approve the agenda. That's what's been provided to you in your packets. It's essentially the same as the drafts that have been provided to you at different points through the process with some additional information added, new speakers, additional business. Is there a motion to approve the agenda as submitted? I'm sorry. Please identify yourself.

MS. MOOREHEAD:

Linda Moorehead, Virgin Islands, (inaudible)

CHAIRMAN KING:

Thank you. Is there a second?

MS. REEVES:

(inaudible)

CHAIRMAN HICKS:

Peggy Reeves.

Mr. LEE:

Peggy Reeves. [confirming Peggy Reeves seconded].

CHAIRMAN KING:

Is there further discussion? Hearing none, all those in favor of the motion to approve the agenda, signify by saying aye. Aye. Opposed no. The ayes have it. The agenda is approved.

[Unanimous affirmative vote]

CHAIRMAN KING:

At this point, it's our happy task to welcome a small band of individuals, I believe 13, who have joined us as new members since our last meeting. We welcome you very gratefully for your willingness to serve in this capacity and hope that your tenure on the Standards Board will be a rewarding one for you and one that you can take back to your colleagues to explain the importance of the work that we do.

At this point, I'll turn the microphone over to Sally Williams to read the names of the new members, and we'll ask you to come forward to receive a certificate in recognition of your service.

MS. WILLIAMS:

Kyle Ardoin. So, if you're here by proxy for one of these individuals, if you could come up, that would be great. Kenneth Barger, Carri Crum, Heather Doxon, Lynn Jones, Ken Kline, Jonathan Marks, Lisa Moorehead, Chrissy Peters, Gerry Pettit, Chris Piper, Kai Schon, and Meagan Wolfe.

CHAIRMAN KING:

Please join me in a round of applause to welcome our new members.

[ Applause ]

CHAIRMAN KING:

If we did inadvertently miss someone, please let us know. Proceed to ask the committee chairs who serve the Standards Board in dealing with particular topics to give brief reports to this body.

I will start as chair of the by-laws Committee with the shortest report. One, we have by-laws. Two, there were no proposed amendments, and so we have no business to transact. We will, of course, have an opportunity -- we will, of course, have an opportunity during the year ahead to propose amendments and consider them in our next meeting. At this point, I'll turn the mic over to Sally, who serves as Chair of the USPS committee.

MS. WILLIAMS:

Hi. The USPS committee has been fairly active, not in the last few months, but we have conducted conference calls every other month. We have a great group, very active. Really have focused in on key messages related to USPS issues for 2018.

I'm hoping everyone saw with the meeting announcement and the newsletter there was a nice one-page attachment packed full of useful information about key USPS issues and resources available to state and local elections officials. It's also posted on the EAC website on the vote by mail page, and it's designed as a one-pager, a PDF type of a format that can be downloaded and

sent to all of your locals in your states. I highly encourage you to do that. There's great information on one page. Hyperlinks to some helpful pieces. That's been the main crux of our work so far this year.

Looking forward to continuing to work with you all that will be on that committee.

CHAIRMAN KING:

Thank you, Sally. I'll ask Greg Riddlemoser to give a report regarding the VVSG Committee.

MR. RIDDLEMOSER:

Good morning, thanks Brad. The VVSG committee has done a lot of stuff, by proxy if you will, through the TGDC and other things. Now, having said that, I'm going to be on the agenda for three hours later today, so I won't take up much of your time right now.

We did do a couple of webinars, and the VVSG committee of the Standards Board were the first people to see the VVSG 2.0 after the TGDC turned it over to the staff at the EAC for presentation at this meeting today. So, we got some comments back from those folks, and the public comment period and all of those other things will be explained later today. So, I won't take up anybody's time. Thank you.

CHARIMAN KING:

Thank you, Greg. I'll recognize Mark Goins to discuss the EAVS committee work.

MR. GOINS:

The EAVS committee is exactly what it says, we work on the EAVS committee report, with an overall goal to make it simpler, but making sure we give quality and accurate data so that citizens, as well as leaders, can see that data.

In making it simpler as much as possible, there has been a working group that had been assembled, and assume another working group will be assembled to look at a different part of the EAVS committee, I mean, EAVS report. But I'm pleased to say that the work that the body did was taken into consideration, and the report, although it's still a unique task to get done, it certainly is getting better, and it's getting better because of the EAVS Committee. And so, if you want to roll up your sleeves and get to work on the EAVS Committee, I encourage you to consider joining us as we go forward.

CHAIRMAN KING:

Thank you, Mark. I'll recognize Genevieve Whitaker to give a report regarding the EAC Clearinghouse Committee.

MS. WHITAKER:

I would first say that on the Virgin Islands we experienced two devastating category 5 storms. Pretty much we were very

ambitious after the last meeting. We had regular meetings, but for the last few months we did not. I was challenged in many ways with the technology.

But what I will say during the meetings we did have, a lot of it was around best practices, and a greater working relationship between our committee and actually the EAC staff in carrying out the (inaudible) of the clearinghouse. We looked at best practice on procurement, serving the members on how they feel about the equipment and getting more information as to how we go about communicating to voters about the importance of voting.

So essentially, I hope that we'll meet again later today or in the actual meeting tomorrow, that we go back to really thinking about strategizing and a greater relationship as to what the EAC staff is doing, working on communications, and that way we can move forward. Thank you.

CHAIRMAN KING:

Thank you, Genevieve. At this point, we'll move on to our agenda to look at the foundation which governs our work in federal law, FACA, as it's affectionately referred to.

The general counsel of the Election Assistance Commission Cliff Tatum will provide information. Please come up, Cliff. And then we'll have some additional information regarding some particular applications of our procedures with regard to elections to

our executive board. We currently have two vacancies and have a complex process for filling those vacancies that Cliff will address.

Thank you, Cliff.

MR. TATUM:

Good morning. As Brad has indicated, I will walk us through the Federal Advisory Committee Act, and a good number of you have heard this presentation on more than one occasion since you've served on the Standards Board, but for the new folks, I'd like for you to pay attention to a couple of the slides on the presentation because it is important for you to understand what the duties are of the Standards Board members and what the controlling statutes and governing legislation is related to our function.

The Federal Advisory Committee Act is the framework in which the Advisory Boards operate. The advisory boards were actually created by the Help America Vote Act, and there's three Advisory Boards, the Standards Boards, the Board of Advisors, and the Technical Guideline Development Committee. Your duties for each of those boards is to assist the EAC in developing the voluntary voting assistance guidelines, reviewing and participating in creating best practices recommendations for the EAC, and also at points in time to review the absentee voting processes and procedures for overseas and uniformed voters.

FACA, as indicated, is the advisory act that governs what we do. Our advisory committees are established by statute. There are certain advisory committees that are created by presidential act, and there are certain advisory committees that are created by the agencies themselves. We are statutory committees, and as such, we are permanent committees until the legislation is actually changed.

So, as you recall several years back, we were nonoperational because of the lack of quorum, regardless of that, the committees did not go away because we are statutorily created. As indicated, the operations of the committees are governed by the act itself. The act requires that Designated Federal Officer, Commissioner McCormick is the Designated Federal Officer for this Standards Board and Commissioner Hicks is the Designated Federal Officer for the advisory committee.

The committees operate on a two-year term, meaning every two years we have to renew our charter with the Secretary of the GSA and each of you serve for a two-year term until replaced, and unless replaced you will continue to serve until actually replaced by your sponsoring representative being your chief state election official, and for the locals, your local elections conference or association.

What are your duties as members of the Standards Board?

We ask that you participate in meetings and subcommittee meetings and as you'll hear later in the day, there will be discussions about how to join those subcommittees and what activities as was just reported those subcommittees conduct.

As a member, comport yourself with integrity so as not to trade upon your position as a member of the EAC advisory board for your own personal benefit. Not represent yourself as a representative on the board to promote yourself or your services or products. Now what that means is that it's certainly acceptable for you to say you are a member of the board. But if you are -- if you open your presentation with I'm a member of the board so I'm able to say, I'm able to represent, I'm an expert in the -- that's not really what we want to you do.

Secondly, there's a federal law that prohibits you from being a lobbyist. That doesn't mean that you can't speak to your own representatives and your own senators about things that you want to see happen in federal legislation, but if you are a registered lobbyist I'd ask for you to come see me later today so we can ensure we're not violating any federal laws. You can certainly lobby Congress on your own personal behalf, and you can speak to Congress about the EAC if you'd like, but not as a member of the Standards Board.

I mentioned the Designated Federal Officers, the charter, every two years. Don't need to cover that. For the advisory committee meetings, they are open meetings, meaning that if there's going to be a meeting of this body, the Designated Federal Officer must be involved in publishing that notice and making the notice available to the public, and actually making the meeting open to the public.

There are subcommittee meetings that will take place that aren't necessarily open to the public. Those are subcommittees, they're sub bodies of this full body and as such when those subcommittees conduct business, they then report their activities back to the full body, and the full body then makes those recommendations or presentations to the EAC, thus those subcommittees don't have to participate or have to operate under the open meetings requirements.

Our minutes are taken and are open to the public as we just approved the minutes of the previous meeting. All of our records should indicate the date, time and location of the meetings, as well as the recording the folks who actually attended the meetings. We described the matters that we will discuss as we set those forth in the Federal Register notice and as we create the agenda, and the records that are presented at this meeting will be made available to the public for future use.

As indicated, Commissioner Christy McCormick is the Vice Chair and she is the Designated Federal Officer for the Standards Board, Commissioner Hicks is the Designated Federal Officer for the Board of Advisors, and at this point we don't have a Designated Officer for the Technical Guidelines Development Committee.

The applicable laws that govern our operations are listed on the slide there and the slides are on website, so if you want to go out and download those slides you certainly can do so, but this is a Federal Advisory Committee Act, the Advisory Committee Management Regulations, the prohibition on appointment of lobbyists to federal boards and commissions, and of course the Freedom of Information Act.

Any questions from anyone? Here's the contact information for the Chair and Vice-Chair and Executive Director. And here's our social media contact points. Mr. Chair, that's all I have.

CHAIRMAN KING:

Thank you very much. Are there other questions for Cliff?  
Let's give Cliff a thank you for his presentation.

MR. TATUM:

As Chairman King pointed out, there are several vacancies that exist on executive board. According to the bylaws of the Standards Board, notices are to be submitted out to nomination solicitations are to be submitted to the body at least 60 days prior to

a public meeting of this body. And unfortunately, because of the rescheduling of our annual meeting, we weren't able to -- actually at the time of the reschedule of the annual meeting, we did not have a vacancy on the executive board, but as the meeting was rescheduled, we then subsequently learned that there were two vacancies.

As you may recall, (inaudible) Cortex was serving as a Chair and he is no longer with the Virginia Board of Elections, so Chairman King has ascended from the Vice-Chair to the Chair position which has created a vacancy in the Vice-Chair position and our Jerry (inaudible) has retired from the elections business thus creating a vacancy as on the -- in the Secretary position for the Executive Board.

So, at some point in the future, you will be receiving from the EAC a solicitation notice for nominations to the Executive Board. So those nominations will carry forward to our next meeting, at which point we'll go through the elections process and nominate two additional members to the Executive Board.

Now, later this evening, the Executive Board will meet and hold elections to nominate and to name new members, Executive Board members, to the Chair, Vice-Chair and Secretary position, but there are two vacancies at this point on the executive board.

CHAIRMAN KING:

Thank you. Cliff, thank you very much, appreciate that. So be looking in your email box for communications regarding that in the future.

At this time, we have what many years ago was called the \$64,000 question. Which involves new funds for the implementation of the Help America Vote Act, which for many of us came as a very pleasant surprise. At this time, I'd like to ask Brian Newby to come forward along with Mark Abbott.

MR. NEWBY:

Good morning. Welcome to Miami in April. So many of you know that we were looking at having this meeting in January, and based on the government shutdown, we're now making it up as a day night double header today and tomorrow for the Standards Board, Monday and Tuesday for the Board of Advisors. Neither rain nor snow nor sleet nor government shut down is going to stop us, but the thing is that government shut down was really just a way of talking about funding authorization. And funding authorization finally came in fiscal year 2018 in the form of the Omnibus Appropriations Act that was passed in March. And that act included \$380 million that was provided to the EAC to distribute in accordance with HAVA section 101 type of funding, and to improve administration of elections and security in federal elections.

And so, because of that, it gives us something new to talk about, something new you probably want to hear about, and had we had this meeting in January A, that wouldn't have been yet asked, and B, we wouldn't have discussed it so it worked out. What we're going to do today is give you a little bit more of an overview of that \$380 million if you were here yesterday, we gave a presentation, Mark did especially, to the Commissioners. This will be a little more in depth and also interactive. So yesterday Mark and I were facing here, Mark's going to face this way. The whole point is really to answer your questions and make sure you are comfortable with the approach and what these funds can be used for.

So, I'm going to hand it off to Mark in just a moment. One thing then, because we modified the agenda, this wasn't on the January agenda. So, we've kind of moved things around to make this a bit of a security operations continuity kind of day. So, you're going to see that we're going to keep that theme going. We'll have security panel after this. Then we have a disaster recovery panel over lunch. And then we get into voluntary voting system guidelines 2.0 discussion this afternoon. So tomorrow will be more of a what's going at the EAC. We would have had some of that today but we're going to push it to tomorrow.

So, you're going to have your subcommittees in the morning tomorrow. I would like to say one thing we would like to work with everyone here on I guess, is to utilize those subcommittees more. You are an advisory board. We've had some of you discuss how can our advisory panel committee be more engaged with EAC activities and we want that. So, I just would like to tee that thought up as you head into those committees, tomorrow morning.

Back to today and the 2018 HAVA funds. You see a map here that shows how they're distributed, just a really rough look to show the more green there is the more green your state is getting. What we're going to do is get into the details of it now, so I'm going to hand to Mark Abbott, and I'll come back to MC us through the rest of the presentation or rest of the discussion after that. With that I'll hand it off to Mark Abbott.

MR. ABBOTT:

Good morning, everybody. Let's talk money. Our favorite subject, right? So, I do a little bit more in depth presentation today. I am going to talk a little bit fast. The presentation will be available to you to download from the website, but I want save lots of time for questions today. And going to a little bit more detail about what it means to have HAVA funds.

So, we want to do a quick history. I want to talk about the new election security funds and then talk about how the funds can

be used. We'll get into a little detail around Notice of Grant award, the NGA, which ever state now has in their possession, and what is in that document and what it means to have it. I want to talk a little bit about next steps, what will happen in the coming weeks as folks draw down their funds and then what will happen 90 days from now when we actually see what your plans are to use the money. And then audit funds and management. What it means when you get this money, and with how you need to be accountable for it to the feds.

This history is important because some faces are new and may not know about how much money has flowed through the Election Assistance Commission to the state and localities through the Help America Vote Act. But it's a fair amount of money, including the \$2.8 billion for requirements payments and then two tranches of 101 and 102 funds used to improve administration of elections back in the very early days of HAVA, and then the 102 to replace punch cards.

I bring this up because the biggest challenges we had in administering this money came from the very early days. Because it was federal money into the kind of state election offices was brand new. Folks had never administered federal grants before. There wasn't a lot of clarity because the EAC didn't exist yet and consequently states got into a fair amount of trouble with how some

of them spent the money. We do not want to duplicate that this time.

So, we have put the money out in front of the plans, but we have now a whole body of history and experience together resolving audits and managing funds that will make this a lot better for us this time around, but I want to acknowledge that you can't assume you can do something or not do something with the funds. You need to ask us or check the website and make sure that you've kind of -- you're on the right track because it's better to fix it before it happens than after the fact in an audit situation.

So, the new money, \$380 million dollars on March 22<sup>nd</sup>, the President signed it. It's under the Election Reform Program, which was the original title for 101. The funds expire March on 22<sup>nd</sup>, 2023. What that means is we have a five-year clock on this money. If you've been around HAVA for a long time, you'll remember in 2008 we had a five-year clock on some HAVA requirements payments, which means you have to draw that money down from your account with us before the, and spend it before the five years is up. So, we're going to say that over and over again. This money has a clock on it. The expectation from Congress actually is that, yes, this is money on a clock. We want to see it spent, not available in perpetuity for things and eventualities down the road,

like we have with the current requirements payments and some states that have some 101 money remaining from the early days.

So, this act came together. The money came together in one sentence. So, in the law we got one sentence that gave us \$380 million referencing back to 101. We had a vehicle to get the money to the states, that was the Help America Vote Act. We had basically two choices in that act, requirements payments and 101. Congress gave us the money in 101. That money has a little bit more flexibility, doesn't require an update to the state plan to begin using it. And it will allow you to get going right now, not long in the future after the plans were updated had we had requirements payment money.

So, that's a little bit of the back story here, but when you do one sentence to get \$380 million, there's not a lot of detail in it, so the detail will come somewhat from us and a lot from you. The point of these 90 days plans is we want to hear from you in some detail what makes the most sense for your state and localities to spend this money to help secure the elections and improve your processes.

So, you've gotten two things from us. You've got an awards packet and a Notice of Grant administration. The awards packet has instructions for how to get your money, which is right on the

first page, and then a second set of instructions around these 90 days plans, or in 90 days the narrative we want to see from you.

So, kind of -- we already did that one. Am I going backwards? So, in the plan -- let's talk about these plan narratives first. So, what is your state doing to secure voting systems and processes ahead of the upcoming elections? We need to know this because the auditors want to know what you said you're going to do with the money. They will want to see a budget for how you are going to spend the money, and they're going to audit against that. They're going to look at that. We're going to look that because it's really important for us to help report on what it is the states are doing. We're responsible for consolidating, rolling up your activities and reporting to Congress and other stockholders, the public -- how the money is being spent.

And given the fact that there's an emphasize on security here and this is on everyone's mind coming to the next election, we want to be able to uniformly talk about what states are doing in a way that we can show across the nation in certain categories what's happening with the \$380 million.

And so, these are seven kind of categories we've come up with. There are going to be more and having your own is fine, but if you have activity in these categories, that's what we want to hear about in your narrative and in your budget submission. On the

website today, you will see a sample budget. You will see -- there won't be a sample narrative, and we have a form for you to kind of look at to say "this is how we fill this out, this is how we might do it", it'll help you.

I think there's going to be a lot of questions about this, so I'm going to leave most of the time here to answer your questions. We're going to go through a few more of the administrative details on what it means to have a HAVA award and administer it, and then we'll take questions. That can be on any topic related to this from how it's used, what the money can be used for to how to administer it.

So, on the Notice of Grant award, this is the legal document that we sign in send to you. You do not sign it and send it back, but what do you is request the funds. And when you request the money, the notice says by taking this money you agree to these terms and conditions. It's a legal document. It's a contract with the federal government to spend taxpayer money a certain way. And so, there's a lot information in that one-page Notice of Grant award that you have to pay attention to. The first is the budget periods beginning March 23<sup>rd</sup> is when we start, and we end on 2023. The draw down is you accept the terms and conditions, you do some assurances around being a drug free workplace, around lobbying, and a couple other things. Pretty standard federal stuff.

We also have some OMB administrative requirements. When the auditors come to visit you, and I've been told by our Inspector General that every state will get an audit of these funds, so it's not I wonder if we're going to get audited, it's just when. The schedule will be five to seven to eight states a year, but they're going to check every single one of these grants.

So, our job at the grants office is to make sure that you guys are out of harm's way, that you're using the money effectively and within the very broad guidelines that the federal government has set up for you. So, we're going to be looking at administrative requirements, cost principles and audit requirements for federal awards which is in this Title II of the code. There's everything you need to know to administer these funds correctly. And then there's the standard federal grant award provisions for states are included there.

It's down in the details, down in the weeds, your fiscal office will do a lot of that, but as you build your budgets and think about how you want to spend money, it's really important that you follow those guidelines and we will help you do that.

Some other things in the notice of grant award, there's a match this time. The match has to be provided within two years of the awards, so it's very different than the requirements payment match which was up front money in your election account. This can

be cash put in that election account like did you with requirements payments or can be in kind. In kind is defined here and basically if you're spending money on something that you plan to spend this money on at the state or local level, we can use it as match. You just need to document that this is part of your match and report it on your financial form at the end of the year.

Your grant reports, the program narrative is a summary of budget expenditures and the equipment that was purchased and activities to meet the goals you set out in these outlines that we're asking for 90 days from now. And then of course your FFR, your Federal Financial Report, very straightforward -- sample on our website -- we'll help you fill it out. It's due at the end of the calendar year.

Your audit requirements, your single audit are required, this is basically your state's audit. This happens right now already and will continue to happen with a new tranche of money added to what they're looking at. And then our inspector general audits. These are very straightforward. If it's a financial audit, if they're investigating waste fraud or abuse that's an investigation, not an audit and your office will be contacted, and investigators will come visit you. Anyone can make a charge of waste, fraud or abuse. It happens. Usually money is relatively new coming out. And so, we just have to be aware that there's a process, and we'll guide you

through that process. If it's an audit, if it's an investigation, you'll talk only with the Inspector General about what they're looking for.

So, this is the fun part. Findings -- We have a long track record of finding things, but I want first say it's a shout out to my predecessor and to the states that have managed HAVA funds. You've done an amazing job, with the exception of those early early year wrinkles where we didn't have good guidance out and people were kind of flying blind, this money has been extremely effectively managed by states and localities. We have less than one percent of the funds were questioned in terms of hey was that the right use of the money or not, and even a smaller percentage of that was found to be an actual problem or not used correctly. So, 99.5% of the money out of the \$3 billion you've administered over the last 18 years has been spent correctly to federal standards. It's a great win for you, and gives us a lot of confidence going forward that you're going to get this right with our continued help.

But having said, that there are a lot of little ways to get tripped up. Lack of supporting documentation for your costs, so if you procure something, make sure there's a procurement file and it has certain things in it. Wages and salaries -- If people are taking salaries from your HAVA grant, there's certain things and time sheets that have to be in place and Mike Kenefick is right there, and he's an expert on this both on fixing and after the fact, but more

importantly getting it right before you start. So, Mike is on call and will be working with us. We have one or person in the grants office (inaudible) Rosenberry (sic), who also will be working with you in answering these kinds of questions.

Property and equipment inventory, election fund shortfalls and interest. We give you the money up front. In return, you put in an interest-bearing account and get to spend the interest, but if you don't put it in an interest-bearing account, you have to pay the interest back to your fund. So, that means a trip to your legislature or a way to find the cash, never a pleasant conversation and one that's completely avoidable by putting it in an interest-bearing account, either at the state level or the local level if you push some of this money down to localities.

Use of HAVA funds to support non-HAVA activities -- voter registration, ballot purchases -- get out the vote. We review videos, because the auditors will flag your PSA's and you got to -- you know, we like videos that are informational. Where to vote, how to vote, security issues. You're communicating all the important stuff that HAVA allows. And then your secretary or someone else gets out and says how important it is to get out there and vote and do your civic duty, and then it changes the nature of that PSA and becomes unallowable. So, talk to us about what's allowable and

not allowable in your videos. And you'll stay out of harm's way there.

Let's see – your FFRs not matching up with your accounting system. It happens all the time, because sometimes someone that's not in the accounting department fills out the FFR, but those documents have to match. It's just like balancing your bank account.

Procurements that don't have the right paperwork. The promotional stuff we just talked about. Funds get transferred down to your localities like we give them to you before they spend them, that's fine. But if it doesn't go in in an interest-bearing account, interesting is going to be owed. So, you can do it on a reimbursement basis, or if it goes down there make sure they have it in the right kind of account.

That's a very quick kind of pass through, what happens once you get the money. Our office is kind of this grants lifecycle from award to close out. We're going to be with you every step of the way in partnership. From the time I started, and then my predecessor Monica Evans, and then back to me somehow. That's a conversation over a beer later (laughter) or two. You know, our job is to support you in effectively administering the funds, and I think a lot of that is risk avoidance. We want to minimize the risk that you've taken by accepting federal funds, we want to minimize

the risk of tax payers if the money is not spent correctly. This year as a nod to congressional intent and as a nod to the tremendous amount of public acknowledgement and paying attention to what's happening with our elections, we wanted you to have cash up front to begin the importance, or to continue the security work you already have ongoing without first putting together a plan, having us review it, and then getting you funds sometime in two months before the election, which is we're already really late in the calendar, right, so that didn't seem to make a lot of sense.

So putting the money up front is not done haphazardly. It's not done because we're kind of willy nillying this or, it's just you know we're passing responsibility to you, we're doing it with a lot of intentionality. But that means a lot of work has to come from us and from you to figure out what we want to do with the funds and to make sure that we in fact administer them as we have done in the past.

So, it's a little tricky. I think the devil is going to be in the details, which is why we've got people that can take your call every day the same day you call. That's why we answer you know promptly on our email. It's why we're going to a series of webinars and conference calls as needed to make sure that as you're putting both -- as you're deploying cash, even as of early -- as right now. If you know you have something you need to spend on and you

spend your own money, you can reimbursement with our money if it's an allowable cost as of March 22<sup>nd</sup>. So, you're now ready to go. The money is there to be spent and drawn down by the way.

I have a lot of detail on the draw downs and what they look like and the different ways of doing it, and I'll save that for the Q and A because I think there's going to be questions about that. So that's my talk. This is my contact information. Mobile number and office number, and you know we're available and we respond promptly. So, congratulations on getting the funds, a big nod to what a great job we've done in the past, and looking forward to working with you on this next round. Thank you.

CHAIRMAN KING:

Thank you. Are there questions for Mark? Please remember to identify yourself when you have a question to pose.

MS. WHITAKER:

Thank you so much for your presentation. I just want to make a notation – I know you also awarded funds to the territories, I don't see – I would just say maybe amending the map and then also accounting for the fact that I know for a fact you've that you've given it to the territories.

MR. ABBOTT:

So, you know, in our notice and in our writing we always say states and territories, and then we refer to the 55 entities as states

simply for space sake. The territories receive funds. They received by formula from 101 \$600,000, which is administered exactly the same way the other differences. There's no match requirement for the territories, except for Puerto Rico. They get more money but also have to match. And so yes, I didn't mean to leave you out. They are absolutely part of this tranche of funding.

MS. WHITAKER:

Genevieve Whitaker.

MS. REEVES

This is Peggy Reeves from Connecticut. I just have a quick question. Right here. You had a really important slide that you kind of rushed through about prohibited uses of the funds, which I thought was pretty important, like voter registration, ballot purchases, get out the vote, probably purchasing voter registration cards. There are some other things there. Could you either go back to that or just elaborate?

MR. ABBOTT:

I can. And, we have another list on our website in the FAQ's that talk about this. Probably at the end, isn't it? Is that it right there? No. Okay. Right, so that's a small list of things, but there are -- here's what we want it watch out for in this list.

There's two things right, there are some things that we just know we don't spend money on. We don't build buildings with

HAVA funds. We don't purchase paper ballots with HAVA funds. We don't do get out the vote drives with HAVA funds or voter registration. Voter information and education is fine, but we don't do voter reg drives with HAVA funds. There's a few other things, but there's not a long long list of prohibited activities. Much of what you're contemplating doing would fall under that improvement to the administration of federal elections and be allowable with a couple caveats. The biggest one is, you know no one is really interested in seeing the federal money to go to pay for things that you're already paying for. So, you switch the all your personnel over to the grant and they were previously paid for with local or state money. That's going to be questioned in the audit on the basis of was that actually an improvement to the administration of federal elections. So, I know auditors will question it. It will come to our office, and we're going to look pretty hard at that because I'm not sure, you know, without of course there's always details and always circumstances where it is an improvement, but we're going to look hard at that and that may not fall under the definition reasonably of an improvement to your election process.

So, you have that. The other thing you have to watch out for is if you have a maintenance of effort agreement with us already from your previous HAVA grant. If you have a maintenance of effort agreement with us and you're still spending money from your

251 funds, you can't take those activities and then pay for them with your new federal grant. So, there's that, and likewise if you've already claimed some of the money as match -- hopefully I'm not going to have a you know seizure. (laughter) If you're already using that --

CHAIRMAN KING:

A seizure would be out of order at this point (laughter).

MR. ABBOTT:

As match, then claimed as match on your 251 you can't of course claim it a second time. It's a one and done kind of situation. Is that helpful? Thanks for the question. Dwight?

MR. SHELLMAN:

Hi. Dwight Shellman from Colorado. Can you talk a little bit about once the funds are expended, what -- I mean, obviously there are recurring reporting obligations, but in Colorado for the initial HAVA funds, and this was by agreement with the EAC for other reasons, the Secretary of State's office has had to conduct on-site audits of the hardware, essentially, acquired with those funds in all 64 counties every other year in order to, you know, account that the equipment is still there or if it's not, what happened to it, where did it go. Is there a similar audit requirement for these funds, because -- honestly, it really is going to influence how my Secretary of State is going to want to spend the money.

MR. ABBOTT:

So, there is. But there are a couple differences. So, the reason you keep getting asked to keep that inventory current and keep doing those site visits is because the grant is open. This grant is going to close in five years. After which you have a record retention -- the equipment purchase is yours. Transferred -- the title is yours. The requirements to report on that end after the grant ends. You have a certain period of time where you have to keep your records, but at that point your obligations, your reporting obligations to the feds have a timed window.

So, Mike can turn on his mic if I've said something wrong there. But it's much different than having a grant agreement open for 18 years and being required to keep records and keep inventory of equipment in some cases is not even there anymore. So, or you can always update your equipment list if you've disposed of stuff, that's fine. But there is a record retention policy kicks in and then you stop having that obligation. So, this is not an ongoing thing.

Mike, any more detail?

MR. KENEFICK:

I want to add something. You don't necessarily have to do an on-site audit. There are people who use scanners and they have it scanned out there and that's an update. The list needs to have someone -- you could actually delegate that locally. So, I've

seen in one state where they just have, you know, they scan the codes. So, having to go personally to every site isn't necessarily a requirement in the grant, but you do need somebody to verify the existence of equipment and you could do that locally.

MR. SHELLMAN:

And -- thank you for that. Is the reporting period every other year or is it annually?

MR. ABBOTT:

It's annually.

MR. SHELLMAN:

Okay.

MR. ABBOTT:

A federal financial form annually and a program narrative update annually. Look, we're only asking for a three-page submission to start this off. We're not asking for much more than that as we update. We just want to know what's happening in each of the categories that your plan includes, so it's minimal reporting, but really important reporting. We have -- everyone knows the cost of these elections is not a one and done situation, right? The federal involvement, it doesn't appear to have been a one and done situation as evidenced by the new funds, but of course it's a down payment on much more substantial investments that need to happen, you know the federal funds are one place that might come

from. But only if we do a really good job of showing them the impact of how we've spent the money. Other questions?

MS. WILLIAMS:

Sally Williams from Michigan. I have kind of a two-part question. So, everyone has gotten their Notice of Grant award, and everyone is due to have a plan to you within 90 days.

Can you talk a little bit about that process? Because you will get those plans, review those, provide approval back or some type of feedback back, and then secondly, with the money being available immediately, I've also heard it said, you know, we're able immediately to begin expending funds, and how does that work within the process.

MR. ABBOTT:

So, let's talk about the plans for a moment. We're not going to approve your plans. The plan is yours. What you decide to do is your decision. We are going to look to make sure the costs are allowable correctly to the circulars and reasonable. We're going to make sure that the activities that you've outlined constitute improvement to your administration of elections and we're, of course, really interested in your security programming. We're interested in the security program because we'd like to share it. These plans will be public and that is part of the confidence building

that we're doing with all stakeholders around you know why we're making this investment. But it is really your plan.

And so, we will like to concur, we'll show that we reviewed them, we'll give you feedback, we might ask for a revision if we find something that we think will put you in harm's way in an audit, but it's going to be yours.

Now, the immediate expenditure of funds, that authorization is including in the Notice of Grant award in the awards packet.

There are things that you might want to pull a trigger on immediately related to cyber hygiene or security or two-factor authentication, all manner of stuff that you know that you've got on your radar that why wait for 90 days to tell us you're going to do that. You should do it now. If you have any questions about whether or not it's allowable just call us. We'll put it in writing and send it back to you.

We have a lot of state legislatures wrapping up their sessions in the next 30 days. Many of them weigh in on this with either match or an appropriation of federal funds or something like that. So, let's not wait for the plan to get them engaged if we have to engage them prior to them leaving for the summer. So, you have the flexibility you need to begin spending and programming the money now. The plans will follow. And then our hope is that we'll have a really robust page of 55 entities, states and territories that

have mapped out what they plan to do initially with these funds. That plan can be adjusted whenever you want. That plan can be reflective of the full tranche of money you're getting, or a portion of it. If you draw down just 25% of the money next week, and the rest comes a year from now, that is fine. The plan should reflect initially the first tranche of money that you've drawn down. We have some states that simply will not have a plan in place or authorization from the legislature to spend the entire amount. That's fine. Take what you need. The rest is there. There's a clock on it. Don't forget to draw down because it will disappear. But, you've got time. Of course, just from talking to folks on the hill, the expectation is that you know we expediently expend this money and make an impact in 18 and 20.

So, if we've got the big balances hanging out there after the 20 election, it's going to be extremely difficult to explain. Probably not explainable actually. Yes? To the left and then back to the right.

CHAIRMAN KING:

Your mic, please.

MS. MOOREHEAD

Hi. Sorry about that. Lisa Moorehead from the Virgin Islands. My question concerns the fact that we have a somewhat distinct situation given that we've suffered two Category 5 hurricanes and

we lost much of our facility, the elections actual office. I'm on the Board of Elections as opposed to being an employee of the election system in the Virgin Islands. So, whereas -- when you say equipment, are you talking solely about election equipment, machines, et cetera, because we have costs that we wouldn't normally have. Our budget has recently been cut by the local legislature. Would costs such as replacing computer equipment for the staff be included or would it be disallowed?

MR. ABBOTT:

We take a very broad view of equipment used to administer elections and election processes. So, you know replacement of equipment in your case because of the hurricane, using the grant money for that would be appropriate.

MS. MOOREHEAD:

Okay.

MR. ABBOTT:

You know again, we're in HAVA 101 world which is designed to be incredibly flexible. There is a security overlay on this because that's the times we live in, but clearly there are activities and expenditures that you'll find posted on our website under our FAQs that are completely allowable with these funds.

So, you can go offline and talk in detail about the Virgin Islands situation. I suspect Virgin Islands might have gotten

knocked out of Title 3 compliance because of the storm. And so, there are a whole host of things you might be looking be at as investments to get back in sync with Title 3 of HAVA, which is not a static destination. It can ebb and flow as challenges arise. So happy to talk to you about that.

MS. MOOREHEAD:

All right. Thank you.

MR. TROUT:

Mark, Steve Trout from Oregon. Back to the issue of Congress wanting this money to be spent expeditiously, is there anything in the congressional record, anything documented that can be provided to us to help us to put a spark plug under our legislature. I need spending authority from my legislature to spend any of these funds. So, just looking if there's something documented that says Congress wants this spent.

MR. ABBOTT:

So, there is implicitly. So HAVA has authorized, says the funds are available until spent, which is a signal that this is money until you need it, always there. That designation is not associated with this current tranche of funds. In order to have that designation in the appropriation they would have to say, specify money available until spent. We just don't have that. It happened in 2008 by accident, and that money was on a five-year clock. Basically,

they want us to get it to you within -- by the end of the fiscal year, so we've done that by obligating the money. It's now yours to drawn down.

So, it's safe harbor -- now it's on the five-year clock. That's about as much urgency you're going to get from us or from Congress with this, but if they wait, they just won't have the money. It disappears. So that's about as good as we can you know for you.

MR. TROUT:

And I understand that. I was just looking for something in writing that I can say, see?

MR. ABBOTT:

We can provide you something in writing.

MR. TROUT:

Thank you.

MR. ABBOTT:

On letterhead and make it all official (inaudible voice). Right. Thank you, Cliff. We also have the congressional report language, and that language makes abundantly clear that Congress is very concerned about a whole host of administration and security related things. And so, there's intention there that is pretty easy to interpret as urgent. Yes?

MS. GABRIEL:

Hi. Kristin Gabriel from South Dakota. Our state had recently purchased in September new tabulators and some ballot marking devices. Some of the counties had used general funds to make that purchase. With the five percent match for this grant award, are we able to utilize the county money that they used if we're going to be doing a county and state combination for that match? Can we go back in time to utilize that fund?

MR. ABBOTT:

So, it's a great question, and we're going to actually provide additional guidance on this question. There are some -- there are some wrinkles and caveats to my answer that I won't kind of parse up here from the stage.

I will send the -- I will telegraph that I do believe that we'll be able to take match back to September 1<sup>st</sup>, 2017 ... I'm sorry, October 1<sup>st</sup>, 2017, for match purposes and then -- but I want to get that in writing to you, and I want to give you the kind of caveats. So, we are working on that and that will be out in short order.

MS. GABRIEL:

Thank you.

MR. VALENZUELA:

Ray Valenzuela, Arizona. I'm also proxy for the state so I'll speak on the states' behalf since I'm the local and I want them to

spend it the way we want. (laughter)—since Eric Spencer, state of Arizona is not here.

But the question truthfully is, and I do notice you mentioned the voter registration. Obviously, that voter registration activity is not voter registration systems, meaning the first point of order for when we got the NGA was that we are in the process of strengthening our statewide voter registration system – the infrastructure. Arizona being one of the states that potentially was attempted to be penetrated, removing that word hack, which is -- and they were excited about this. I want to clarify, come back to the Arizona and say indeed we can use because we're right in the process of a RFP to look to do that.

MR. ABBOTT:

Absolutely. Unquestionably. Every state, the voting registration system in every state but one was paid for with HAVA funds. It is a critical piece of the infrastructure of elections and one that we actually, you know, have responsibility for.

I anticipate a good portion of the funds will go to harden those systems, or update those systems, or add features to them, especially at the local level which is where the points of entry are. And so, we will see -- we have heard and have seen lots of practices around this. We're going to be sharing those broadly on a

list of activities where we already know the funds are going to be deployed.

So, part of the 90 days also was to get everyone thinking and sharing. Right? Sometimes it's much easier to come up with your plan when you understand what everyone else is doing around this so this kind of -- kind of crowdsourcing along the election community the very best practices we can do in short, medium and long term with the funds I think is a marvelous way to ensure, you know the most impact. Yes?

MR. SHIVELY:

When the original HAVA funds were made available, it was, my recollection is that each state had to have a plan Commission to develop the plan, but that's not the case where this is basically going to come from the state, and I guess the second part of that question is, is that in Nebraska we'll have a new Secretary of State beginning next year.

Our legislature has already adjourned for this session. Can a plan be amended down the road if our new Secretary of State has different priorities than what the current one does?

MR. ABBOTT:

Answer the last question first. Absolutely. I anticipate lots of amendments and changes. These changes are things we just want to share with the public that we want everyone to understand that

everyone is at work at these issues. So, you can amend it and change it as you want. You may want to do an initial draw that's not the full amount for this year to take care of some issues in the run up to '18 and do the second draw later. If you don't have the match, for example -- you've had two years to find your match, right. So, you can take the draw now, have it in your election fund ready to deploy with your new Secretary when they come in or a portion of it now and the rest later. Entirely up to you.

The plan we're asking for whether -- we call it a narrative submission, right. I'm not asking for a state plan for security. The state plan updates and the process of state plan is laid out in HAVA is an important way to get public input to how the HAVA money are being spent, but not a requirement and we're not requiring it for to spend this money. I do think it's a best practice and eventual update to your plans is probably in order, and I would encourage that process to happen outside of the process you're using to identify and deploy these resources in a way that impacts '18 and '20. Does that help?

MR. SHIVELY:

Yes.

MR. ABBOTT:

Can you say your name, too, please.

MS. CHARLSON:

Nikki Charlson, Maryland. Under the prior HAVA we didn't have an end, and I understand that there are some rules about acquiring equipment or software, that at the end of the five years there's a possibility of a buy back and there are rules about what happens at the end of that five years. Could you educate us a little bit on those requirements, please.

MR. ABBOTT:

Sure, for us at the end of your grant period, the equipment is yours to do with as you want. We're not going to be asking for it back. We're not going to be asking you to sell it. It is yours. And then you're reporting requirements stop at a point in time. Your records retention policy you know we'll lay that out for you. You got to keep records for a certain period of time after the grant ends, but then in fact your obligations to the federal government are done and the equipment is yours. Mike will correct everything I just said that was wrong.

MR. KENEFICK:

I'm not correcting a thing. I'm just adding to it. Nikki, if you look at the part about equipment at the end, if you continue to use it for the same purposes in any federal program, you get to keep it and use it and later dispose of it. So that's in effect the last of the federal interest.

MR. ABBOTT:

Thank you, Mike. That's a good addition. Yes, Cliff?

(Off mic -- inaudible)

MR. ABBOTT:

Right. So, record retention is -- we have state record retention policies and then we have our own record retention policies. This is an area that's been vexing as these older grants have stayed open forever, and auditors have tried to look at expenditures from 2005 or six or something.

So, you all have state record retention policies that are in play here. You should know what they are. You should abide by them. But you should also overlay what the federal record retention policy is, and Mike can speak to which one is in effect when.

MR. KENEFICK:

Well, the federal record retention policies are three years after your last expenditure report on an amount of money. So, in this case the election funds that are coming, if you have them for two years, it's three years after that unless audited. When an audit comes, that extends the period a little bit depending on what the audit is. But most of the states have more extensive record retention, five years -- seven years. So, it's three the fed, but you need to comply with your state also requirements.

MR. ABBOTT:

Thank you. I would note that the agreements are five years in length maximum. You may deploy your resources in two years in which case when you send me that second FFR, it should have your full match on there, it should have the fact that you spent all of the money you're planning to spend, and the box that says final should be checked, and then that starts the clock. We process your close-out, and then your obligations and your record retention is on a clock and then it's done.

There will be no audit -- they can come audit you after the record retention policy period is expired, and if you don't have the record that's fine. I don't know what they'll audit, but that's not your problem. All you need to do is follow the rules. And that's why we actually want these on a clock. We want to close them. We want to stop the federal obligation to you on reporting and other things as efficiently as possible. It's a risk reduction strategy, and it's just smart grants management. Yes?

MR. GILES:

Hi. Bob Giles from New Jersey. So, one of the considerations is monitoring our systems, and if we were to enter into a contract with an MS-ISAC, how far, and if there's a five-year shelf life on the money, can a contract go beyond the five years for monitoring services? Say we entered into a ten-year contract paid

that out of this funding so we're actually using the money beyond the five years –

MR. ABBOTT:

Technically the money is spent within the five years. So, the fact that it's not -- it's been allocated within the five years sitting in your accounting waiting to pay out is appropriate and the money is fine. And I think, Mike, correct me if I'm wrong, would that extend the grant period, or can we still close the grant with an open obligation?

MR. KENEFICK:

Probably you can't close it with an open obligation.

MR. ABBOTT:

Cannot, right?

MIKE KENEFICK:

There's a little bit of nuance to this about what's a current need and what isn't. And I must admit, there's some nuance to interpretation.

MR. ABBOTT:

We should go offline and talk to you about what would be appropriate length of time to have a contract out and how much you could pay for it and the grant beyond that five year,s but you have some flexibility.

MR. GILES:

(inaudible)

MR. ABBOTT:

So, a multi-year contract is a slightly different animal also. So, we can talk to you about that as well.

MS. FRESQUEZ:

Kari Fresquez from New Mexico. Slightly different flavor of question that came from Mr. Giles. If we are planning to fund a term staff member, an employee, can we obligate beyond five years to pay a salary?

MR. ABBOTT:

Yes. Salaries is an allowable expense. You'll want to make sure you've identified, and keep the appropriate records of their time. If they're full time on the grant it's easier. If they're part time, then you've got to actually, you know, have a record keeping that reflects the amount of time they're spending on the grant. But completely appropriate.

CHAIRMAN. KING:

(inaudible)

MR. ABBOTT:

Yes, we've had that popular audit finding. Mike, do you want to say anything more about the time sheets from your experience working with our time sheets across many states?

MR. KENEFICK:

It was always messy, and I think part of the problem with the initial grants is they come into the Secretary of State's office that didn't manage federal funds. But when you have a staff member that you're charging, you have to keep records of all their time and divide it between their assignment to the HAVA Grant and their other assignments. If they're full time on the HAVA Grant, then you can do a yearly certification of their time. So, there's some confusing aspects of that, but part time actually requires more recordkeeping.

MR. ABBOTT:

Yep. Full time is a certification and very straightforward. And not onerous at all. Yes?

MS. MOOREHEAD:

Lisa Moorehead again from the Virgin Islands. How does that jive with what you said before with respect to the -- this employee we were just discussing have to be a new employee? Because you had indicated that if it was an expense that you previously paid for there would be some questionable --

MR. ABBOTT:

I think we would -- when we look at this we're going to flag -- if we're just replacing salaries from people that are currently on your staff being paid for with other monies, it's up to you. You prove

that's an improvement to your administration. I think the bar is probably not simply that you have to have that person there and this is the only money you have. I mean, you could make that argument and put that forward and use the money. That's appropriate.

But what we're saying here is it's likely to be flagged in an audit, and it's going to have to come to resolution here and you'll have to convince us that we in fact improved the administration there, not just that it survived. It's a distinction that I can work with you on but, let's be clear, no one is expecting we take this money and take over current operations at the state and local level. That is not Congress's intent.

MS. MOOREHEAD:

Thank you.

MS. DOXON:

Hi, Heather Doxon from Nebraska. One of the items that you mentioned that is not allowed is the program maintenance that was being paid for with the original HAVA funds. If our state has run out of those, and the Secretary of State's office is doing the maintenance, can that be used for the match?

MR. ABBOTT:

Tell me -- say a sentence more about what kind of maintenance this is.

MS. DOXON:

The program maintenance, the machines and whatnot.

MR. ABBOTT:

No so that is, that's an appropriate – that's allowable. It's the maintenance of effort is not related to the actual maintenance of machines. It's a term of art used to say, hey, if you're already doing that, you can't simply take our money and not do it anymore with your money. And that was part of the requirements payments language that was in the law. So that MOE was a very specific auditable set of expenditures, and everyone has a plan that they're looked at, supposed to have a plan for their MOE. That is not what we're talking about here. So, maintaining your equipment to certain security standards or standards in general is an appropriate expense. Again, I don't want to see us supplanting that effort that's on-going, but it's certainly falls into an allowable category.

MS. DOXSON:

Thank you.

MR. ABBOTT:

These are great questions. Mike Kenefick is here the rest of today and you can probably get him part of tomorrow, I believe. I'm heading to another engagement so I won't be here. I'll be here next week, though on Monday and we will publish maybe some lobby

hours where we can sit with you one-on-one and talk through issues.

I've gotten lots of requests for letters and clarifications because of the state legislatures are wrapping up. I'm happy to provide any kind of documentation you need that helps you with how you want to administer these funds. We have flexibility there and we'll write what you need within the correct parameters of course. So, thank you very much for the great questions and your time.

CHAIRMAN KING:

Let's join in a round of applause for Mark. Thank you.

MR. NEWBY:

EAC is very fortunate to have Mark, who has been in this process before. He knows the drill. And one of the things that we committed when we heard this money would be available is that we could get it out fast. We actually said within 30 days, and they gave us 45, but we're proud that we are going to hit that 30 days and that's because of the hard work of Mark and many others on our staff.

We want to shift gears now to talk about security some and going back two years when we met in Carlsbad. We've met at the Standards Board now each of the last three Aprils counting this April. Foreign interference in elections was not even a topic at all in

April of '16. But by August of '16 we're kind of in the depths of hearing about that. We had our first meetings with DHS, and we were looking at some of the ways that we could emphasize security and help you provide answers with security, and actually those of us who were fairly new to the EAC, I was surprised EAC didn't have materials already that kind of just explained the overall process. So one thing that we did to prepare, help you prepare for '18, is we created a security video that was intended really for you to show at community groups when you go out and if you're going to talk about anything related to the election in 2018, you're going to talk about things like your early voting locations, advanced voting, your polling places, that kind of stuff.

But you know you're going to be asked questions about how secure the election is. So the idea was to create a video that was general enough, it could be used by many of you, maybe not all, but then also you could show that at the beginning of those discussions and then say we don't do this, but everything else is kind of how we do it, or we do something else a little different. And then dive into the stuff you talk about.

We're going to show you that video, and then also let you know that it's on our website. There's a leader's guide you can use with that, and also print off some material that if you wanted to hand out. But it's really not designed for you, it's designed for you to use.

And so, some of you may have seen it, but let's show that video now.

VIDEO:

Have you ever wondered about how we secure elections? That's a fair question. Security has always been at the heart of what election officials do, which is why each state and jurisdiction has measures in place to ensure security in all phases of the election process. Most people don't see the behind the scenes work that makes it happen, but today we're giving you a peek. Let's start with voter registration. Which is a security measure in itself.

Registration ensures that only those meeting state eligibility requirements are able to vote, and helps keep track of who has cast a ballot in an election. If a voter shows up on election day and believes she's eligible and registered to vote, but for example her name does not appear on the registration list, or she does not have the required form of ID, she can cast a provisional ballot. Election officials determine whether or not to count provisional ballots after verifying the voter's eligibility. Once you're registered, election officials take a great deal of care to keep your personal data safe. Only authorized personnel have access to the voter registration database. All database traffic is monitored and logs details every time the database is accessed or changed. Routine backups ensure all data can be restored if any unexpected modifications are

made. Since these are public records, personal information is only released in accordance with the state's legal guidelines.

Now, to the heart of the election process, voting. US elections are conducted independently across thousands of local jurisdictions. Each following unique laws and statutes, which means there's no single point of access. Transparency is built into the election process. Almost all processes and procedures require that two or more trained personnel be involved. And these folks have taken an oath to uphold state election laws, and protect the security of the election. In addition, representatives of political parties, or candidates, and sometimes even members of the general public are allowed to observe and monitor activities throughout the election processes. If something does happen on or near election day, most jurisdictions have back up plans to make sure voters can still cast their ballots. These plans cover everything, from voter registration lists back ups to moving a poll location due to a natural disaster or power failure. A good deal of care is taken to ensure voting equipment is safe too. When it isn't being used, voting equipment is stored in a facility accessible only to trained election personnel. Before voting starts, each piece of voting equipment is put through logic and accuracy test, to make sure ballots will be counted correctly, and often the public is invited to observe these tests. Ballots and election equipment are typically

secured with tampered evident seals and transported to polling places in secure containers, and each time they switch hands it has to be documented. While materials and equipment are in use, they are closely watched by election workers trained to notice and respond to any suspicious behavior.

What about the folks who vote by mail? Well, these ballots are protected by state rules and procedures that determine how they must be handled. While steps are taken to ensure that mail ballots are as private as those cast inside a polling place, mailed envelopes must be signed so that the signature on the ballot envelope may be compared to the signature on the voter's registration form. Such signature requirements let election officials make sure these ballots have been filled out by the correct voter.

Now, to counting those results. Today, most ballots are counted electronically, either by the same voting machines where votes are cast, or by devices that scan paper ballots. Most jurisdictions have adopted policies that forbid machines from connecting to the internet in accordance with state and local guidelines. When the polls close on election night, election personnel collect vote counts from each machine and report results to election headquarters. The votes are tabulated at election headquarters before they're reported to the public. Ballots and equipment are then securely transported back to election

headquarters, although we may know who won an election within a few hours, results are not official until the vote is certified by the election office. That happens once the office verifies the ballots from each precinct, early voting, absentee voting, uniformed and overseas citizen ballots, and provisional ballots. These ballots are kept in a secured location as required by law.

Once all records are confirmed, election results become official. And many jurisdictions conduct post-election audits to further validate results. So, you see, there's a lot that goes into keeping our elections secure. But it's worth it. It means ensuring the voices of the American people are always heard.

MR. NEWBY:

The idea then is that hopefully you can just take that and lead into the stuff you talk about. It's just a tool you have. Maybe it doesn't apply to you, hopefully it does, but it's just something we wanted to have available. It just kind of spoke to something we thought you would be asked a lot in 2018 and 2020.

Going back to April of 2017, when we met, again, you know at that point critical infrastructure had been designated. It had been about three months. And we had discussions about DHS, and I know they didn't really like it when I said this, but we left those discussions with more questions than answers. And if you remember, those of you who were in San Antonio, we listed a

bunch of questions we wanted to get answers to and you provided many of those as well.

And after that meeting we talked a lot internally and just thought about the fact is many of you have elections, several in a year, and somewhere in this room there's probably an election every Tuesday if we added up everybody. And so why were we focused only on the federal election. You couldn't get past the fact that we're a federal agency, and even in the HAVA money you were just looking at, that spoke to federal elections.

So Mark Listes, in our office and me, Cliff Tatum and Brian Hancock, we set in several rooms and talked about this a lot, and I know it sounds kind of hokey, but kind of came up with the conclusion that if it's to be it's up to me, and we thought if we were going to get this thing to a place that could even be ready for 2018 we felt we had to drive it.

And we kind of wrote a bunch of things on my white board in my office and the top of it said "show time January 1, 2018." And so many of you have been involved in the steps leading to that. But the thing we did is we hand-picked a cyber security working group, we worked with DHS to set up a meeting for that. We knew that that cybersecurity working group would be the foundation of the government coordinating council eventually. There's someone in the back of the room who I'd just like to maybe wave his hand, Juan

Figeroua, who is back there and Juan was very instrumental in getting us going and we worked hard with Juan, and I really do think that if it hadn't been for the EAC for many reasons, and I think many of you here would validate that, we wouldn't be at a place they could say this was the fastest government coordinating council set up in any other critical infrastructure sector or subsector.

One key person in that, obviously all our staff, but Mark Listes really tried to cut through a lot of the language issues that are involved, the terms and that kind of thing. And referred to this as alphabet soup, and he gave an overview at one of those meetings and really kind of kicked off as we formed this council.

So, what we wanted to do is have, I'm going to introduce Mark and have him come up and introduce a few people on a panel. It's twofold. One, members of the Standards Board who represent you on the Government Coordinating Council. Some aren't here today, but some are. And then also Dave Wulf from DHS, and Mark and Dave will describe the second part of that, the Sector Coordinating Council, which also was able to be stood up before the 2018 election. So, with that I'll first bring up Mark Listes.

MR. LISTES:

Good morning -- good afternoon. My name is as Brian just said is Mark Listes from the EAC. I'm here for the security panel. Almost with the security grants discussion this morning. Security

panel part two. I am joined on this panel with -- I have the honor of being joined on this panel with distinguished guests, Mr. Bob Giles of New Jersey, Mark Goins from Tennessee, and Dave Wulf, the Deputy Assistant Secretary of Infrastructure Protection from DHS.

We're going to do a panel of moderated Q and A, and the goal for this panel is to break down what critical infrastructure means, how it applies to people in this room, what it means for the operations of everyone in this room, and catch everybody up on the answers to the questions that Brian was just talking about from last year. It's my goal for this panel that by the time we're done with this, that we won't have any questions about what any of the basic terms mean and we'll all have a good understanding of where we're going with things.

Now while we are doing a moderated Q and A, we have about an hour for this, we thought it would be best to get some of the basics and some of the basic terms out of the way. In order to do that, we have a short presentation by Dave Wulf of DHS to cover the basics.

After that presentation, we'll move into the moderated Q and A. I'll kick things off with some starter questions and some basic questions, and then we'll continue along my list until there's questions from the board members. I invite everyone in here to answer, or ask all the questions you might have about critical

infrastructure or any of the other topics, or how critical infrastructure applies to cyber security in general for us. We want this to be as interactive as you'd like it to be and we want you to ask all the questions. To get things started, then, please welcome Dave Wulf to the podium.

MR. WULF:

Thank you so much, Mark. I really really do appreciate the opportunity to be here with you all. Really pleased to be here for what is my first EAC Standards Board meeting. It's fair to say that I'm generally pretty pleased to be anyplace that is not a congressional hearing room. So, my bar isn't super high, but in this case, really and truly excited to be here among such a committed group. I know it is tough duty to spend part of the week in Miami, but someone's got to do it. But I know that important stuff is happening down here.

And, you know, as many of you know, DHS is kind of the new kid on the block in the election security arena. New kid on the block, but without the musical talent or dance moves. But it has been really great as we've tried to sort of wrap our heads around this complex election infrastructure landscape, to be able to partner with and to learn from the EAC and from a number of you who are in this room. So, I'm continually impressed by all you all do to facilitate the smooth functioning of our democracy, of our electoral

processes and you know really no question about it, that is a big job. And it's been really gratifying over the last year plus to see the community that exists around elections.

So, when I am talking to folks across the country who manage America's critical infrastructure -- see if I can make this thing work -- I do focus a decent bit on the continuing and dynamic threat environment both from a cyber perspective and with respect to physical vulnerabilities across a number of sectors. And there are 16 critical infrastructure sectors, sectors such as critical manufacturing, oil and natural gas, the defense industrial base, the water sector, chemical sector, nuclear, healthcare, electricity, and so on and so forth. In fact, I think there's a list of the 16 critical infrastructure sectors.

Critical infrastructure in our minds also serves -- also includes venues that serve as public gathering places, our city squares, our arenas, and more. All things that are kind of core to our way of life here in the United States and all things that in our current threat environment remain attractive targets to adversaries.

As you know, about 15 months ago DHS former Secretary Jay Johnson designated election systems as critical infrastructure. So, you see it there under the government facilities sector. Our newest subsector, election infrastructure. And implicit in this critical infrastructure designation was the recognition that election

systems, voting systems, are an attractive target as well for bad actors. So, I know the criticality of America's election systems is not a concept that is new to any of you who have been working for years to ensure that our electoral process is a free and a fair one, but you see our official definition of critical infrastructure drawn from the USA Patriot Act. So systems and assets, whether physical or virtual, that are so vital to the United States that the incapacity or destruction of those systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

So, I think it is fair to say that when Secretary Johnson designated election infrastructure as critical infrastructure last January, that announcement was not met really by unanimous cheers of joy across the community. We heard that. We understood that.

There were folks who were concerned about the potential for federalization of elections. I think we've come a long way since then. Last month we had a hearing in the U.S. Senate, our Secretary, Secretary Nielsen testified, also Secretary of State Condos from Vermont, and I think you could tell those of you who sat through the three or four or five hours of that hearing -- from the overall dialogue that a lot of progress has been made over the past year. That trust really has been built, that folks generally accept that

the federal government has no intention of interfering with local control or administration of elections. I don't think we would even know where to begin on that front. And again, greatly appreciate the willingness of folks across this community to -- as we have wrapped our heads around what is the election infrastructure landscape.

So, you know what does the critical infrastructure designation mean? Well -- not going -- okay. Anyway, there's some awesome slides in here somewhere. But first, the first thing it means is that there's some additional opportunities provided to build the community. So first as sort of outlined in the National Infrastructure Protection plan, the NIP which I think is worth a read, critical infrastructure sectors and sub sectors are invited to establish both sector coordinating councils and government coordinating councils. So, sector coordinating councils are for private sector members largely in the elections arena. We're talking about manufacturers of voting machines, database vendors, and a number of others. Government coordinating councils, you've heard some about government coordinated election infrastructure, government coordinating council here. For government entities -- federal, state, local, kind of designed to enable interagency and cross-jurisdictional coordination.

So, we have seen both the formation of a GCC as mentioned just a couple minutes ago in record time. And now a sector coordinating council also in record time. We started with the GCC, which is now working on a sector-specific plan that will set forth strategies and activities designed to foster the security and resilience of the sector, to include with respect to ways in which we'll foster the sharing of information and threat indicators. Bob Giles down the row here is a member of the GCC executive committee as is EAC Chairman Hicks. And we've also formed within the last couple months a sector coordinating council.

So again, drawing from all elements of the non-government community. So, election systems vendors, voting system manufacturers, voter registration database providers, also including the cross check and ERIC organizations, we have the associated press election night reporting entity within the AP, and all of this takes place under something we call the critical infrastructure -- okay, thank you -- critical infrastructure partnership advisory council framework, or the CPAC framework. So, and that framework is set forth in the National Infrastructure Protection plan, which itself derives from an Obama administration Presidential directive, PPD21 on critical infrastructure security and resilience.

So, you know, there is a lot of source material out there for those of you who are so inclined. So certainly, again, worth a read.

I think it's also important to note if we have another minute or two that the designation of election infrastructure as critical infrastructure has really enabled us at DHS to more effectively prioritize the provision of assistance when requested, and to more effectively make available tools and resources across the sector. So, things like cyber hygiene scans, cybersecurity, risk and vulnerability assessments, liaison with our cybersecurity advisors, all of these things are available through our National Cybersecurity and Communications Integration Center or NCCIC, which is of course tied very closely to the Multi-State Information Sharing and Analysis Center, the MS-ISAC, and its emerging election infrastructure ISAC.

So, all of this is designed to provide a robust environment for sharing information on cyber and physical threats across the community. I did mention that our cybersecurity advisors, we do have about a dozen cybersecurity advisors in place across the country. We also have across the country about 120 protective security advisors who have a little bit of a broader portfolio, but all of these folks are out there across the country. They are out there for you guys. So, I certainly would encourage you all, if you have not yet come across or met your local cybersecurity advisor or protective security advisor to reach out to us. Feel free to reach directly to me and we can get you in touch. These guys are great

resources. We have a bunch of or resources available around the country as well.

So, I will maybe close now. I bet we'll be able to cover a lot of what was maybe in the slide. I guess we've run through some of the slides. Current priorities and next steps on this front across the emerging partnership framework, continuing maturation of the Sector Coordinating Council. I see our Chair and Vice-Chair of the Sector Coordinating Council out in the audience. Sector-specific plan as mentioned the GCC is working toward. I think we're going to be talking about a Sector Coordinating Council action plan as well. Information sharing protocols. Election task force. interagency and state engagement. Trying to get more security clearances out to state election officials and their staffs to further facilitate the sharing of classified threat information. And expanding that as far as we can through our private sector clearance program throughout the relevant election security community is a priority of ours.

And we are also able, and we have in recent months done sort one day read-ins to enable the passing of classified threat information. Establishment of the election infrastructure homeland security information network portal, the HSIN portal, and conduct of classified briefings, and the development of incident play books and exercise templates. So, a lot on the plate in the world of the

Government Coordinating Council and the Sector Coordinating Council.

So, you know, I will maybe wrap it up there. I'll close by thanking you all for your continuing commitment to election security. You know, this sector, our newest subsector certainly one that is diverse in terms of technology, approaches, one that thrives, I think, based on local control. You know, we are really pleased to be, again, the new kid on the block in this community, but we are here for you. So, if there's anything we can do to help, please don't hesitate to reach out and let us know. And I guess now we can have a panel discussion, Mark. Awesome. Thank you all so much.

MR. LISTES:

Thank you, Dave, for that overview. So, as I said in the beginning, one of my goals for this hour is to make sure that we can move past all of the government acronyms and the government talk and give everybody a real understanding of what all of this means and how this impacts everybody. So, what I'm going to do is I'm going to start off with basic questions about what CI, critical infrastructure, means, and I hope that as we progress, that the members of the board will interject with their own questions. When you have a question please just raise your hand. We'll stop the QA, and we'll point to you to inject your own questions.

But I'd like to start off with the real basic questions. So, Dave you gave us the good legal definition of what critical infrastructure means. And you talked about some resources that it might mean the DHS can employ. Past the Patriot Act definition, what does it mean to the people in here? Does it mean more resources, does it mean federal involvement, does it mean that they now -- they're talking to DHS more? Break down operationally what this might mean.

MR. WULF:

I can take a crack at that Mark. I think the short answer is really all of the above. More resources, prioritized by the department, more access to those tools and resources so not only those cybersecurity resources, the cyber scans, the liaison with our cybersecurity advisors and our protective security advisors.

But the building of a community, really, within that critical infrastructure protection council framework. So, I think the establishment of the Sector Coordinating Council, establishment of the Government Coordinating Council really enables this community to plan, develop strategies and priorities that can be pursued jointly and we are able with the critical infrastructure designation to more effectively prioritize the resources we put into that.

So operationally, our focus is the 16 critical infrastructure sectors, and now with election infrastructure under the government facilities sector, it is one of our if not our highest priority in this space, certainly leading into the 2018 primary election season. Do you think that answers it, Mark?

MR. LISTES:

I think so. I think so. I'm hoping you can drill down a little bit more on the information sharing aspect and the parts of the critical infrastructure system that the people in this room might interact with. The councils and the new resources that may become available. I know that we continually talk about critical infrastructure as meaning more resources, but to no one's surprise in this room the idea and the process of getting federal resources down to the states can be a complex one. I know you've got a lot of experience within critical infrastructure and other sectors as well. Can you talk about a little bit what that really means?

MR. WULF:

Sure. So, I think I briefly mentioned the resources available through our National Cybersecurity Communications Integration Center, the NCCIC. So, there are resources that are available that can be downloaded that do not require an on-site visit from our cybersecurity advisors. Things like those cyber hygiene scans. There are other more in-depth risk and vulnerability assessments

that involve a visit from our folks. You know, there is involvement in the overall information sharing environments. So, the environment through which threat indicators, information on cyber incidents are shared. So, I think that is tied very closely to the MS-ISAC.

So, the ability to be part of that community is key, and one of the things that is happening right now is an effort to build a charter for the election infrastructure ISAC. So, a sub component of the broader multi-state ISAC. And I think that will be a really important step forward. So, designation of election infrastructure as critical infrastructure in this case means, you know, we are able to more fully prioritize election security focused initiatives.

So, I think that is sort of the long and short of what it means in -- don't want to overlook, though as well, if I can take another second or two, a lot of the work that happens across the country in other critical infrastructure sectors across other critical infrastructure sectors, focuses on physical security. And certainly, don't want to lose sight of that in the elections arena. So, you know, polling places, places where voting machines are stored. We are eager to consult, provide advice as requested regarding physical security of those locations. I think certainly with regard to polling places, nothing more central to our American way of life than the casting of ballots in elections at polling places. I think certainly those are attractive targets as many of our other public gather

places to those who like to do us harm. So, don't want to lose sight of the physical security aspect as well. Certainly a lot of the focus in this new subsector has been on the cybersecurity front.

MR. LISTES:

So, I want to put the question down to the state representatives we have here on the panel as well. We can maybe start with Bob since you're at the end. You've been involved with the working group that Brian Newby mentioned since the beginning and you're starting to see some of the inner workings of what all this critical infrastructure means, stand up from the inside. Can you from your perspective talk to us about what this means to you and to your operations to give them an insight?

MR. GILES:

Sure, thanks. I guess from the beginning when we first started, I don't think anybody really understood what critical infrastructure was and what it meant to us, and for me, just trying to learn who the players were and what all the acronyms meant was really a big deal. So, the alphabet soup document you guys put together was very helpful.

I remember our first meeting we got together and the EAC brought us all together to talk about critical infrastructure and the Government Coordinating Council, and our first comment was we

have no idea what any of that is, so you're asking us to put something together that we don't know what it is.

So, we spent the first part of the day learning about it and getting a better understanding of what critical infrastructure meant to all of us. So, through that process we've learned a lot. So, learning what the resources were available to us I think was really important. Learning the difference between -- we have your state homeland security and federal homeland security, what the difference, that was one of the first questions I had, how do they work together. Are they offering the same services? Sometimes they overlap, sometimes they don't. Having a good strong relationship with your state homeland security folks is really important, and that was a lesson I definitely learned. And then making sure they have a good working relationship with the U.S. Department of Homeland Security. So, through that process just I think from my initial comment, just learning everything that's available and it's a lot.

And even to this day I'm still not utilizing everything that's available because it's just -- you kind of take it in and it really is drinking from a fire hose when you start looking at what's out there and what's available. So, you kind of just step by step utilize -- we're doing the cyber hygiene, definitely we members of the MS-ISAC and now the election infrastructure ISAC. So, taking that into

account and then trying to utilize some of the training that's available is probably the first step. It's just getting a good understanding of what is out there for all of us.

MR. GOINS:

Yeah, I was fortunate to be on the cybersecurity workshop working group and Director Newby was a hundred percent correct. Had it not been for the EAC, we wouldn't be where we are today. Essentially at the beginning you had a group of election officials that didn't want the DHS to be involved, and DHS probably didn't know what they were getting into.

But what means for me as an individual, really when you break it down, critical infrastructure I think in layman's terms, is that elections are a target that needs to be protected. Now let me change that just a little bit. You are a target that needs to be protected. That's a sentence that you may want to underline, circle it, and highlight it. Because the mentality that I've learned, there's a difference between cyber hygiene and cybersecurity, and cyber hygiene I take it more as what am I doing as an individual whereas cybersecurity is more globally what is the organization doing. And during this process I've learned that the state officials are really doing an excellent job at cybersecurity. When you break it down, sometimes that we, when we're looking at ourselves, maybe we are not dealing with looking at our cyber hygiene.

I can remember as the process started very specifically, I looked at my Facebook account, and I realized that some of the security questions that you may have if you forgot your password -- what elementary school did you go to. If you got on my Facebook account, you would have been able to figure that out. Another security question that I noticed, you would have had to do a little bit of digging, but if you would have looked at my wife's Facebook account and my Facebook account, you could have figured out where our first date was by looking at an anniversary post that we had. Once again, that is a security question that if you've forgotten your password, that you would be able to find. And I don't know if any of you -- several of you were in that meeting yesterday. What Commissioner McCormick said struck me, because it's something that I have done. You know, how would you hack yourself? How would you get into yourself, because you are a risk, you're one of the open holes out there whether it's on the local level or it's on the state level. You got to realize that when you're a target, we're not just talking about foreign, we're talking about domestic as well. Russia is going to be in the news, but it may be those advocacy groups that you have out there.

In 2011 we had a group come to Nashville and start camping on the -- outside the General Assembly. In 2012, during the presidential year, the General Assembly passed a curfew for

anyone on the lawn of the capitol, and those folks were removed by the police once the governor signed the legislation. I remember it was my first time where we had folks from the DHS on the local level, you know state level, call us together with the folks that protect us, IT folks, and say we want to let you know we've heard some chatter that you may be a target. You may be subject to hack, and specifically the concern was the election results, because if we post our election results someone may change it. Fortunately, we were able to take preventive measures, but there was in fact a hack, and it was a website for a sheriff. So, that was not a foreign target. You weren't a target of a foreign interest, you were a target of a domestic group.

And then you have the white hat hackers. You know, if you're out there -- in the media, we're put on the defense many times and even before the legislature when we have to say we're protecting our system. We're doing the best we can. We feel very good about that. We had a million attempts last year and -- last month and we prevented them all. Well, the next thing you know, that's in the newspaper, and there's some white hat hacker out there saying, I want to make sure that's accurate. So, you have those that potentially coming at you and then the black hat hackers who could care less about hurting the election process. They don't

care about the distrust, they want the data you possess. The last four of the social and the names that you have.

So, it's really for me, critical infrastructure is a mindset, and it's a mindset as an individual I never had. It's a mindset globally we've always had, and fortunately Tennessee has done some great things. But, that's really what we're look at, as a mindset changing the way you think. You know every morning you wake up, brush your teeth, unless your Bob Giles you take a shower. Bob never showers (laughter).

You spend time and money on hygiene, well, I encourage you to do the same thing for cyber hygiene. It's something I'm doing every day. Cyber hygiene isn't something you can cram for a day before an exam. Cyber hygiene is something you've got to prepare for every day. Because within an election setting, we have so many things going on. So many moving parts. This is something I encourage you to do. Every morning wake up saying what is going to be my cyber hygiene today. Maybe it's checking your passwords or changing your passwords, or reading an article about cybersecurity or cyber hygiene.

But essentially that's what it is to me. Critical infrastructure, I don't know that I needed to be named critical infrastructure, I guess the media probably pushed us there as much as anything else, but

in layman's terms, not looking at a legal definition, it is we are something, we are a target, and we need to be protected.

MR. LISTES:

Thank you. So, you've mentioned resources, you've mentioned protecting ourselves, as well as needing to be protected. Dave, you mentioned some new resources that were available from DHS through critical infrastructure. I'm hoping we can break that down a little bit. What kind of resources are we talking about? From Bob and Mark, your perspective, what resources are you already using and where should people be going to learn more about the resources and who should they be talking to? I think, take it to you Dave first and we will do the same order.

MR. WULF:

So, resources in a few different categories. So, they start with our people I guess, our cybersecurity advisors, our protected security advisors, our folks at the NCCIC National Cybersecurity Communications Integration Center. They can connect you with resources that can provide resources. So, you know, we heard about cyber hygiene scans, those are pretty – not that they don't exist through other sources, but that is a tool we can provide to you. Risk and vulnerability assessments, a little more in depth, onsite involvement of DHS personnel. The information sharing environment. So, involvement in the automated indicator sharing

program, so the ability to be a part of a community in which threat indicators, incident information is shared I think is super important. As is the role of the multi-state I-SAC. And the resources from the department that are available when requested to respond to incidents.

So, we have a hunt and incident response team that can come onsite in the event that something is going on – can sort of isolate it – I am, you can probably tell from the way I talk that I am not a cyber security genius. That is sort of in my colleague's wheelhouse – but they can come onsite and they can isolate what the issue is, can sort of learn who the adversary is, and then funnel that into the threat indicator information, the incident focused information that is shared across the community. So, you know I think it's both the prevention focused assets, the people-focused assets, and the response-focused assets.

MR. LISTES:

So Dave, before we go to Bob and Mark, you mentioned a couple of terms in there and one concept that I am hoping you can drill down on, the MS-ISAC as well as the ISAC in general as well as the information sharing. Can you break down what is the MS-ISAC, and how does that help with information sharing?

MR. WULF:

I can take a crack at it. So, MS-ISAC is the multi state information sharing and analysis center. It's an organization that is at least partially funded by DHS. It is in place to support state, local, tribal and territorial governments to -- in the enhancement of their cybersecurity, their cyber defense postures. So, within that multi-state ISAC, the Government Coordinating Council has worked to form an election infrastructure-focused information sharing and analysis center that is directed specifically at serving the elections community.

So, by way of who can be part of an ISAC, state, local, tribal, territorial government are members -- are certainly eligible to join the MS-ISAC. Similarly, they are eligible for the election infrastructure ISAC. And as we work through across the GCC and the Sector Coordinating Council, kind of chartering that election infrastructure ISAC, we're certainly going to be looking to expand opportunities for membership as broadly as we possibly can. I think certainly important that the vendor community be part of that information sharing environment as well.

MR. LISTES:

So, Bob, Mark, I want to it turn over to you to hear what resources you've been using and what your experience has been like interacting with DHS. As we do that I want to mention in

yesterday's forum on security, one of the things that came up was that some of the representatives who were speaking at the forum found out they were actually already a part of the MS-ISAC through a different agency within their own government.

So, I would encourage everyone to reach out to their representatives, maybe their department of technology, as was the case with Delaware, or I know that let's say in the Commonwealth of Virginia, the secretary of technology's office. Reach out to your technologist counterparts within your own organizations and see if you're already interacting with the MS-ISAC.

But as we do that, as I come to a close on that, Bob and Mark, can you talk to us about some of the resources you've been using and what's your experience been like?

MR. GILES:

So, we've definitely started utilizing, very early on we utilized the cyber hygiene that DHS has to offer. We're participating in a risk and vulnerability assessment with DHS. We're members of the MS-ISAC and the EI-ISAC, and we're pushing that down to our county and local jurisdictions. We think that's really important for them to join that.

So as far as, you know some of those are more tools than resources I think, and there's the federal virtual training environment that is out there that really has some good classes or

online classes on cybersecurity. I just started utilizing that and as I mentioned earlier, the homeland security information network is another place to go and get additional resources.

But I think for me the biggest resource we're going to have is the GCC. Just a quick – for those of you – you know we're talking about for those who don't know a lot about it, this Government Coordinating Council has 27 members. There's nine local election officials on it, there's eight secretaries of state, there's seven election directors, we have one representative from DHS and two from the EAC, the Chair and Vice- Chair all sit to make up this 27 member council. And that break down, we have eight members come from National Association of Secretaries of State, four from the National Association of State Election Directors, three from election center, three from the International Association of Government Officials, then we have two from the Board of Advisors – one local, one state, two from the Standards Board, one local, one state, and two from the TGDC, one local, one state.

So, I think for me, that -- building that GCC as kind of our go-to, it's got an unbelievable amount of representation for all of you. And we're really trying to make that the focal point and funnel everything through the GCC, because then the election officials know they are represented on there. The locals are represented – the state, not only election (inaudible), but the secretaries. You as

Standards Board members have representation on there. THE EAC is represented on there. So, I think that resource and what we're doing at the GCC level is probably going to be our best resource to offer everybody, and to just help educate everyone on what is out there. That's like I mentioned earlier, there's so much out there, and we're trying to figure out how to get that information to all of you and how to sort through that and not just send you this 20-page document with a list of stuff that you have to figure out what is best for you.

An example we're working on, how to spend the HAVA funding. What are some best suggestions from a cybersecurity standpoint? That's something that the GCC is going to put out, and once the GCC membership agrees on that, we'll get it out to all of you. And by having the membership we have on there, we know we can funnel it to the EAC membership, the Standard Boards membership, election center, IGO, (inaudible), so we're covering such a large group of membership that I think that is probably going to be our number one resource as far as I'm concerned for election officials.

MR. GOINS:

I think most everything has been mentioned. I will touch a little bit on clearinghouse of information. It's just not with – not only do you have DHS, you do have the ISAC, as well as the terms and

definitions that the EAC put together. In fact, when I went to testify before the Tennessee legislature, we actually gave them those terms in advance and that was -- you would be surprised how many folks don't know what air gap means, and many of you may not have known until this became a huge issue. But that's something, that you know once you're in front of them and you start talking the lingo, they can understand or at least they can look it up.

As far as training, there is some outside benefits other than cybersecurity, and I know the title says election security. One of the other aspects of security, we had had some -- a few years ago we had a school shooting, unfortunately, and it took place in November. So that put on some administrator's minds about a school shooting, and what would happen if we had that on election day. Candidly we hadn't discussed it, we didn't have any plans, but we'd had some administrators talk about that training. Turns out that we had mentioned that when we met with their DHS person on the federal level when they said how can we help you, and sure enough, last week in Nashville we ended up having training that not only were the administrators invited, also the general public as well.

So you know that's an ancillary benefit that on the local level you could tell your states and training you may be looking for and on the state level we can pass that on. I went to that training. It was very helpful, and I can assure you going forward that not only

will we take that training for an active shooter, you can actually take that training and apply it to a lot of different emergency situations. So that's something that can be helpful as well.

MR. WULF:

And if I could just add agree completely with both you guys. I think from a resource perspective, you know we stand ready to link you in with all manner of resources across the homeland security enterprise. I think to the point about the GCC and overall building this community, and being able to become more of a clearinghouse for best practices and otherwise. I think that is a huge benefit. And I think importantly too is remember that I think as we move forward to kind of lash up the efforts of the GCC with the efforts of the vendor community through the Sector Coordinating Council, you know those who own and operate our critical infrastructure are kind of our target audience.

And so, in this community it goes to not only states and local jurisdictions, but those who develop the technology and, in many cases, run that technology on behalf of state and local government customers. So, I think a huge opportunity to bring those two groups together and to work collectively on strategies, on guidance, you know best practice-type efforts. It's a huge opportunity, and excited to see the community growing in that regard.

MR. LISTES:

So, I want to move us into two more topics to go look with this. One, I want to talk a little bit about the division between cyber and non-cyber parts of critical infrastructure. We talk about critical infrastructure and the resources that come along with that, and the terms of cybersecurity, cyber hygiene. I think I'm going to steal Mark's line about what do you do every day to pursue your cyber hygiene. But that's not all of what critical infrastructure is, and I'm going to talk about that and then I want to talk about these strategies that have been mentioned a couple of times.

Dave, I'm hoping that you can shed some light on cyber versus physical or cyber and physical right, because this isn't just cyber, is it?

MR. WULF:

No. It's not. You know, as I mentioned, certainly want to keep a focus on physical security. Polling places, storage locations for elections systems and technology, voting machines, et cetera. Mark mentioned school shooting, active shooter scenarios. You know we have folks who focus not only on cybersecurity, but on physical security. So, those 100 -120 plus protective security advisors in place across the country, at least a couple in each of the 50 states can link you in with training, can link you in with resources on the physical security front.

We also focus to some extent, to a large extent, on the nexus between sort of cyber and physical incidents. So, you know, we have a number of examples of circumstances in which cyber attacks have had physical consequences. You know we've seen cyber attacks shutting down electric grids in Ukraine. We have seen other instances as well. So, you know I think our imagination is really the only limit in terms of what we need to look out for. So, I think for that reason that I think this community coming together to think through strategies, to look ahead at what an adversary may want to try to do is so important. From Mark's point earlier, you know think about - thinking about how I would hack myself. You know, we have to think creatively.

And we don't have all the answers at DHS. We need to work closely with all of you who are in the thick of owning, operating, running, developing the technology and running the elections that are very clearly an attractive target for those who would want to see the perception of our democratic process called into question.

MR. LISTES:

So, Dave, you mentioned the development of strategies in this community. Whose strategies are these? And are these strategies the members in this room, the members of the broader election community must follow? Are these rules or are they suggestions?

MR. WULF:

No, this is not a prescriptive situation. This is -- the critical infrastructure partnership advisory council framework is a voluntary framework. So, it is about bringing together a community of owners and operators of critical infrastructure who work together to develop strategies for the broader community. So, they are not rules, they are not regulations. They are in the nature of guidance. They're in the nature of opportunities to enhance the security and resilience of designated critical infrastructure, in this case America's election system.

So, you know I would encourage all of you to plug in. I think you all have connection points either into the Government Coordinating Council or into the Sector Coordinating Council and to be part of the process going forward.

MR. LISTES:

Now, Bob, Mark, I want to give you the opportunity to either play devil's advocate or agree. I mean, Dave has just laid out these are not rules, they're suggestions. Is that what you've found?

MR. GILES:

Yes. So far that they're suggestions. Although they may be strong, they are suggestions. But they're important. And as we all know, once you put something out as best practices, it's a good idea to follow them, because if something does happen the first

question is why didn't you follow the best practices. So, it's good to have those and utilize them and although it's voluntary, it's just -- it's good to have them. I agree. And they haven't forced them on us, and I think that was one of the big concerns in the beginning, that the federal government was going to come in and drop the hammer and they haven't done that. So, but they've done it in way that it's helpful without being too strong of a forceful attempt.

MR. WULF:

I would agree with that, and I think the framework, the partnership council framework is about the community coming together. You know those who know the business the best to develop those strategies, to develop you know that sort of guidance.

MR. GOINS:

I echo what Bob says. Let me give you an example of where it's suggested but it could become mandatory, and it's on the risk assessments. Turns out the state of Tennessee, we've been conducting risk assessments for years, and we have a third party vendor that does those. But perhaps the Department of Homeland Security could be in front of Congress and Congress could say how many states, how many localities have taken advantage of the risk assessments. Well then you see your state is not on that list. It's not that your state hasn't been doing it. In fact, we are doing it but,

in that instance, you may get a media inquiry or someone from Congress saying hey we noticed that you're not taking advantage of that.

So, as long as there's a clear understanding from the Department of Homeland Security side that states are doing these things and yes, you may offer that service, but we also have that service out there that we're already taking advantage of, then I think that's fine. I think there needs to be that communication when you're in front of Congress if you're asked that question, you know, have all these states taken advantage of this, well no, but they may have it independently themselves.

So, there is a way where something's not mandatory could become mandatory, and I will share for you my standpoint, it should be suggestions, it should be best practices, because we are 50 different states and territories, 6 territories included, and we do have different processes in elections, and what may work well in Oregon very well may not work in Tennessee. And that's something that I think DHS is realizing, that there are so many moving parts nationwide. Just imagine on a county level how many moving parts you have, and then look at the state side, how many moving parts you have. So, I don't envy the task that DHS has, but at the same time, we are meant to be independent.

And I will tell you this, I think sometimes it's overlooked a little bit. I think one of the reasons that it's very difficult to attack elections is because it is so decentralized. I think the more that you put the focus in one area subject, you were to have a successful attack, and folks are doing things very similarly that could affect nationwide as opposed to God forbid an attack happening in your area. You're only affecting one small area versus the entire area.

So, I think that's something that folks are -- need to realize on both sides. And I will say, I've seen it from the beginning to now. DHS really the communication has improved. At the beginning that was part of the hesitation. We're reading in the newspaper that states had been breached or been hacked, and no states were aware of this, at least election officials. Someone may have gotten a notice.

Things are starting to change, and DHS is communicating with us, and we're communicating with them, and it helps -- I see some of the local folks in here as well. I would tell you, the greatest thing I've learned on that Government Coordinating Council, and this is amazing because for nine years I've been working with locals throughout the whole process. But the folks on the local level are so talented and really put in my head -- hey, this is -- just like the state doesn't like the federal folks coming in, sometimes the local don't like the state coming in. So that is something -- so there's

ancillary benefits to everything, and I think that's an ancillary benefit we've had.

MR. LISTES:

So, as we continue on, I want to see if the members here who have been listening to this conversation have any questions themselves. Yes, please.

MR. PETTIT:

So, this is all interesting.

MR. LISTES:

Please identify yourself.

MR. PETTIT:

I'm sorry. Jerry Pettit, Washington State. Thank you. Coming from a local jurisdiction and a small local jurisdiction, I feel fortunate that I have an IT group in my county that works really, really hard, they're very talented. We have a large IT department for our size county.

My concern is particularly maybe a couple of the people from the state level can talk about what has your discussion been regarding these little tiny jurisdictions, little tiny counties, the little cities, the little election jurisdictions that have such limited resources that they're lucky to even get their job done, let alone look at these kinds of issues. I think that sometimes that becomes one of our more critical access points and -- if you want to use the

word hack, or how some people could get into these areas if they began discovering this at a level that, especially when you have systems for example voter registration systems that were put together from the bottom up versus from the state level down, and how do you get to them and how do you work with them.

I think some of the HAVA funds is going to be a great idea to use some of those to help those jurisdictions get to a place. But you talked very seriously about some of the issues we have. The federal government down to the state government, the state governments down to local jurisdictions. How are -- what are some of the ideas you've talked about, have you talked about that and how do you help those local jurisdictions?

MR. LISTES:

So, thank you for the question. I think, all right so Bob, I know you're leaning in. I'll let you answer the question. I think one thing that I want to make sure we have a part of this conversation as we answer that is, I think one area that this question gets to, is what's the path forward for the GCC and information sharing in that. So Bob, I'll turn it over to you, but if we can just work that in as well.

MR. GILES:

Okay. That's a great question, because that's exactly where we are right now. When this all hit the states, took a step back and looked at how do we secure ourselves and how do we get our

infrastructure up to speed. And I think most states have been able to accomplish that. So, the second step is, okay, now we're connected to all of our locals. And how do we secure them? Because if they're our next level of vulnerability, what are the things we can do to assist all of you. So that discussion is going on, and it's probably the biggest discussion we're having right now as far as how do we get this information and these tools to our locals.

So, one of the tools that are out there is the MS-ISAC which is now the election infrastructure ISAC that the locals should be joining. There's a big push now that we're an election infrastructure ISAC, because the MS-ISAC was really a very technical widespread, broad tool that most of us didn't understand. You get alerts and it's very technical, so what we did was take that and basically say we want our own information sharing analysis center and we want it geared towards election officials, and we want it in layman's terms and we don't – you know we want the technical aspect.

So, what's going to happen if you join the EI-ISAC, you'll get alerts, and advisories, but they'll be written in such a way, there will be an executive summary, so it's readable for us, so we have an understanding of what that is, and then there's also a technical part that you can bring to your technical people to say hey are we doing

this? Look at this alert I got. Are we secure here? Then there's going to be weekly reports that the stories of the week.

So, you don't have to necessarily read everything that's going on, but you'll get two or three stories every week of what's going on in the country.

And then there's the cybersecurity spotlight. They're going to take like a term or a phrase, and each week you'll get ransomware, and they'll tell you what ransomware is, and they'll tell you what to look for and how to deal with it. So, by signing up for the EI-ISAC, it's going to give you a lot of that information, and it's going to assist you in maybe not knowing how to do it, but what questions to ask your IT folks. Then when you get down to the level, and that's our concern -- the very local level that doesn't have an IT staff. And we understand that. That's a discussion that's going on, how do we deal. We know we have states that the elections are run at the local level so they're dealing with hundreds, if not thousands of individual offices.

So, one suggestion is definitely to join the EI-ISAC. I think that's helpful. And we are looking at how to -- and I think Washington is looking at, I know New Jersey is -- is we talked a little bit about the Albert Sensors that help monitor the networks. We're looking at putting those monitors on the local jurisdictions at the county level. So, we can assist you with your county networks,

because that's really important. And like I said, if you're vulnerable ultimately, we become vulnerable, because if they come in through you there's a way to come into us. So, we are looking at it. Great question. And we have a GCC executive committee meeting tonight. I'm sure that'll be one of the things we talk about, but as we move forward, the GCC and having the locals on there, your voice is definitely being heard, and hopefully the HAVA funds can assist in helping the local jurisdictions.

MR. LISTES:

Bob and maybe Dave, before we move on, how does someone join the MS-ISAC or EI-ISAC? Do they sign up online? Do they reach out to their homeland security advisor?

MR. GILES:

Yeah, you can sign up, as long as you're an election office basically you can go online and I'm sure the EAC can share this information with everyone. Very simple process. You agree to the terms and then you're going to get these alerts, and you're going to get these advisories, and we're still -- we're even trying to make it more simplified, because we don't want you to get all these alerts to the point where it becomes noise, and you just see these things coming through and you're not paying attention to them. So, we want you guys to get what's important to you and to me too. And I see it too when they're all coming through. If you get four or five

you tend to look at them and let them go by. If you know you're getting election infrastructure ISAC notice, then you're going to stop and read it because you know it's geared specifically towards you. So you go online, you sign up. Very simple process. It's free. And then work with your state, and your state chief information security officer, and it really has to be a team. So, we're really pushing towards that.

MR. LISTES:

So, I think we've got time for one or two more. Does anybody else have any questions? Please.

MS. WILLIAMS:

Sally Williams from Michigan. Appreciate that Bob, we are one of those locally controlled states, and I'm struggling a little bit with some of this. I signed up for EI-ISAC. I also get MS-ISAC, and I don't know if I did that -- when do you do that, you get both right now. We've had just a handful of locals, I think more counties, sign up. But seeing everything that I am seeing through that, I'm a little concerned at this point if our local cities and townships all sign up if they're getting everything MS-ISAC, or can they get just the EI piece.

MR. GILES:

So my understanding is you can get just the EI piece now. And in the beginning, you couldn't then -- and that's part of the pilot.

There were seven states that were a part of this pilot program, and that's what we worked on and we developed the products that are going to be specifically for the EI-ISAC. So, now when you sign up you can select that, and then they're going to -- they're working on either being able to further segregate that down so you don't get that information. I'm signed up for both, so that's what I'm saying -- and we're trying to get them to brand it because it still comes as MS- ISAC but then it says EI-ISAC in the subject field.

So we've asked them to brand it just to EI-ISAC so we -- even though we're part of the MS-ISAC, we need to be our own brand and we need to -- so you guys see that and understand that. So that's a request that's into them. I think they will be able do it, so you'll just get EI- ISAC information.

MR. LISTES:

I think there's an important point to add on here, and that is that as you've mentioned a couple times, we're still developing what some of these communication protocols look like, right. So how granular does the information get when it's pushed down to the local level, how specific, or how broad of information base are you receiving on a consistent base.

So, as I think it was Mark or Bob that pointed out, that there are representatives for everybody who's in this room who are on the Executive Committee and on the Government Coordinating

Council, the GCC. So those members will be looking for your feedback as you're trying to figure out what -- tell them what you want to see from them, so they can communicate it in those meetings.

I think we've got time for one more. Does anybody have any more questions? All right. So seeing none, I'll ask the last question. Bob and Mark and Dave, what's the one thing you wish you had known right when you started to get into this topic, learning about what critical infrastructure means. What it means for the community itself, what it means for your operations? What's the one thing that we haven't covered that we should have? Bob, we'll start with you.

MR. GILES:

Well, I think one of -- I spoke about it earlier, is when we first got into it, learning who the players are. That was really important. And learning all the terminology. But I think one of the things and it's still true today, is the Freedom of Information Act and how to protect the information that we have, and that is an ongoing discussion. Because when we get information from DHS or from MS-ISAC or the EI-ISAC, we're trying to find this balance of transparency with the public and the media with protecting the information we're getting. So, there's this concern of I don't necessarily want to just redact stuff within a document, because if I

miss something and I share something I should not share, it's concerning. So, as we're moving forward, we're still struggling with that. If it's a federal document, is it protected under federal law, that then I don't have to share, and that's the easy answer we're looking for, to say federal, they called it secure and they put a protocol on it that I can't share it. But sometimes they don't put it to the level that happens, so then it kicks to your state law, and then that's where you need to talk to your legislators to make sure your state laws are strong enough to protect the information because you don't want to get a hundred page document that you have to now redact because your law is not quite strong enough on protecting this kind of information.

So, I think for me, and knowing the communications we had early on that that became an issue and I think most states, the media reached out when they were trying to figure out who the 21 states were. They wanted all your communications with DHS. So, it became this issue of well I've got all these attachments, they've got all these protocols on it, what do I do, is it classified, is it unclassified?

So that's probably the one thing in hindsight probably handling those communications early on would have been -- would have been a bit better and understanding those protocols.

MR. LISTES:

Thanks Bob, what about you, Mark?

MR. GOINS:

Well, everyone knows words are powerful. And words have always been powerful. But what I learned is the story that was told is not really accurate of what happened. When you hear 21 states, there was attempts on 21 states. The terminology is something that I need to know, and local officials need to know. You know, if a local official says there's a glitch, or if the state says there's a glitch, or if you use the word hack, you better be right it was a hack, because if it's just an attempt, really that's a success story. Meaning that if someone tried to get in your system, and you prevented them from getting in that system, it worked. But that's not what's told. If you're one of the 21 states in many instances, it suddenly became a breach, you were hacked. Unfortunately, it's a disservice to you and it's a disservice to the voters who lose trust and it's a disservice to the folks who trust your system.

So, when we talk about terminology, it is something you and your coms person needs to get down, because if it you make the wrong statement before a House or Senate hearing, or in your local newspaper, the next thing you know the word out there is so and so said we were hacked and that's not true. So, in the large part although there was a few successful attempts reading the media,

those things that you've seen, for the most part, it worked. Folks tried to get in and they were prevented and that's the story that really wasn't told. And that partly is the way it was presented, but also partly on just not knowing the terminology ourselves.

MR. LISTES:

Thanks, Mark. Dave?

MR. WULF:

You changed the question.

MR. LISTES:

You've been in this for a lot longer than us, so I can ask --

MR. WULF:

So, I think the one thing I would like to leave you all with is that we at DHS really want to be part of this community. We are not here to dictate. We are not here to develop or enforce standards. You know, I certainly wish, going back to the original question, Mark -- (laughter) -- that when I came into it, I had sort of a magical understanding immediately of the diversity of this community, and of the vocabulary, to your point. I mean, the words that we use are absolutely, absolutely key. And you know, it has been really great to have learned from you all. Not only the vocabulary, but the players. I think we're all still getting to another one another, but I do think the trust has developed. The relationships certainly have developed. The structures have

developed, and are continuing to develop. The GCC, the SCC, the EI-ISAC. So you know, huge strides forward and more to come. You know, the spotlight is not getting any dimmer. So, we got to keep our pedals to the medal. So, really appreciate the opportunity to be here. Super fun panel Mark, even though you changed questions. (laughter)

MR. LISTES:

So, right as we wrap up, I just want to remind everybody that we do continually put up new critical infrastructure resources on EAC.gov. These are resources that help everyone navigate everything from terms to new developments. We write a blog from time to time, and there's even a cybersecurity shared dictionary on there as well.

So, please check back often on EAC.gov and you'll see more and more of those resources. Also, please feel free to reach out to any of us on our staff to answer any questions at all. With that, I just want to thank my fellow panelists. Across the board, I think it's been a very valuable insight from all of you and I really appreciate your time.

With that, we are the last panel that is between you and lunch, and I have just a couple of lunchtime announcements. Thanks. I've been handed – so, on the way to lunch, those of you who are new members are welcome to have your head shot

photograph taken for our flyer. If you'll look for Brenda, she's right in the back, she's raising her hand right now as you leave, and our photographer. We'll use these photographs on our websites for the Standards Board page. We can send the photos to you for your own use as well. Two, immediately following lunch, members of the Standards Board are asked to please go to the lobby area directly across from the check-in desk. We'll take a quick group photo. I'm assured there's a promise this will take less time than last year. (Laughter) And three... If you have any questions about the photography at all, please again, Brenda, raising her hand in the back. Please see Brenda. And with that, I'll turn it over to Brian Newby. Thank you, everybody.

MR. NEWBY:

So, thank you to the panel. And just one more thing. If you haven't had enough Bob Giles, he's on the next panel also. He's the hardest working man in show business today. The panel will begin as you get your lunch in the Venetian Ballroom. So, after your photos, the Venetian Ballroom is back where you had breakfast this morning, so back again where Brenda was waving. So, with that, we'll move to the next room. Thank you, everybody.  
(applause)

(Lunch recess and Elections and Disaster Recovery Panel)

VICE-CHAIR MCCORMICK:

We are going to get started with our lunchtime panel, so please continue to eat. This panel is about elections and disasters, basically. We've got an interesting panel for you today. This is another area that we have had renewed focus on, given events of recent years, and a couple on our panel have dealt with some major disasters in their jurisdictions in dealing with elections. We also have a panel member who is preparing for, who lives in a jurisdiction that is right in the hurricane alley. And then another panel member who has just recently written a law review article on elections and natural disaster emergencies. So, I am going to go ahead and give a short bio for each of the panelist.

I have asked them to talk for about five minutes, and tell us about their thoughts on election emergencies, and what is going on in their jurisdictions. And then with our law professor to weigh in on what he discovered as he was researching for his article on election emergencies.

So, I will start at the end. The person who is on every panel and now who I am going to ask to speak with his mouth full as well as not taking showers, is Bob Giles. Director for the New Jersey Division of Elections. Bob was appointed to the position of Director of the New Jersey Division of Elections on May 1, 2008. Prior to this he was employed by the Ocean County Board of Elections

beginning in 1995 working as an investigator, a voting machine tech, and an assistant supervisor and then a supervisor. Bob is currently a member of the Standards Board and is the board's representative on the TGDC. He served as a member of the Department of Homeland Security's Cyber Unified Coordination Group for the 2016 Presidential election. He also served as a member of the Council of State Governments Election Technology Working Group. He is president of the National Association of State Election Directors, and serves as vice president of the New Jersey Association of Election Officials, and was a member of its legal and legislative committee. Thank you for doing this Bob.

MR. GILES:

Thank you. I have to stop sitting on the end. So, welcome back. The panel I was on last time was by choice, this panel not so much because you can't control where the weather goes. As many of you know we had Hurricane Sandy in 2012, a week before the Presidential election. Basically, devastating large parts of our state.

So, as a result of that, we obviously learned a lot and I think just kind of the overview, when you are talking about putting together a plan, if you remember you know after 911 everybody changed their plan to deal with anthrax scares. What do you do if somebody throws white powder in a polling place? And then we

had a hurricane, so we changed our plan again to address those issues.

Now we are changing our plans again for cybersecurity. So, an emergency preparedness plan is never a static document. It is constantly changing. And I can't believe it is almost six years since Hurricane Sandy, but you tend to get a plan and it's great and you put it on the shelf and forget about it until something happens. That is a danger, so you want to continually update your plan and as events occur in other states, look at those events and see how they apply. But at the end of the day, when you put together a plan, it is just a framework because you just don't know how intense something, or an event can be.

We had a good emergency plan in New Jersey. If a polling place caught fire or if there was an incident, we knew where we were going to move to the next polling place. We knew what we were going to do if the power went out in a polling place, but when entire towns are wiped out, it's just something that is very difficult to plan for, and you just become very reactive. So, if you have a good framework and if you have good people in place. I think that is the key. Communication, and trying to figure out who you go to to get stuff done is the most important part of your plan, especially when you basically have to take your plan and throw it out the window because mother nature didn't really agree with your plan.

So, I think from that perspective, just with my opening comments is that your plan is good, your plan is your framework, but you have to be ready to completely change it and just really think on your feet. That is my comment.

VICE-CHAIR MCCORMICK:

Thank you, Bob.

MR. GILES:

And now I can eat. Thank you.

VICE-CHAIR MCCORMICK:

We're going to come back to you. We're going to come back to you mid mouthful. Next to Bob is Walt Latham. Walt is the General Registrar of York County, Virginia. Walt has served as the General Registrar in York County since July 2007. Prior to that he served as an officer of elections in various elections. As a governor's fellow in the Virginia State Board of Elections and as the Assistant Registrar in York County. He has served in various positions in the Voters Registrars Association of Virginia. And is currently serving as its president. In 2003, Walt was admitted as an attorney in Virginia courts and in the US Court of Appeals for the 4<sup>th</sup> Circuit. After receiving his master's in public policy from William and Mary's Thomas Jefferson Program in Public Policy and a JD from the Marshall-Wythe School of Law. Walt worked in Information Services at the National Center for State Courts in

Williamsburg. He then worked at a small civil practice firm in Norfolk, Virginia. From 2005 until 2007 he served as an assistant public defender in Hampton, Virginia. In 2016 Walt was awarded the Virginia Electoral Board Association's Jensen Hager Best Practices Award for his exemplary work facilitating smoother elections throughout the state.

So, welcome Walt. I know you haven't experienced a disaster yet, but you are in a disaster alley, a hurricane alley in Virginia. So, give us a little low down on what you all are going through trying to set up contingency plans.

MR. LATHAM:

Well, we haven't, we did experience Sandy vicariously because we had emergency folks going up to New Jersey and New York. So, in the middle of a Presidential election we were, the former Secretary of the State Board, Don Palmer, was using some unusual parts of the state code to allow us to mail absentee ballots to people, and so that was enough to let me know that I really didn't want to be involved in something like Hurricane Sandy, but like Bob said, you don't really get a choice, and so shortly after becoming president, I was worried, what is Virginia's plan for dealing with a weather problem. And, I don't think we have one. But we are working on it. And when I say a problem, I don't mean like you know a polling place has a roof collapse, or something like that. I

mean if we have something like Isabelle, which didn't even hit Virginia as a full force hurricane, and it shuts down electricity in half of the state, what do we do if that happens in the weeks before an election? What if our officials can't get to the polling place? What if our voters can't get there? What does that do for the legitimacy of an election if you don't have a respectable turnout for an election?

And so, the state government under the previous governor, Governor McAuliffe, started working with us and the Department of Emergency Management at the state level to come up with, devising a template for local governments and how to work with state government on continuity of operations for elections. And that has been continued under the current governor. And just last week we had our meeting at the Virginia Emergency Operation Center, got a tour of the facility. It's very impressive, and they are very eager to work with us. So, that gives me a lot of hope that we will at least have some kind of plan in place if the eastern half of the state is devastated by a hurricane, and also if the western half of the state is flooded, which is what normally happens to them when there is a hurricane.

So, it won't be perfect, and I am sure something will be altered by the course of events, but at least we'll have a plan and can show that we have done something to keep democracy going.

VICE-CHAIR MCCORMICK:

Thank you, Walt. Next to Walt is Genevieve Whitaker, the deputy supervisor of elections for the US Virgin Islands. Genevieve is the Deputy Supervisor in the St. Croix District for the election system of Virgin Islands. She also serves on the executive committee of the EAC Standards Board. She has served in various capacities in government, private and non-profit sectors. Genevieve obtained a master's degree in political management with a concentration in electoral politics from the George Washington University in Criminal Justice, with a concentration in strategic management from Boston University. She received a JD in international human rights from the Stetson University College of Law. Genevieve serves as an assistant professor at the University of the Virgin Islands College of Business, teaching a course in business law and a course in elections participation within the College of Liberal Arts and Social Sciences. She is also the co-founder of Virgin Islands Youth Advocacy Coalition Inc., a youth civics education organization. And I think we all were quite aware of these hurricanes that hit the islands recently, and Genevieve we would love to hear, well, maybe not love, but love to hear about your experiences about what happened to your jurisdiction.

MS. WHITAKER:

I want to first thank, thank you very much Commissioner for having this panel, a very timely discussion. For us, a pretty real discussion. While there was not a lot of media attention on the Virgin Islands, we had, within a span of actually 13 days, the islands of St. Thomas and St. John, first hit by Irma. St. Croix was partially saved, and then 13 days later, so December 6 we were struck with Irma. Then 13 days later, we were struck by Hurricane Maria. Two category 5 hurricanes. We had not experienced a category 5 since 1989. Other hurricanes since that period. Very devastating.

I would say that, for me, also by way of background, I served on the EOC representing the office to our local EOC. In terms of the office itself, the St. Croix Office was largely destroyed. Luckily our machines, where the machines are stored in that office was fine, but for the most part total destruction of our front office. All of our offices for our staff, for myself and the supervisor. St. Thomas and St. John were actually, their offices were largely spared. We spent several months without power. Some areas up until now not having power. I would say we are probably about 90 percent power restoration, but faced with a lot of communication challenges. The St. John Office and St. Croix Office are still working and we recently as of last week, we finally have full internet service on St. John as

well as St. Thomas. They kind of go back and forth but for the most part they had internet service.

What I would say though, for me, this is about preparation, mitigation and recovery and not, those are the key tenants of emergency preparation and for me, it's also about relationship building. In preparation for the panel, I have reviewed NASS's updated 2007 report on preparedness, and one thing they did highlight which is something that I have also concluded, is that FEMA, for an example, is one of the entities that, is obviously one of the key entities that are present. There is little interaction beforehand. There needs to be a greater relationship between FEMA and generally, FEMA I would say also in the preparation process.

Speaking from personal experience, I did not in the 3 ½ to 4 years of serving at the EOC and becoming trained in emergency management, there was not significant presence of FEMA. However, there was a lot of training opportunities that we could take advantage of. So, looking at NASSs 2017 report gave us some ideas around how to best prepare. Recommendations include the election officials becoming trained in emergency management. I would say that, and I am not sure how it is in your states and territories, our local office of VITMEA, Virgin Islands Territory Management Emergency Agency did not see the election

system as a critical entity. In fact, we had to push our way in to meetings and, honestly, right after the storm, I actually went out and did an assessment of the office, reported that to the EOC and there really was not any particular priority given. It was a go here, you are just another agency. And in many ways not really being invited to the table once the disaster, you know once the recovery process began. In the case of FEMA, in terms of our receipt of federal funds, a pretty straightforward process, but again, no particular priority given, no discussions around how we go forward as we prepare for another season. How FEMA would work with the election system, in providing various technical assistance as we prepare yet again for another disaster.

So, in terms of the elections process itself. Many of our polling places obviously are schools. Going back to this concept of mitigation, it would take, in all honestly, and just to let you know we have FEMA present, we have the Army Corps of Engineers also present. Many of our schools survived the storm in terms of the structure. We had total devastation of a couple of our schools, particularly on the Island of St. Croix, where one of our middle schools was completely destroyed. Again, we are talking about over 200 miles per hour winds. A category 5 is the highest and that being largely destroyed. We had post storm issues, and that had a lot to do with a lack of mitigation. Whether its FEMA, the Army

Corps of Engineers conducted a necessary assessment to get us going in the process of retrofitting our buildings, and doing what -- so basically our schools, after months of just sitting there, with no response, whether our local government, whether FEMA, the Army Corps of Engineers in fact, what was a little frustrating for me was learning that Army Corps of Engineers went to a middle school that they had been condemned a couple of years before the storm, and I was wondering why would you assess a building that's already condemned.

But, on the flip side, you have the resilience of the people. You had persons who have come to volunteer. People from the states, from Denmark. All over. Helping out. What happened to St. Croix was that, as we weren't impacted by Irma, we gave a lot of our resources to St. Thomas and St. John. And we it came to our turn in terms of being struck, and just to let you know Maria also hit St. Thomas and St. John as well. It hit us a lot harder.

So, I look at this as a way forward. Right now, FEMA is a lot more engaged in conducting training and being present. The recovery effort though, I'll be honest, is protracted as I see it. The Department of Education has had its challenges. As we begin our new school year, many of our children are in half day sessions. The questions becomes of, how quickly can we get these modular schools down? There has been a lot of delays in that. A lot of red

tape and bureaucracy and so to the point where you kind of question what is the cause of it all? In a very small place with a little population, yet we seem to see a lot of blockages in the delivery of aid in that context.

There is hope. We have definitely, the US Congress has been involved and whether they were talking about allocation of federal funds. But what I am most concerned about is our preparation. Are we going to prepare better this way? In other words, is FEMA going to be a lot more present, and us having a shared relationship, and how we can better prepare next time our procurement processes? How do we go about essentially understanding our actual relationship? I mean, I'm not sure what the -- if schools are a priority, why are they still abandoned and what is going on with that?

So, I say that to say, we'll see, I am hoping that right now, there is -- because of the board preparation for the next election we are looking at alternative sites. It becomes a very difficult in a small island environment. But I do believe that we are going to still pull through. The hope is that the modular schools, which will be the polling places, will be delivered this summer, and we will move forward. So thank you for that.

VICE-CHAIR MCCORMICK:

Thanks Genevieve. We will get to questions in a little while, but our final panelist is Michael T. Morley. Michael is currently a law professor at Berry University School of Law in Orlando, Florida, but in June will be joining the faculty of the Florida State University College of Law in Tallahassee. Professor Morley is a graduate of Yale Law School. Clerked on the US Court of Appeals for the 11<sup>th</sup> Circuit, and was a Climenko Fellow and lecturer on law at Harvard Law School. Less than two weeks ago, Professor Morley published an article entitled, "Election Emergencies, Voting in the Wake of Natural Disasters and Terrorist Attacks" in the Emory Law Journal.

Coincidentally, Professor Morley forwarded a copy of this article to Brian Newby, the Executive Director and myself, and not knowing that we were planning this panel for the Standards Board meeting, so we quickly called him and asked him to participate and to help us understand the legal considerations when dealing with election emergencies. So, thank you so much for coming and being with us to share your knowledge.

MR. MORLEY:

Thank you very much for having me. One thing that has become very apparent if you look even just over the course of the past few years since the turn of the century, is that our electoral

system is highly vulnerable to natural disasters. Calamities.  
Terrorist attacks.

Our goal, I would suggest, is to prepare for these types of contingencies, not only through election emergency plans, but by facilitating, advocating the adoption of election emergency statutes, that give election officials the powers to address these problems in as much in advance as possible based on clear, nonpartisan objectives standards, pursuant to comprehensive statutory schemes that give election officials the authority they need to preserve everyone's right to vote in the midst of dealing with these types of disasters.

So, your main question might be, why a statute? Why election emergency statutes? There are really two alternatives. The first is for election officials to try to address these problems on their own, on an ad hoc basis. Or secondly, for courts to do so. Neither of these alternatives, if you look empirically, if you look into our two past decades of experience, wind up being particularly effective.

Hurricane Sandy in New Jersey is an example of an election official, the Lieutenant Governor is the state's chief election officer, doing her best, under extreme circumstances in the absence of statutory authority, should try to protect people's right to vote in the midst of this hurricane. Among numerous executive orders that she

issued in an attempt to try to remedy the problem, she allowed -- she issued an order allowing individuals to vote at satellite voting locations outside of the areas to which they were registered. One of the consequences of that, and this was something, again, in the midst of an emergency, this is the last thing on anyone's mind, one of the consequences of that is that if you go to vote at a precinct outside of where you are registered, none of the local questions are going to be on that ballot. The only votes of yours that are going to count are going to be for the larger scale offices. The state-wide offices. Perhaps if you are in the same district, congressional district offices, county wide offices.

And so litigation resulted because there were numerous voters from Hoboken, New Jersey who had voted at the satellite districts, and the number of those voters who were deprived of the chance to vote on those local referenda without being notified, without being warned or cautioned about it, again because this isn't what people are thinking about in the middle of Hurricane Sandy. The number of people who voted at these centers was greater than the margin by which one of the referenda passed, and so it resulted in litigation. And the court held this was unconstitutional. These voters were deprived of a chance to vote on these local issues without being warned, without being given caution of it. And so, the election was nullified, and they had to do it over.

One of the other orders that was issued was applying the rules for military and overseas voters to all voters. Saying that everyone throughout the state who was affected by the hurricane can vote over the internet, can vote by fax, can vote by email. As a result, many county official systems crashed, they ran out of toner, they were unable to process all of these requests. In one case, the county election officer was giving out his personal email address, and having people just email, e-scan and email their ballots. And again, this isn't a criticism. These were people doing the best they could under emergency circumstances, but as a lessons learned type thing, and PS, that was challenged as unconstitutional and a court wound up saying anyone who had requested ballots and whose request wasn't processed because the systems crashed, because the printers ran out of ink, they had an opportunity after election day to resubmit their request and the court wound up extending the election period by three days based on constitutional concerns about this ad hock process that was put into place.

So, again, under the circumstances given the legal framework at the time, election officials were doing the best they could, but they resulted in aspects to problems that weren't fully considered. What two separate courts held wound up being constitutional issues. And so, had there been an election emergency statute in place that provided a well thought out

objective framework that specifically empowered election officials, the Lieutenant Governor take these steps, we wouldn't have had these constitutional problems. We wouldn't have had these election re-dos.

The other alternative is to simply to allow the courts to do it, which I would suggest is the least good alternative out of all of these. Election litigation, by its very nature, tends to be very partisan, tends to be very ad hock, based on subjective value judgements. There is a tremendous amount of forum shopping involved precisely because of this subjectivity of many of the balancing tests that come into play. And often times, I would suggest one of the things that you systematically see in these cases, is that courts tend to undervalue the challenges that you all, as election officials face.

Courts often present these issues as fundamental constitutional rights, versus administrative convenience of faceless bureaucrats and the constitution wins. That's not true. That's not an accurate assessment. Of course, particularly if you have just gotten hit by a hurricane. If the ground has opened up, and you have just been flooded. If you want to have election day proceed, you have a tremendous amount of work that you have to do in terms of processing all of the last-minute voter registrations, relocating polling places that are inaccessible, making sure all of

your polling place officials are going to show up. That it isn't just a matter of administrative burdens, of administrative convenience, that upholding and enforcing elections laws winds up playing a compelling role in insuring that election day goes forward as planned. And so, keeping these issues out of the courts, addressing them again, pursuant to objective, neutral, nonpartisan standards that clearly identify, in advance, the circumstances under which the standard rules of elections need to be modified, who has the authority to modify them, the geographic scope within the state over which those rules will be modified, laying out an election emergency statute, and I would be happy to talk to you. There is tremendous variation right not in terms of what we see in current state laws. Virtually every state in the country has very very limited statutes that says if voting machines malfunction you can use paper ballots. If a voting place becomes inaccessible you can move the voting place. A few jurisdictions have more robust statutes that allow election day to be delayed under certain circumstances. That allow restrictions on absentee ballot requests, or who qualifies for absentee ballots to be waived in emergency situations. There are a few states that have even more extreme, more thorough, comprehensive extreme election emergency statutes that provide even for worse case scenarios. New York being among them.

Having such a statute in place insures that you are not making important politically charged decisions on the spot, in the midst of an emergency, without potentially recognizing some of their implications.

VICE-CHAIR MCCORMICK:

Thank you for that. So, Bob, there is a lot of litigation around Superstorm Sandy.

MR. GILES:

I thought I did a good job. I guess not. (Laughter) Oops.

VICE-CHAIR MCCORMICK:

He said he's not criticizing you. You did deal with it.

MR. GILES:

I know. I know.

VICE-CHAIR MCCORMICK:

So, what did you learn out of that situation? What wisdom can you give us about preparing for these things? What would be the first thing that you would look to change, to fix the situation that happened in Superstorm Sandy?

MR. GILES:

So, he is right. There were absolutely unintended consequences by the choices we made. You have to remember, 1, it was a Presidential election, so you can't cancel that. You can't move that. So that was the first thing we had to -- if it was a state-

wide race you could have cancelled, you could move it, you had some flexibility, but because it was a Presidential election we had no flexibility. We had to move forward.

So, we started looking at things we could do to get people to vote. We had a gentleman, and this is what led the Lieutenant Governor to make some of the decisions, he couldn't get back home, and there was no way he was getting to his house and basically, he went to another election office and said, look, I have lost my house, its destroyed, I don't want to lose my right to vote. What can you do for me?

So, that's when we started taking actions like declaring everybody a UOCAVA voter that was displaced, because that was the quickest and easiest way, without getting into trying to write some kind of law or executive order to address that, so we made them basically UOCAVA voters so that they could fax and email their ballots. Because they weren't, there were the barrier island, you couldn't get to it. It was just wiped away. So those people were not you know getting home, and then there was gas shortages. You couldn't get gasoline. So, people couldn't even drive even if they wanted to get there. So, we allowed that, and then we also allowed for people to vote a provisional ballot anywhere in the state, so they could at least vote for President and,

that was the big concern for most of the calls. I want to vote for President.

So, we understand that is had some unintended consequences down at the local level, but the bigger picture for us was that particular issue. So those were decisions that you had to make at the time and utilize what existing laws were in place and how we -- by using the existing provisional ballot laws and just counting what you are eligible for -- so, and you are right some people got further down the ticket to congressional, maybe if they were still in the town, but they could only get to a certain section of town.

So, it's tough to say and I don't know how you could write a piece of legislation that is that broad, and I haven't seen your paper and I am interested in reading it now, but to cover something like that, that you -- I mean it's unavoidable to say -- I don't see how you say you can vote for local -- because we did try to figure out how do we get those local ballots around the state? Is that even possible to get a ballot in the northern part of the state down to somebody down south? It just wasn't feasible, so we you know we said look we'll let you vote for whatever you are eligible for at that particular location. At least, like we said, you got to vote for President.

So, yeah we knew there were unintended consequences, absolutely. Fax machines were backed up. We weren't -- you're

just – you know on a normal election your fax machine and your email box can handle normal. But when you say here is the email address to request a ballot, kind of like a self-imposed DDOS attack, we kind of just said, hey, send everything here. And it kind of locked up, and they couldn't get to it, so we had to extend, and that is what happens. An early action required us to take another action to extend the deadline. To take another action to extend another deadline.

So, we were trying to address them as they came in, but these things, these changes were the Saturday before the election. So, there is not a lot of time to say let's have a really well thought out plan for this. It was, we a provisional ballot law, let's use it. We have a UOCAVA law, let's use it. And those are the approaches we took, so I don't know in hindsight, and without reading your paper, how we could have done anything differently, and I just don't know how you could write legislation to cover all the scenarios that a disaster like that throw at you.

VICE-CHAIR MCCORMICK:

Walt, you are working on a plan right now. Listening to all of this, what is your greatest fear in writing this plan and how to address all of these kinds of issues?

MR. LATHAM:

My biggest fear is a federal election, and I don't know if you have looked at the Virginia statute, but almost every election except a general election for governor, lieutenant governor, attorney general and a federal general election, the governor can move, or cancel, even in the middle of the day, an election in Virginia. And that was passed in '02 I guess after September 11.

So, we have some recourse, and I am hoping in this plan, if Governor Northam says, what do I do, there has been something, blew up somewhere, or a hurricane. They can give him a folder with these options. But there is nothing you can do for a federal election. And that is my concern is that, and if you bring that up, people instantly go to well we might just have a situation where someone cancels an election and we never have an election again. And I get that, I think that is what the opposition will be to that, but you still have to have a plan. You can't just wing it, because then you have the litigation, and you possibly undermine the legitimacy of the election if the courts go back and say well, none of these votes count. In Virginia we would never get by with that in Virginia. You know, them saying we're going to treat everyone as a UOCAVA voter, it would be no that's not going to work. I don't know what the procedure is for a federal election. For a state election, it's a little more manageable. We've had a little bit of --

enough go on. We even had an earthquake in 2011. You know, didn't expect that.

After that we all got little riders on our insurance policies coming in the mail. Everyone got it in the mail, that insurance companies would not cover earthquakes or volcanoes anymore in Virginia. (Laughter) So, we knew that we were probably going to lose if we ever had to fight the insurance company with our homeowner's insurance, but it did make you wonder what else is going on. I am in York County. We have Camp Perry, which may or may not be the CIA (Laughter) and we have naval weapons station. The CIA by the way, puts notices in the local paper and you live locally, you see these, but they'll put, Camp Perry puts notices in the paper. If you hear explosions out of Camp Perry don't worry, it's just training. (Laughter) And then, we have a weapons naval station, and you have Norfolk Naval Base, all of which may or may not have nuclear weapons. If you ask them they will say we can't tell you. You have to decide how that makes you feel. (Laughter) That is just something we have come to accept in the Tidewater area, but my biggest fear is the federal election and not having a procedure and the fact that there is so much. I know it sounds good, but it sounds good as long as it works, but there is so much inflexibility built into an election, especially a Presidential election, and you can't move the date too far. I mean even if you

could move the date, even if Congress said fine, we will move it to December, that doesn't give a lot of time for recounts, or the Electoral College to meet. Because the term for the president starts January 20, come hell or high water.

VICE-CHAIR MCCORMICK:

Genevieve, when you saw these hurricanes barreling toward the islands, what was the first thing that you did to prepare for them?

MS. WHITAKER:

Well, on a personal basis, move out of the house that I lived in because it definitely wasn't hurricane proof, and move to a house that definitely was hurricane proof. I would say this kind of goes back, we had a couple of years ago, one of our elections was a very rainy day, very unstable because of the weather and there was a consideration, just to let everyone know, we do in fact have an emergency plan. It is somewhat vague, but it definitely involves the election system office, the board and the executive branch. In terms of them coming together to make a decision about whether this would warrant stopping the election. So, there is definitely flexibility.

In terms of my lawyer hat, putting that on, I do get a bit concerned about, my biggest thing is always preparation. I think that we need to be more involved in preparing and conducting drills

and things like that. Storms and hurricanes come very often, and when it comes they can be completely devastating.

So, in terms of what I did for the office, what was important was the safety of our staff. I make it a point definitely to reach out to all of my staff, concerned with where they live as well. Really, instructing people that if you don't live in a safe place, definitely go to a shelter on that basis.

But also coordinate with the EOC, like I said I sat at the EOC, but I did – I will be honest, we had a very hectic election season last time, and also too, I did not find our meetings at the EOC very productive. I had already done all of my trainings, but I didn't feel that we were engaged with what I considered to be action planning.

I took a recent course in emergency management, and it was drilling down on policy making and the importance of planning and it becomes a bit frustrating when you go to a meeting and we just sit and we talk, but we don't get into this concept of action planning, nor do we see the relations being developed. My immediate reaction after the storm was really to get involved. The government was a bit too chaotic as far as I saw in terms of everybody was really intense. Very frustrating. And I decided to volunteer. Get involved with the local Red Cross, and even speaking to Red Cross people. Saying net time, as we get ready for

the next season, there should be more engagement of training of volunteers. A greater engagement of an action plan where we involve all of the agencies. Human Service, and like I have said the FEMA representatives, I have been very clear to them, your presence is necessary in order for us to build relationships. The Army Corps to be present. We have a lot of schools that even before the storm could be also condemned because of infrastructure that was already compromised, and of course the storm adding more. We have a lot of – a number of schools full of mold, and the storm exacerbated it of course.

So, the immediate steps for me was just really, I'll be honest I also thought that our elections office was not (inaudible) structured, so for me, I was not surprised at the level of damage. Sheet rock, and things like that. I am a big proponent of concrete, and I feel that most of our buildings should be all concrete. So, the whole point is, we are now engaging with our landlord, and as we consider possibly even moving to another building. Being more -- the biggest thing was the machines, where they were stored, was quite a safe area, and perhaps if the rest of our building was in that same structure, we'd have -- our office wouldn't have been compromised. So having, when we deal with our contractors, having a better sense of the integrity of the building. And also, really realizing we have to prepare for category 5 storms. Building

a house or a property to a category 2 or 3 is not cutting it. We have to build right, and the hope is that as we again prepare we develop better relationships. And that is my key point. Preparing and mitigating as best we can.

VICE-CHAIR MCCORMICK:

Michael, before we get into more on the legislation, I don't know if your research -- if you did research on this, but what actually constitutes an emergency, or maybe better than that what does not constitute an emergency?

MR. MORLEY:

That's an excellent question, and that is one of the issues that constantly arises when you are talking about election officials, particularly in the absence of clear statutory authorization. Contemplating, taking extraordinary steps.

There have been situations where this question was litigated, where people have gone to courts asking for court orders either delaying elections, seeking waivers of rules for elections. And while there is not a single succinct clear-cut answer I can give you, some of the general principles that have evolved is that ordinary, run of the mill type problems, such as power failures, equipment malfunctions, long lines, extreme weather, short of hurricanes, heavy rains for example. These are categories of things that courts have generally been unwilling to recognize as

election emergencies that give rise to either the need to waive the usual rules that govern the electoral process, or that constitute unconstitutional burdens or unconstitutional interference with people's right to vote.

On the other hand, both as a descriptive matter, looking in terms of circumstances under which election officials have acted, as well as the few cases in which the matter has been alluded to in litigation, things such as hurricanes, earthquakes, massive snowstorms and blizzards. Maine has an interesting line of cases from the 1950's about snow storms and blizzards making it impossible to vote up there. Those have categorically been recognized as either constituting the types of extreme circumstances that would warrant judicial relief that would constitute new burdens on the right to vote.

And so that obviously leaves a tremendous grey area in between these two extremes, where it is in the absence of a statute that draws the distinction, that makes the line, that gives clear guidance as to the circumstances under which you can exercise extraordinary power. It is something that is going to be worked out on a case by case basis using both election official's personal judgement as well as what courts are willing to tolerate.

One quick thing I want to push back a little bit on, and without getting into the legal weeds, is the notion that states on

their own cannot postpone a federal election based on election emergencies. There are obviously federal statutes that lay out when election day is going to be. That specify when elections for Congress will happen, when elections for President will happen. But if you look at a section or two further in Title 2, Title 3 of the US Code, if you look at the subsequent section, there are then later statutes that talk about if there is a failure to elect representative and if there is a failure to elect Presidential electors on that day, then there is statutory authorization for states to conduct elections at a later day. Interestingly, for historical reasons, there isn't a statute that applies to US Senate elections, though most courts have said we are going to apply the House race to Senate elections because back when that statute was passed we didn't have direct election of Senators. So, that tells you how old some of these laws we are dealing with are.

But generally the few courts that have looked at them, as well as some of the other commentary that have looked at them, have basically said these failure to elect statutes for the House, for the President, courts have applied the House one to the Senate. Those failure to elect statutes give states the flexibility they need to be able to delay federal elections in the wake of these disasters.

So, I would urge you to the extent that you are crafting plans, that you are crafting emergency election statutes, you you --

I would contend, if you look at the precedence, if you look at the analysis, you're actually not limited in your ability to delay federal elections based on emergencies. There are other circumstances of course. You can't delay the Presidential election too far. You have your safe harbor to worry about right. We all remember Bush v Gore, we are here in Florida, but obviously there are statutorily required meetings for the Electoral College itself, but at least to the extent you are talking about short term delays of a few days, a week. There would be tremendous political consequences. There would be tremendous logistical consequences, but exclusively from a legal perspective, that is something that in the face of a large enough emergency you have the flexibility to do.

VICE-CHAIR MCCORMICK:

Interesting. I didn't know that. Learning something today. Bob, you talked about a self-imposed DDOS attack. How do you effectively communicate with the voters when there is a pending disaster? What they should do? What actions they should take?

MR. GILES

So, what we did back in 2012, and fortunately we were part of the Voting Information Project, the VIP. So we worked closely with them as far as pushing out information to the voters for our polling places. So, the Friday before the election of our 3500 polling places, 900 were gone. So, we had to find 900 new

locations over the weekend. So, we worked with VIP to -- as every two hours as we updated our list of polling places, we would push a new file out, and then they would push it out to all of the organizations that were utilizing their information. They also had a texting tool, so we were advertising the texting tool because obviously a lot of people didn't have access necessarily to the internet or to their computers, so at least if they had their phone they could text to a particular number, and they could get their polling place information sent back to them.

So that was probably one of the biggest ways and obviously, TV news, radio news, all the different outlets that we could get to, and they were fantastic. But that was probably, short of the news saying -- you know, and then running it along a little scroll at the bottom of the news feed on TV, so just pushing the VIP was probably our biggest way to at least tell people before you go to your polling place, because it could change two or three times.

One of the problems, we gave all of our polling place information to the Board of Public Utilities, so they could get it to the power companies, so they -- we would get on the list after hospitals and water treatment, all the life particular departments and needs were taken care of. So, we got on this list, and they would let us know when that particular area was up and running and they would say this grid is now working. We would reach out to our locals, and

even though the grid was fixed, you could have transformers out, so we would then find out if in fact they could have the polling place there or not, due to the power outages, and that was changing on the hourly basis. So that is why we said every two hours we would put out a new feed and then prior to going to your polling place please check either on a website or by texting, and that was hugely successful. I think we had more than half the texts that VIP had for that Presidential election just in New Jersey. So, it was pretty phenomenal.

VICE-CHAIR MCCORMICK:

I know you don't have microphones out there, but if you have a question, oh we do have microphones. Okay, I will take questions. Anybody have questions for the panel that they want to ask? About disaster planning? Contingency plans? Their experiences? Nobody has anything?

CHAIRMAN KING:

Thanks very much to each of the panelists. It has been very informative, and I too have learned a little bit about federal statute. So, I appreciate that. My particular question is directed towards Genevieve. You mentioned that following the disaster that the Virgin Islands received assistance from a wide variety of sources, including from Denmark, which I found particularly interesting. I wonder, in that context, could the elections community respond on

an individual basis to a jurisdiction that was affected by an overall catastrophe of the sort you describe? And if so, would there be additional problems resulting from housing and accommodating the responders?

MS. WHITAKER:

Thank you Brad. That's a great question. If we had lost our machines, we would be in a much different conversation because of the skill ability, in terms of the amount of money. I mean, because at the same time, being able to replace all of those machines. We had just bought the ExpressVotes, and so we were very fortunate because the procurement process is very dragged out.

What I would say about the community helping. It has a lot to do with even as we talk about what are your standards out there. What are your examples of statutes that we could look at to better shore up our own statutes. The rendering of assistance, more so around this conversation around FEMA for me. I would like to know in your states and territories, how does FEMA interact with your respective state, because I also know that there is always a conversation, at least for a local level that we see things happening. We have family in Florida. We have family in Texas. And we were quite aware of a different response. In terms of the quickness of recovery, how funds are allocated a lot quickly. Here we have a lot

of people who still have no roofs on their houses. We have people who have been asked for their great, great, great, great grandfather or grandmother's deeds. And not accepting people's deeds. And a lot of issues in terms of insurance payouts is pretty systemic. But we did, in terms of our power restoration, we did have -- it was pretty well done in terms of the power people coming from away. Power companies, contracts being dolled out.

But when it came really to our schools, no priority. As I sit here today, we have schools that are just sitting there, and parents are doing the best they can, teachers and so on are getting together to help, but there is no FEMA. (inaudible) FEMA didn't give us any priority, just kind of another agency, there was no priority given. To say well, we'll make the process a little more simplified for you. Everything is now centralized by the Virgin Islands Territory Emergency Management Agency, and the funds go directly to them. So, we actually have to go through them to get our funds to basically purchase our equipment.

So, and then also the fact that a lot of people have left. Some people just cannot, I mean they had to leave because their children are -- the schools were you know you now -- they were condemned. So many people have left. We have had thousands of Virgin Islanders who have actually left (inaudible) hundreds of

thousands of people leaving because of the lack -- everything takes so long and is so protracted.

So, we have now a concern over our absentee process, and it will be helpful to know how best are we going to be able to reach out to the Virgin Islanders who are now in your respective states. They have lived there, they have actually relocated so that will be great if we can get a system in place where the Virgin Islands residents who live now in your states, we can get their information as to whether they plan on remaining in your states or if they would like to vote absentee.

So, that is where we are now in terms of getting that information. And speaking of this community, that would be a great help. Thank you.

VICE-CHAIR MCCORMICK:

Michael, what can election officials do now to communicate to the legislatures the need for election emergency laws, and what are the one or two most important things that you've seen are necessary on those laws?

MR. MORLEY:

I think that one of the best things that election officials can do is working together through groups like this to come up with model statutes, you know model approaches that to the extent that the ball is rolling, right. Basically, the easier you can make it on

legislators, the less work they have to do, the less thinking they have to do about it, the more likely it is that they will take the ball that you give them and run with it. And so to the extent that a professional consensus can develop around, at a minimum a body of principles if not an actual statutory framework, then you can be able to say, much like we see in the uniform law context, with the Uniform Commercial Code, other uniform laws, that the simple fact that other states throughout the country have chosen to adopt that approach creates pressure, creates momentum, that facilitates its adoption, sprinkled in with the stories of the difficulties, the challenges, the expensive litigation that arises when you are ill prepared without these types of statutes that give election officials the authority they need that clearly identifies the standards by which they can act. The circumstances under which they can act. The particular steps they may or may not take. The more the election administrator community is able to coalesce around a particular framework, I think that makes it easier for legislators to adopt it. It creates an air of urgency. It creates a sense of legitimacy. And it can help move toward insuring that every state has at least the minimum structure in place that it needs to be able to address these situations rather than what we currently see in terms of dramatically diverging approaches from some states that are relying effectively just on the governor's emergency authority to

other states, such as Virginia, such as Florida, that have very very detailed, very very thorough specific, comprehensive election emergency laws.

VICE-CHAIR MCCORMICK:

Yes, Walt. Please.

MR. LATHAM:

I was going to ask that question of you. The Uniform Law Commission has delved into a lot of different categories of laws. Especially contract law with the Uniform Commercial Code and then they have done the (inaudible) statute, which I don't know how people generally feel about that. A lot of states have adopted it. But they haven't – they don't really seem to pay a lot attention to election stuff. And I think we all generally believe in a very strong federal system. But there is also something to be said for efficiency. So, maybe this is an example one other area where they need to come up or they should at least look at a uniform law on emergency election provisions, because there is strength in numbers and if you have, an emergency is an emergency. Whether it's a volcano or a hurricane. You know, maybe having a group of people work on it would make us more resilient from legal attack.

VICE-CHAIR MCCORMICK:

Thank you. Do we have more questions? Yep.

MS. RONCELLI:

Michael, on Tax Day, there was a federal emergency. Was there a statute for the federal government to handle that emergency and extend Tax Day because of electronic submissions, or was that just an emergency decision? Do you know?

MR. MORLEY:

I do not know anything about the IRS beyond what Turbo Tax tells me. (Laughter)

MS. RONCELLI:

Well if I would have known, I would have waited to pay my taxes. (Laughter) (inaudible) they had a statute to allow that to be extended.

VICE-CHAIR MCCORMICK:

Do we have other questions?

MS. MOREHEAD:

Yes, my concern about enacting statutes, is that you know, the old adage in elections is elections are local, so the situations are very different in different locations. In the Virgin Islands, unfortunately, I don't know what you would really call us, but we, like Guam and the other territories are not able to vote for President, but we have elections every two years for our local legislature and every four years, and this is one, for gubernatorial elections, but every election we have a delegate to Congress vote

so we do have to comply with federal laws with respect to elections. But because there is so many differences, my concern with respect to statutes, and I have been a member of the ULC for some time in a past life, and there was no attention. Basically, no attention paid to elections at least during my tenure. But my concern would be how specific would you suggest that statutes would be so that they would be flexible enough to apply to different locations and different situations.

MR. MORLEY:

So, without having debate over particular text right, it's impossible to give a full answer to that question. But what I would say is there are certain very hard questions, right. There are certain ultimately subjective questions. For example, to take just one recurring question. Let's say you're facing a Congressional election. And let's say that you have flooding, or a hurricane, or an earthquake, or some natural disaster that affects half of the Congressional district. Or that makes it impossible or unreasonably dangerous, unreasonably impracticable to conduct elections within half of the Congressional district. What do you do? Do you -- to the extent that the election emergency laws exist, do you suspend the emergency just -- do you suspend the election? Do you grant waivers just within the part of the district that is affected by the

emergency? Do you suspend it throughout the entire district? Do you suspend it throughout the entire state or territory?

That is a question. I don't necessarily know if there is one objectively correct answer to, but that is the sort of thing where if election officials are making that decision on the spot, they are going to be subjected to tremendous partisan pressure whatever answer they come up with. Invariably, or at least there is a substantial likelihood is going to benefit one candidate or another. So those are the types of questions, in terms of determining the minimum criteria on which election emergency laws should be invoked. The breadth of exceptions we should make. Those types of what you should call higher level questions, or the difficult questions, I think we need to work out ahead of time before you know who is going to be the particular beneficiary of particular outcomes. Have those embodied in law, and then the nuts and bolts technical details of whether it is the election board or the supervisor of elections, or however the elections happen to be administered in a particular jurisdiction.

That's the type of unavoidable variability that has to be left to each individual jurisdiction, each individual state, each individual territory. But at least for those types of no clear answer, politically charged, unavoidable subjective balancing type questions, I think that everyone has a stake in having those resolved ahead of time

rather than on the spot without potentially even recognizing all of the possible consequences under highly partisan charged circumstances.

VICE-CHAIR MCCORMICK:

So, we need to wrap up. I am going to ask each of the panelists to give us one parting comment. Starting with Bob down at the end and we will just move across.

MR. GILES:

I think it goes back to my opening comment of having your plan be flexible enough and now your laws be flexible enough too. And I am interested in reading and seeing where you suggest to go with emergency legislation like that. So yeah, I think it is just a matter of being flexible with your plan and having the ability to, just like you were talking about, half your state, half your jurisdiction could be under a snow storm and the other half is getting a dusting. So, how do you deal with that. So, you've got to be flexible.

VICE-CHAIR MCCORMICK:

Walt.

MR. LATHAM:

I would form a committee and have them look into it.  
(Laughter) I know that sounds really simple, but you can't solve everything yourself. And you get a variety of people from around the state to get involved, and in my case, I tell them I am the

president of the association. I am just there for my looks. I can't help with all the answers, so I ask people who wanted to be on a committee and they formed, and they are working on it. And I will be showing up and helping out where I can. Have them look into it, have people who are particularly affected by these issues. People who live in northern Virginia who may have snow issues, or where 70 percent of America's web traffic goes through. People who live in Tidewater who have hurricanes. They are each going to bring something to the table that you are not going to think of. So, form a committee. Have them -- give them a title and get them involved, as the saying goes.

VICE-CHAIR MCCORMICK:

Genevieve.

MS. WHITAKER:

I do want to thank you. My key thing is training and preparing. I think that everyone in this room who has not already been trained in emergency management, it's quite valuable. I say it's important to be at the table. If your local emergency management office doesn't want you to be there, in some cases that is the case, push your way through. And overall, just be intentional, realizing that the goal is to get people back to normalcy, and something like voting is a fundamental right. Although we have issues within the Virgin Islands I will say openly that I am fighting

for the rights of the Virgin Islanders to have the right to vote, vote for the President. I am quite involved in that at a personal level. But at the end of the day normalcy is important, and lets just do our best. Training. Prepare. You can never prepare too much. Thank you.

VICE-CHAIR MCCORMICK:

Michael. Last word.

MR. MORLEY:

My main takeaway from this panel is if you want to get your power back after a storm, have your house be a polling place. (Laughter) But my main piece of advice would be, in the short term, as you are putting together your administrative plans and your administrative responses, make sure you have statutory authority for each thing that you are purporting to allow election officials to do. It's one thing to say in your plan, okay, if we have a disaster, if we have an emergency, the county election officer will let people vote by military ballot, or will let people vote by absentee ballot after the deadline. You don't want to then show up in court two weeks later when somebody is challenging the election and have a judge say well, where is your authority for that? Where does the state constitution let you can do that? Where does state law let you do that?

So, as you are preparing your plans, make sure that each of your contingencies is supported by statutory authority, and if there is none there, that just bolsters your case for having election emergency statutes enacted.

VICE-CHAIR MCCORMICK:

I want to thank each and every one of the panelists. I think this was an interesting panel. We got some humor in here as well. Thank you all for sticking around after lunch to listen. We move forward. Prepare. Prepare. Prepare. Lots of drills. Thanks so much. Brenda has an announcement real quick.

CHAIRMAN KING:

We will begin in just a moment. If you haven't taken your seat, please do so. We are back in session. We've heard several references today to alphabet soup and acronyms. We're going to be focusing now on one of our most venerable acronyms, VVSG. Try to think if you can think of a clever series of words that stands for, and share them later. But at this point I'd like to turn the microphone over to Brian Newby to introduce our panelists. Brian?

MR. NEWBY:

Thank you and welcome back. So, one of the first things the Commissioners did when the EAC Commissioners were kind of reformed I guess back in 2015, they passed VVSG 1.1, and

accepted the development process for VVSG 2.0, which is actually the third version of VVSG, or technically fourth as Brian has pointed out from the old days. So, apparently, election people didn't do the numbering system there. But the VVSG 2.0 has gone through significant development with the TGDC and has been presented -- voted by the TGDC and presented to the executive director. This happened in the fall of 2017.

The next step now is that it is presented to the Advisory Boards – the Standards Board and Board of Advisors, and that's what we are going to do today. So, Brian Hancock who's been Director of Certification since the EAC began will cover all of this, and I think you will see a streamlined approach with VVSG 2.0.

And a lot of that is credited to Ryan Macias, who used to be a Standards Board member, and now has been with the EAC a couple of years. He really led the charge in breaking it down in this very simplistic, creative way that lets a lot of flexibility in the process exist. And Greg Riddlemoser, the registrar for Stafford County, who is part of the TGDC, will be up here as well to help present. And then they will answer questions with the end game here of the Standards Board voicing their opinion through a vote for VVSG 2.0. So, I will hand it off now to Brian.

MR. RIDDLEMOSER:

Thank you everyone. As our Executive Director said, I am Greg Riddlemoser. I am a local election official from Stafford County Virginia. I am a member of the TGDC, and I am the VVSG Chair of this (inaudible) body, having taken the reins from Paul Lux from Florida, a great man. Now, I had asked the staff to put tissues in your welcome kits because when Brian gets up, it is going to be incredible. It's going to bring a tear to your eye. And you are going to want to follow every word that comes.

Now, what you are about to see is basically the cumulation of three year's work. And I spend 26 years in DOD, retired as a Colonel, neither here nor there, but I say this to say that we know that the work is not done in the Pentagon by general officers. It is done by Captains and Majors and Sergeants.

So, I want to mention a few people that were very instrumental in getting this thing off the ground. Bob Giles of New Jersey and NASED, this is before Bob was a great collector of proxies. (laughter) But Bob has been instrumental in getting this where it is now through NASED, because some of their recommendations, and Brian will bring them to the fore, were very important. So, the state election directors got on this early, early on after the release of 1.1, and the work that they did informed the process of the TGDC thereafter.

So, there were public working groups, there were communities of interest, and I'm sure between Brian and Ryan they will mention all these things. A lot of folks were intimately involved, and you've got to give credit where credit is due, and that credit goes to the professional staff at NIST led by Mary Brady, and elections is not her sole portfolio. There's a whole bunch of scientists there doing a bunch of really important work, and Mary, I can't thank her enough for the things she did to get this to where it is today. And the other staff level folks that did some serious heavy lifting, so frankly Bob and I didn't have to, was the folks at the EAC led by Brian Hancock. So, with no further ado and no tissues for you, I turn it over to Brian. Thank you, sir.

MR. HANCOCK:

Thank you, Greg. Good afternoon, everybody. Hopefully you won't need those tissues that you apparently don't have now. We'll try to keep it on the lighter side because, that's what the VVSG is all about. And Greg, the other thing I thought you were going to ask is if Bob wanted to join us up here because he's been on every other panel. If you feel the spirit move you -- come on up. Okay. All right. Thank you. Appreciate it.

Well again, thanks for being with us this afternoon. And let me just give a little bit of overview how the discussions going to go up until the break this afternoon. I will begin by talking about a little

background really about the structure and process of VVSG, because except for Greg, whose elbow deep in this all the time for the most part, you guys don't live and breathe this like some of the other folks do. Certainly, also for the 13 new members here, I think it's important to get that background and that basis for what's going on and why we've structured the document the way we have.

After I'm done, Ryan will get up and he will talk about some of the internal processes and procedures and changes that we've made in order to make sure that the new structure of the VVSG works well with the EAC's internal processes. And at that point we can take questions about both our presentations, and then we will turn it over to Greg, who will talk about your comments to the principles and guidelines, and then we'll see where we go from there. Hopefully to a good place Greg.

All right, so a little bit about the structure of VVSG 2.0. It's actually fairly simple. The VVSG 2.0 itself is a set of 15 principles and 53 accompanying guidelines. What is being worked on now and what will continue to be worked on into the -- at least foreseeable near future are the requirements and accompanying test assertions to that. And that's really the big difference between VVSG -- the previous VVSG's and as we move forward. As you remember, they were all combined into one document. We didn't have test assertions. The labs currently do write their own test

assertions, they call them test methods generally. But the -- what we're calling principles, guidelines, and requirements were all in one document, and that's true for the old FEC voluntary voting -- or voting system standards as well 1.0 and 1.1 of the VVSG.

And so why did we do this? As Brian mentioned, in 2015 when we had a quorum of Commissioners, when the EAC got its groove back, I guess, there was a letter waiting on all their chairs when they came into the office from NASED's VVSG working group. And really this slide shows you the gist of that document. And they wanted a VVSG moving forward that would be able to not -- to enable, not instruct or impede innovation, and needed responses to changing statutes, rules, jurisdictional or voters' needs. And secondly, to provide deployable systems and modifications in a timely manner, taking into account somewhat recognized election calendars and schedules.

As our program has matured, we've tried to take these into account, and I think we're getting much better at that, but the bottom line is elections are going on every day. Somewhere in the country, it's happening. And it's tough to meet the needs of all 50 jurisdictions and below that all 8,000 counties, but we're working on it, and I think this new structure of the VVSG will go a long way to moving us to an even better place in that area.

The EAC also set up its own working group really it was at the end of 2014, when we knew there was a good likelihood we were going to get Commissioners in and we would be working on the VVSG. And that future VVSG working group was composed not only of state and local election officials, but it was also composed of the test laboratories and some representatives from the voting system manufacturing community.

And really as you look at these points here on the slide, it dovetails very nicely into what the NASED folks were asking EAC to do, right, particularly the last point. The VVSG should allow maximum flexibility to incorporate new and revised requirements, including those from other standard setting bodies. Also, I think equally important is the fact that our working group thought that technology neutral statements give longer lives in order to keep, what we hope is future VVSG 2.0. evergreen to the extent that that's possible. And they also noted that the most promising avenue for doing that would be to develop high level performance-based standards, and then have details contained in some lower level document. Again, that's what we're now calling the requirements and then the test assertions.

So, both of those groups presaged what we are doing right now. And to our boards, we presented this at every board meeting since the EAC has been reconstituted – and did you see here, the

Board of Advisors in May 2016 adopted a resolution that the format of the guidelines would be, as we have done, principles and guidelines. I won't read the resolution but, you see it there, and that was approved at that point. The Standards Board, this body in fact -- and I think probably Ryan was a member of that body when this happened -- first of all in 2016 they unanimously moved to adopt the NASED principles to be used as the guiding principles developing the Technical Guideline Development Committee's charter -- that's the TGDC. They also moved to adopt the structure and that the principles again are the high-level system design goals. Guidelines provide very broad design details. The requirements are definitely the more technical details that the vendors will use to develop the voting systems. And then that the test assertions will be the technical specifications to be able to test those voting systems at the appropriate time.

In 2017, the Standards Board -- the VVSG committee of the Standards Board unanimously determined that you should adopt the 17 functions of a voting system as the scope of VVSG 2.0, and voted to move that. The VVSG committee also recommended the VVSG 2.0 principles and guidelines be a guideline for the TGDC moving forward, and then you voted to do that as well.

And finally we're back at the meetings, two meetings in 2017 of the Technical Guidelines Development Committee. At the early

year February meeting, the committee approved to adopt the scope of VVSG 2.0 really to allow the working groups to complete NIST and the EAC working groups to complete the principles and guidelines, and then finally at their September 2017 meeting, they unanimously voted to approve the draft VVSG 2.0 principles and guidelines that you've been given, and that you've been reviewing, and that we'll be talking about here today.

I think equally important, and I think every member of the Technical Guidelines Development Committee felt this way was the resolution that you see at the bottom about ensuring equal consideration of accessibility and security. And please remember that that was cosponsored by David Wagner and Dianne Golden. Dianne advocacy group member, David the head of the security subcommittee and professor at Cal Berkeley as you all know. So, I will read this one because I think it's important. And this resolution reads 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 mechanisms that enable voters with disabilities to mark their ballot and to verify and cast their printed vote selections privately and independently. Right, because security rightly so has taken up quite a bit of our time over the past say, 18 months or so at the very least. But let's not forget accessibility is also a mandate. It was a mandate of the Help

America Vote Act, and the accessibility community has waited a long time for us to finally develop systems that really meet their needs, and I don't think we want to lose that at this point.

I'll talk a little bit now about the process of VVSG 2.0. Right up top there as you see the technical guidelines, development committee, and their public working groups really put a lot of effort and again, I would reiterate what Greg said, and I want to thank Mary Brady and all the folks at NIST who have been instrumental in helping to move this process along, and doing a lot of great work on a daily basis. It doesn't get said enough. But thank you to the folks at NIST.

And so that process gave us the VVSG 2.0 principles and guidelines. The TGDC recommended those guidelines as I mentioned earlier. Under the HAVA process, it gets sent to the EAC Executive Director, Brian Newby. From there, he forwarded it to the Standards Board and Board of Advisors.

HAVA requires somewhere during this period before a commission vote, a public hearing as well as a public comment period. Right now, we are contemplating how long that public comment period will be. It's been longer in the past, but we are considering a 30-day public comment period at this point. Again, that's not decided a hundred percent yet. However, I think an important thing to remember is the public has had input in this

process through the public working groups since the very beginning. And that was not the case with any of the previous iterations of this document. It essentially got to the public whenever it was published in the Federal Register, right. And that was for 1.0 90 days, that's all they had to comment. For VVSG 1.1, it was longer because at some point we didn't have a quorum, and so we extended it, and ended up being well over 200 days for public comment then. But our process currently is as long as really we've been working on this. It's almost three years at this point. So, the public has been intimately involved.

So, at some point, then, the Commission will then vote, and that is required by the Help America Vote Act before the VVSG 2.0 moves forward and we can implement that. Here's our time line. As you see, there's been some recent happenings, recent events that have perhaps put a bit of a crimp in our proposed guidelines. We had always intended to get these to the Commissioners for a vote in August of this year, in August of 2018. As you see there, the public hearing, and obviously the vote on adoption is dependent on a quorum of EAC Commissioners. I think our goal as a staff will be to work with you all and with the Board of Advisors, get the public comment period moving, and to have the document as ready as possible for the commissioners to vote on whenever we have a quorum.

That's important, and there may be a silver lining here also, in that the requirements and test assertions work will keep going on, right. And hopefully it will be much further along than it would have been otherwise, and those documents, the VVSG principles and guidelines and the requirements and test assertions will be at least very close to being done, both done completely, when we have a quorum next time. So, if there's a silver lining there, that may be it. And just saying that we don't have a quorum is an issue, right. It certainly is, but we're still doing the work of testing and certification work we've always done.

As you see here, VVSG 1.0 adopted way back in 2005, it expired in July 5, 2017. We're still doing modifications. In fact, every system we have in currently is a modification to the VVSG 1.0 to a system that's been previously certified to that standard. We will continue to do that into the foreseeable future, certifying modifications.

Commissioners adopted VVSG 1.1 in 2016. They were active immediately. They were required 18 months later which ended up being July 6, 2017. And what that means is that any new system that we get in and applying for certification must be tested to VVSG 1.1. So that is any system that we have not previously certified, for example, from a new manufacturer out there that wants to come into the process. They would absolutely be required

to get their systems certified to 1.1, and of course anybody else that wants to, any other manufacturer that wishes to get certified to that standard, we can do that as well at this point. So even without a quorum, the work is still going on under both VVSG 1.0 and VVSG 1.1.

And again, just leading into Ryan's discussion, just as a reminder, the structure, again. Principles and guidelines, requirements and test assertions. Please don't forget that. And we'll hold questions until after Ryan is done, and then we'll both be happy to answer. Thank you.

MR. MACIAS:

Well I'll first start with welcome and good afternoon. And as we wait on the presentation – and now it's up. I am Ryan Macias as many of you know, and Brian Newby had mentioned, two years ago, when we first passed the resolution as the Standards Board, I sat across this table on your guy's side. So coming over here to the EAC, it's been one of my goals since even prior to that to make sure that this document moved forward and reflected exactly what it was that we, the Standards Board, and the other advisory boards had passed as a resolution, and make it nimble, make it a process that would work for all of us.

So, in doing so, one of the questions was we have the VVSG 2.0 that Brian just discussed. There is also the requirements and

test assertions. Since it was a new process we knew there was questions. We were fielding questions. We were getting asked what's going to be the policies, what are going to be the procedures, what's the process moving forward for these requirements that used to be part of the document? And so, in conjunction with the VVSG 2.0, we at the testing and certification program started developing process and procedures documents to handle not just the requirements and test assertions, but our program as a whole.

Currently we have two what are called manuals, testing and certification manual and voting system testing laboratory manual. Those are the policies that we are governed by. Those have been voted on by previous Commissioners, and they expire. They have a three-year life on them. So, they will be expiring soon, and so in preparing for that, we wanted to make sure that we didn't just update them, but we also modified them to make sure that they aligned with the 2.0 in anticipation of it coming out.

So, what we decided to do was structure them the same way as this new structure of the VVSG. We would have a set of policies, high level just like the VVSG 2.0, and then the lower level, which are the process and procedures documents.

So, this slide here shows what we do now, and you can see that some of it repetitive. We have the two manuals, but they cover

both testing and certification and they cover operating procedures. Unfortunately, sometimes those conflict. But as they take a vote by the Commission, we've had to do what are called notice of clarification on conflicting items and so on and so forth. So, one of the things that we wanted to do was make sure that that did not happen yet again. So, moving forward, we have here in blue -- carrying those items forward into process and procedures documents, and then the gray areas which is kind of the new area. So, there will be that high level policy document that the Commissioners will vote on that will then provide guidance or the policy to us, the testing and certification program, to make sure we write process and procedures documents that follow those policies.

As you can see, there's one new gray box down at that lower level, which is the requirements and test assertions. That is based on the structure of the VVSG and the way that it has moved forward based on your guy's resolutions and the way that you guys wanted it to be carried forward. It allows the nimbleness, the agility, and the like for things to be modified at a quicker basis by bringing it down to the procedures level.

So, we're going to focus today just on that aspect of it, because the other three in blue as stated, those are kind of just carrying forward. It's a process that we've gone with and gone by, but the questions that are coming back from you guys from election

officials as a whole is what is happening with these requirements and test assertions. This is the new part and so that's what we're going to focus on here today.

So, the development. This has been hit on a lot, but EAC and NIST are using a public working group process to facilitate the development of requirements and test assertions. Those are moving forward. There's many of you who are on those public working group calls. As soon as the VVSG 2.0 was voted on by the TGDC to be recommended to the Executive Director, and passed out to you guys, that work continued. It had started prior to that and continued on forward. We're on calls, weekly – still continuing to develop those requirements and they are getting very close.

I believe we are past, and when I say we, again, I'm going to reiterate what started with Greg and then went to Brian and now is to me, we is really NIST. NIST has facilitated all of those public working groups. We, the EAC have participated in them. But knowing that those requirements and test assertions are coming to us by way of NIST, we participated and we are basically just another member of the public. We are there to assist NIST with any questions that they may have, but they have carried the weight on this, so we cannot be more thankful for what they have done, and two of those – well, Mary is here as well, but Josh who is with

the cybersecurity group, and Sharon, with the human factors working group, are both here as well today.

And so those are going to continue moving forward to develop the requirements and then once we get to a place where the requirements are done, we'll start moving into the test assertions, some of which are happening alongside the requirements.

But with consideration of the public working groups recommendations, NIST will provide that document to the EAC. As you will see, there is something highlighted in blue there. You will see that carried throughout, because we want to really focus on it as a document. It is a separate document that will be called the VVSG 2.0 requirements and test assertions.

So, after it's developed, what's the next steps? There's going to be a distribution and implementation plan, where the Executive Director will distribute that initial set to each of the EAC's advisory boards, look familiar? Because it's the exact same process we follow for the VVSG 2.0. We know how important it is to make sure that you guys have an opportunity to comment. We've been talking about that throughout the entire process for three years. We have the VVSG subcommittee to you guys. There is a VVSG subcommittee to the Board of Advisors, and then

obviously we have our TGDC which does not have a subcommittee because they are our guidelines development committee.

And so, what will happen there is they will be distributed to the TGDC for comments and it will be distributed to each of you boards for comments. And then it will be submitted for public comment. Again, it will probably be a truncated public comment period, because the public has had an opportunity to weigh in the entire time. Comments will be addressed, and then the Commissioners would vote on the final version.

So, here's just a little diagram of a what it looks like. We have the VVSG there in green and it's got the little dotted line into the requirements and test assertions showing that there is an association there, but it is not a hard line. They are two separate documents. And so, the VVSG will hopefully be adopted, and then the second document, the requirements and test assertions, would be handled through this process that we are talking about. It also shows there the public working groups and it shows them inside the box directly at the requirements and test assertions for a reason. Because they're working on those individually. They're working on those to develop recommendations that will end up becoming that document requirements and test assertions.

Once we have that document, that document itself as a whole will be distributed to the boards. They're on the right. And

it's kind of hard to see, but that's a two-way arrow, and that's because it will be sent out to you guys and we expect you guys to send comments back. So it will be -- it will be a back and forth. Exact same process as we did with the VVSG 2.0.

That document would go down to Commission vote, and then into EAC implementation. So, I was talking about recommendation and how the public working groups provide recommendation to test assertions -- to requirements and test assertions. We have two terms that are going to be discussed here, the recommendations and they are requests, and there is a significant difference. So, I wanted to make sure it was called to your guy's attention.

Recommendations is a suggested revision on updates. So, this would be after the initial set was voted on by the Commission. This is how we're going to go through the iterative process moving forward. So, we're now jumping forward and assuming that the requirements and test assertions document has been adopted and implemented.

And so, the next step is the public working groups would remain, would continue working, and would continue to develop when necessary, based on innovation, based on new technologies, based on new security, based on whatever may be out there, they're going to develop new recommended requirements and test

assertions if necessary. They would provide those directly to the EAC, and then there is a second entity which is state and local election officials and you guys, the Advisory Boards, the Standards Board, Board of Advisors and TGDC. They can all provide recommendations to the EAC where updates need to be made to the document.

So, another little pictograph just of what it looks like keeping you guys in the same color. You as the Boards would be able to provide recommendations, the public working groups would be able to provide recommendations. Or you as an individual, since we're dealing with all election officials here, state and local elections officials, you could provide recommendations directly to the EAC for us to implement or to add to the updated document as we move forward.

The next step is there would be an annual review. What we know is we need your guy's input, we need your guy's assistance, we need -- and we've been talking about the entire time that your guy's recommendations is what needs to be in the document. This document is built for you guys because you're the ones who are going to implement the systems. So, as laws change, as -- again, new technologies come out, we need your guy's input. If things need to differ, if things need to be updated, and so we have built into this process an annual review. So, at each of these board

meetings, you're going to have to hear from us. Because we're going to be up here facilitating a review of the document. And so we would tell you any updates that had come into us or recommendations that had come in to us, so that we can discuss them with you guys and basically take a look at -- make a determination on whether or not they should move forward, or if you want to put for the additional recommendations to go into those updates.

So how does that differ from a request? I want to focus down at the big red bubble first. As I'm going to describe the process, the process is identical to what we have now, which is called a request for interpretation. Since the document right now is not nimble -- it is voted on -- it can only be changed based on a Commission vote and a quorum. There have been times where there have been things that needed to be clarified. There were times that there were things that needed to be determined and so we had an interpretation process in our current manuals for 1.0 and 1.1, to deal with the VVSG, excuse me, to deal with the VVSG 1.0 and 1.1 and it's in the current manuals 2.0.

So, what is it? Only a registered manufacturer or VSTL may request a revision or update, and again, this is a request, not a recommendation. And that is because they are in the middle of testing, and a requirement or a test assertion is unclear or is unable

to be tested against for a system that is currently under testing. So, this is not an overarching change to the document. It's not adding requirements. It's not adding a set of test assertions. What it is -- is saying we really don't understand how this system can be tested to what is already there, so we're making a request that either a new test assertion be developed so that we can test this system and not put it on hold and, again, this is for agility, nimbleness and to be able to move systems through without having to stall them out and wait for -- to go through the entire process. However, these are again specific to a voting system or to a test campaign as we call it, an application.

So again, just a little pictograph showing the process, a registered manufacturer, a VSTL, puts in a request, that request comes to the EAC. So how does that look as a whole? We have recommendations and we have requests. Here is the process. Public working groups, boards, and election officials individually may provide recommendations that come into the EAC. The EAC would make an updated version of the VVSG 1.0. Or a registered manufacturer or VSTL can make a request. The request would come to the EAC. The EAC can make a determination if there needs to be an update or not, which would then be reviewed by you guys at your -- annually through your annual review process.

So, what's an update? An update is a substantive change. And it's a substantive change to the document. Again, it's a new set of requirements, and their respective test assertions, or the deletion of a set of requirements and their respective test assertions. Again, this is typically for modernization, for innovation, for technologies, for new security mechanisms, and so this is what we would call – you know when you're looking at a version control, this would be a one's place. And so, it's going to be a major change. It's like we did with the VVSG going from 1.0 to one. -- sorry, excuse me, from 1.1 to 2.0. There's a substantive change in the document.

It would be reviewed by the EAC, by the advisory boards, it would be reviewed by the manufacturers and accredited voting system testing laboratories to make that they can test to it before being adopted. So, the process for that is, again, we have that little dotted line. You got the recommendations and the requests that are coming in to create an update to the document. And so there will obviously be a version control. It would – you know assuming we're going from a 1.0 to a 2.0, then that update would be sent out to you the advisory board, to -- that would be during the annual review. Or could be via email if we needed to get it through quicker, but at minimum during the annual review. It would go to the registered manufacturers, would go to the accredited VSTLs,

we would take comment from you guys, would handle it internally at the EAC and push out an updated version.

And this is different than a revision. So, a revision would be the tens place. The revision is a non-substantive modification to an existing requirement. So, something that you guys have already reviewed, something you guys have already commented on and already provided input back on. Or the addition, deletion or modification of a test assertion. So how we test to that requirement as opposed to actually developing new requirements. The program director must determine which revisions get incorporated and again, this follows the process that we have as an RFI.

So, we'll get to questions in a minute. But really what we tried to do, the main purpose here was just to make sure that number one, you guys went through the entire process to make things more nimble, to make things more agile, so that we would be able to move this process forward, be able to continue testing new innovations, to continue testing new security updates, and so the VVSG 2.0 was developed that way.

We knew internally that we also had to update our policies and procedures to also follow that process. Because if not the VVSG 2.0 would be passed, but then we would have these policies and processes that did not fit with the 2.0. So even though the document itself would be moving forward, would be able to provide

the ability to be nimble, to provide the ability to be innovative and to meet your election calendars. If we also did not update our processes to be able to test that as well, it wasn't going to actually meet the underlying reason for the change.

And so, this process was thought through the entire time. I know it's being presented to you here for the first time, but each time that we had a Standards Board meeting; each time we had a Board of Advisors meeting; each time we had a TGDC meeting, when we were doing our webinars, our calls with each of the subcommittees. Each time we were going back and updating this document accordingly as we learned from you guys on what needed to be done to make this process as a whole, not just the document -- fit your guy's needs.

So again, if you have any questions on the process, the requirements and test assertions themselves, or the VVSG 2.0 as a whole, the actual document that will be hopefully voted on and adopted as the next iterations of VVSG, then we're here to field questions before turning it back to Greg to just deal with the VVSG 2.0 and recommendations -- excuse me, VVSG 2.0 -- TGDC recommended VVSG 2.0 and your guy's comments on them. So, I'm going to open up for questions at this point.

MR. RIDDLEMOSER:

Will the guy with the slides please go back to Brian's public comments slide? I don't know how far back that is into Hancock's presentation, but –

MR. MACIAS:

Go back to presentation one, please.

MR. RIDDLEMOSER:

Because what I want to tell is what comes next briefly before we get into questions and answers, because this may or may not answer a question for you. But as Brian said, and most city, county, state and federal rule changes require some sort of public comment period, or some sort of public hearing or all of the above and as Brian pointed out to you, this has both. Both the public comment period and a public hearing.

So, what I want to talk about briefly is the public comment period and what happens with the stuff that comes in during that. First, by way of thanks to the current VVSG subcommittee of this body, which is Veronica Degraffenreid of North Carolina, Robert Dezmelyk from New Hampshire, Kari Fresquez from New Mexico, Bob Giles of New Jersey, Lance Gough from Illinois, Tim Hurst from Idaho, Keith Ingram from Texas, Paul Lux from Florida, Marion Snyder from Pennsylvania, Dwight Shellman from Colorado, Steve Trout from Oregon, Ray Valenzuela from Arizona and Brian Wood

from West Virginia. Those people, which is over ten percent of the folks in this room, got to see all the stuff that we're talking about during a couple of the different iterations, and we took public comment only from those 14 people. And not to single Dwight out, but Dwight I'm going to single you out. (laughter) What happens with the public comment periods and the public comments is they're going to come in in dribs and drabs or gushing. Who knows, but you can participate in that process. These 14 people already have. We got about 30 different comments from four of the 14. So not everybody given the opportunity weighed in. Just like during any normal public comment period, not everybody that has an interest in the VVSG and that kind of stuff in the future is going to weigh in too.

Dwight, just to pick a name, sent in some comments on the VVSG 2.0 as it currently exists, and those comments are forwarded to the EAC staff. You can send them in again if you'd like. We just wanted to get a flavor for what would people think and say if they saw this, and the kind of stuff that came in was interesting and helpful, which is the purpose of public comment periods. So, when we get through this process and we turn the VVSG over to the EAC and they go out for public comment, those public comments will come in the EAC staff will put them together, 147 people said

change puppy to small dog on page 47, and those kinds of things. And they will then make a staff recommendation to the EAC.

So, it's not that your comments may or may not be heard, but I can guarantee if you make ten comments they're not all going to be incorporated because that's not the way of the world. But there is a public comment period. There is the public hearing stuff that's coming up and we certainly are interested in what you may say.

Now, circling all the way back to what was said, this has been a three-year process with at least twice a year meetings. The staff at the Department of Commerce NIST, and the EAC staff working very hard to bring this to the point where it is. A lot of advocacy groups were involved through the TGDC process, academia was involved, the scientific community was involved. A lot of people have been involved.

So, two things happen now. We are going to send this out to the EAC, who is then going to send it out for public comment. And that public includes you. And the nice thing about you is you get more of a vote, if you will, because you are subject matter experts. So, the EAC staff is certainly interested in what the 110 of you have to say. So, Dwight, you know please send yours in again. They're already there. Believe me when I tell you, the staff is fully aware of

the dozen or so comments that you sent. Please take the time to weigh in with your thoughts during the public comment period.

We have no idea what the advocacy community is going to do, academic community and the scientific community, the stuff they're going to send in during the comment period. But they're members of the public too, and those things will become part of the public record. The staff will take those under advisement, and like I said, put them together and make a formal recommendation to the EAC Commissioners for final adoption.

So, it's an important process that's about to begin. We're certainly interested in your questions today because that will inform your ability to weigh in when you go home and think about what kind of public comments you want to make. But this whole purpose started because NASED, the vendor community, a whole bunch of subject matter experts, state and local election officials realized that the VVSG is not agile, it doesn't allow innovation, it's not particularly responsive. So, in order for those things to happen, we had to do something different, and we certainly have done that. Again, a lot of folks have been involved, including the general public through the public working groups. Now, granted that was primarily state and local election officials, but there's been a lot of public involvement, and that will continue, as will the public involvement of the communities of interest.

So, we're looking forward to the questions that you may have. I think Brian is going to moderate this, and we'll stay as long as you want to stay and answer the questions that you may have.

MR. HANCOCK:

Yeah, thanks, Greg. I wanted to make a couple of comments of what you said. Just to reiterate, last time, as I recall, for VVSG 1.0, we received somewhere in the neighborhood of 3600 individual public comments on that document. And that was a lot and it took a lot of staff time from EAC and NIST to parse through that. We're not expecting that level of comment this time for two main reasons. One, as you've seen here, the public has, at least a large number of the public and folks that commented on 1.0, have been working on this since the very beginning. And had their chance to be heard since we started this process. And, two, instead of a kind of guidelines and requirements document that's somewhere around 400 pages as lasted VVSG, right now all we're talking about is a principles and guidelines document that's about 16, 18 pages, something like that. So essentially there's not quite as much to comment on this time.

So, we're hoping we don't get that many comments in, but as Greg said, we never know. It could be a gusher, and considering things that are on folk's minds right now related to security, related

to voting systems, we could get a lot of public comments. So just wanted to reiterate that.

MR. MACIAS:

Yeah, and along those lines, just to put in kind of perspective, the two things. One we don't anticipate a lot of comments because there's been comments weekly through the public working group process to get to where we're at.

So, there has probably been well in excess of 3,600 comments throughout the three years, but those have been addressed as we've been working through the process. And then the second thing is again just to put into perspective, so when I sat on the other side, I sent in alone for VVSG 1.1, I believe 12 pages of comments.

This time between the two boards, I think we had near 40 comments, not pages, 40 comments. We were able to fit it on two spreadsheets. One from you guys and one from the Board of Advisors, and we as staff were able to get through it in basically in one afternoon. And so just to put into perspective, that's what we're really talking about here.

MR. HANCOCK:

Exactly. And I'll give you one more thought before I throw it back to Greg to get his initial comments and perhaps the thoughts from your committee on these. As I was reading through them, I

think what struck me was many of the comments related to some way or somehow more specificity or the need for writing a requirement to something in the principles and guidelines, right. A lot of them related to that, and we're doing that. As you see, the requirements and test assertions are being written so those more detailed items that you were asking for in your comments will be forthcoming and perhaps are already written quite frankly, depending on what the comment was.

As I think we know, the human factors, areas of requirements are really almost completed if not fully completed, and the other working groups are getting there. And so please be assured that the requirements are coming. A lot of them are already here, and they will be addressing at least the vast majority of the needs that I saw in the comments. Would you agree?

MR. MACIAS:

Yes.

MR. RIDDLEMOSER:

And Brian had asked me to go through the 26 comments that we received, and I've decided not to do that for this reason. One of the things about a public comment period, and one of the things about picking the minds of subject matter experts, is to let you do your thing. And Dwight said a few things that we took to heart, as did the three other people who comment during the sneak peek, and I

don't want you to not have the same comment because that's already been covered. Because one of the things about public comment periods is if ten people say this, it has more weight than if one person says it.

So, if I tell you the six things that Dwight told me, you're going to go I don't need to comment on that, Dwight already said it, but I do want Sally and Ray and everybody else to send in that exact same comment because then the staff will look at that totally differently. So I'm not going to do that, Brian. (laughter)

MR. MACIAS:

And he's right. So, as far as comments are concern, size does matter. Let me just put it that way. The way we parsed them out last time, the first sort of grouping that we did was unresponsive. Believe me when I say we got a lot of comments to the VVSG that had nothing really to do with the VVSG itself or anything specific about it, but were more statements of policy, I guess is the way I would put it. Kind of that group is set aside into a nonresponsive category.

MR. RIDDLEMOSER:

My favorite ones are font size and formatting.

MR. MACIAS:

We got a few of those. But otherwise it is important because we group them into like comments. So, we got 150 comments on

this requirement related to security. We got 40 comments on this specific requirement or set of requirements related to accessibility and usability. And so, we will parse them out that way, and Greg is correct, the more comments we get on a certain specific area the harder we're going to look at that to make sure that it is written correctly and we're being responsive to those folks that are commenting on it.

CHAIRMAN KING:

I want to thank the panelists and invite questions from membership.

MR. GILES:

Bob Giles from New Jersey. Could you bring up the slide concerning the requirements and test assertions document and how that's going to be adopted?

MR. MACIAS:

Can you bring up presentation 2?

MR. GILES:

So, while you're bringing that up, so the VVSG itself has to be approved by the Commissioners. But the requirements and the test assertions do not have to be -- so the concern is part of the reason why we took the approach we did, having the VVSG be high-level principles and guidelines is in the absence of Commissioners we can move forward with new requirements and

test assertions without the need for a vote of the Commissioners, and that was why we broke them out of the new VVSG. But what I'm seeing here is you're saying you're putting them back in, and they will require a vote of the Commissioners in order to make any changes to the requirements or test assertions. Is that correct?

MR. MACIAS:

So, in the way that it's laid out right now, it would be for the initial set. And so basically when that first big grouping of requirements and test assertions were rolled out, that the Commissioners would take a vote on it before the original implementation. After that, we get down to the updates here which would go through the EAC and then become an updated version. And so that is one of the questions right now, is it says EAC right now and does that go through a Commissioner vote each time that there's an update as well and/or is that something that you guys are requesting just go through a comment period.

MR. GILES:

So, well two things. One, yeah, I do have a concern as we move forward if we have like we currently do, a lack of Commissioner quorum, that if there's a need for an update, that we can't do it and we're back into the same position as the old VVSG model. And I don't have a problem with the initial, and I get that, and we're kind of doing this whole new process and have the

Commissioners vote on the initial round. The only concern I have with that is I think the requirements are getting done, but I don't think the test assertions are going to be done for quite a while. So, by combining them into one document and one vote, you don't give the vendors time to start working or -- and understanding the requirements while you're building test assertions. And do the Commissioners currently vote on test assertions?

MR. MACIAS:

So currently no, as a matter of fact, the test assertions are proprietary to each of the labs.

MR. GILES:

So -- and I guess that's the -- so why would we put them in there this time around?

MR. MACIAS:

Good question. You know it was -- again, these -- this is a draft right now. So, it is something that we're looking at as a grouping, and these comments and questions are going to weigh into where we go with it, but at this time the thought was that the requirements and test assertions would be done around the same time and as the VVSG 2.0 and basically there will be one grouping.

The policy that would implement this process, the requirements and test assertions document and the VVSG would all get a vote simultaneously.

MR. HANCOCK:

And Bob just so you know, when we were developing this we had a quorum until just a very short while ago. So, a lot of this was developed you know with that in mind. And knowing at that point we did have a quorum.

MR. GILES:

And I understand that. But historically you've had quorum problems. And that was why at one point NASED had to put together a VVSG working committee, because there was no quorum and there was no movement and we went years and years without a set of standards.

So, I have no problem with the VVSG and the requirements going together, because we still have a 90-day period -- do we have to still then take comment on the requirements once they're done? If you're putting them into this kind of bucket, does that require -- so the VVSG if we're saying here's the VVSG, we're good to go we can put it out for public comment. Requirements are not done yet. So, when they're finished you're saying they go out for their own 90-day comment period if we're following the same process, and then if the test assertions aren't done yet we have to wait until they're done and then they go out. This secondary document that's not part of the actual VVSG, we don't know when that could be ready, and we can't move forward until we get a

public comment and until we get Commissioners – a quorum of Commissioners.

MR. MACIAS:

So -- that is the process as laid out right now. And, again, the test assertions will probably be a little bit longer, but we're hearing that at least the requirements should be done hopefully by the end of the calendar year. And so therefore, as we were kind of laying it out, was yes, it would go out for comment near the same time.

MR. GILES:

So it goes beyond...

MR. HANCOCK:

One other thing -- so, the requirements, again, as I noted, the human factors requirements are already out there. And the manufacturers are as you know on many of the public working groups already, so they have access to these requirements. Not only do they know what the principles and guidelines, at least the recommended ones are going to be, they also have access to the requirements that have been developed.

So at least in certain areas, they can start seeing where we're headed with these, right. So, they're not going to be starting from scratch like before. Like really, they didn't see anything until the public comment period. They didn't see any requirements.

They didn't see any other part of the VVSG until that initial public comment period. So, it's not complete, and you certainly couldn't build a full voting system to it yet, but you can at least start laying out a plan moving forward, I think.

MR. GILES:

So, and the test assertions are individualized based on the vendor coming forward with a product?

MR. MACIAS:

Not necessarily. So, the test assertions are usually written to a set of technologies on how to test the requirements. So, it is not based on a single vendor unless it's a new technology or something we have yet to see.

MR. GILES:

I guess that's part of the concern. Last time we had the first set of standards before IPAD, so if we get stuck in a situation where new technology comes out and we don't have a quorum, and this gets to the update issue, that individual can't get a set of test assertions done for their system. If we go with the Commissioner's requirement to update that second document of requirements and test assertions.

So, I have great concern with the direction the second document is going. It's kind of a slap in the face of what NASED put forward to avoid exactly what pitfall we're falling into. And here

we sit with no quorum. I mean, we don't even know when we may get a quorum and when this can happen. So, we're ready to move forward with the VVSG 2.0 after three years finally, and if we go to the public comment and at the end of the 90 days we can move forward if a third Commissioner or fourth Commissioner gets appointed.

But then if something happens, say something happens and we're back to no quorum. Now we have a VVSG with no requirements or test assertions because we don't have a quorum again to vote on them, so that makes them worthless to me.

So, I don't know how the rest of the Standards Board feels, but I think that's a wrong direction we're going. It is not -- this is the first time I'm seeing that -- this particular process. So, to say this has been ongoing, it hasn't been. We have not talked about Commissioners voting on requirements and test assertions to my knowledge. So, I don't know when that was brought up in the past if it has because I'm not aware of it. So, this to me is the first time I'm seeing this, and it's -- I guess it goes against what the whole purpose of the new VVSG was. So –

MR. HANCOCK:

Bob the only thing I can say is we hear you. I've been through all that before, just like you have, that whole process. So, I

guess we're interested in hearing what the board's comments are on that.

MR. GILES:

So, I guess -- I don't want to take up too much more time, but so when you say this is a draft proposal, does the Board vote -- who votes to decide whether the requirements and test assertion document one, is a single document or two separate documents, and, two, if that's the policy we're going to go forward with?

MR. MACIAS:

So, I would say that that would be in the policy document, which would be voted on by the Commissioners on how the testing and certification program would then handle those. And so, if they voted on a policy that said they had to vote on every iteration of the requirements and test assertions, then we would implement it that way as the testing and certification program and write a process and procedure around that. If it was only around the initial set, we would implement that. If it was on none of it, then we would modify that process document to remove that step as well.

MR. GILES:

So we, meaning the TGDC, the Standards Board, the Board of Advisors, have no say over how we're moving forward and the fact that we -- you guys currently don't vote on the test assertions

and now you do want to vote on the test assertions, and your history of a lack of quorum is just mind boggling to me.

MR. HANCOCK:

I think that's not the case at all. I think we're presenting this so we can get feedback on the process. That's exactly why we're presenting this to this group right now.

MR. RIDDLEMOSER:

Brian, could you go back to the slide that Bob was just talking about? I hear you loud and clear, Bob. Not that PowerPoint by committee is fun because there's a hundred people in this room, but if we slide the green orb to the left, and draw the arrow down and bring the Commissioner vote also over to the left edge of the slide. So you have a line now from VVSG 2.0 to Commissioner vote to EAC implementation. We agree on that, right, Bob?

MR. GILES:

Yeah, VVSG to Commissioner vote – yeah...

MR. RIDDLEMOSER:

To EAC implementation. Now because I've slid the commissioner vote out from under that, the slide is intimating that requirements and test assertions are certainly informed by VVSG 2.0 with the dotted blue arrow, right. We've pulled Commissioner vote out of there, so now we can connect that green arrow out of the bottom of that orb directly to EAC implementation.

That is more in line with what you and I -- I think have been working on for the last three years. And I think it's important that we get this right because Brian is going to make this same presentation to the Board of Advisors come Monday, right?

MR. GILES:

Yes, that is what we've been working on for three years.

MR. SHELLMAN:

Hi, Dwight Shellman from Colorado. I share a lot of Bob's concerns, but I do have a question. If the requirements are not formally approved by the Commission, what's the alternative? Who approves -- I mean, assuming, you know, to provide this nimbleness and agility that we're looking for, if the Commission doesn't vote on it, who votes on -- I'm not as concerned about the test assertions. I am more concerned about the requirements. Would it be staff?

MR. MACIAS:

So, if we just took the Commission out and moved it to the left as Greg was explaining, then it would be the EAC. So again, that would have to be written into the policies. So, would it be staff? Would it be the testing and certification program? Would it be the Executive Director? That would be unknown at this time, but that would be something that would have to be set forth in that policy as well, because the policy right now as we are presenting it

would be Commission. So that could be replaced with something, assuming that – that that was what they were willing to vote on.

MR. SHELLMAN:

So, I just need to think through that a little on my own. But, you know, if Congress afforded the Commission the respect of the priority I think it deserves, I wouldn't be so concerned about this. But I do think Bob makes a good point. We don't want to end up in the same pothole, you know? Thanks.

MR. HANCOCK:

Other comments related to this particular item? Robert?

MR. DEZMELYK:

Thank you, sorry. I want to follow up on a subsection of this. I'm also in agreement with the expressed feelings that we do have a goal of being nimble and therefore reducing the burden of broad testing of some of the subsidiary portions is important. But I want to focus on test assertions. I think it is a good idea to have the sort of testing assertion or testing procedures aspect not be tightly tied to the testing laboratories, which they in a way are now.

But I don't think they're necessarily the type of thing that should be voted on or processed in the same way as requirements, because the goal of a testing scheme is to embody the requirements. And to make it kind of non-technical analogy, it's like the difference between an accounting standard or requirement and

the procedure the CPA follows when they're sitting at the desk saying okay how do I check to see if the current cash accounts match up. So, the testing assertions really is a formalized way of talking about testing plans or testing methods. And they're the results of those tests.

So, I think that at least needs to be cut off because that's a process that gets regenerated frequently. In other words, you may run a test and say that doesn't tell us what we want to know, so that's not -- the entire goal of those tests should be to support the requirements and guidelines that are set forth by the people who are making the policies. We're getting down there below the kind of making policy into the nuts and bolts of how do we achieve it. And I think that should be separated out.

MR. NEWBY:

I wanted to say something that I'm just trying to clarify where I think we are and then it might help the context of what Bob's asking and others. And then I've asked Cliff if I say this wrong, just to save me, I guess.

We have the VVSG that is policy and the policy has to be approved by the Commissioners. We have a policy manual that is policy, and it has to be approved by the Commissioners. I think what is in that policy manual in terms of the process for requirements and test assertions is still to be decided.

So, if the Commissioners would vote on something or not vote on something that would be in the policy manual that they would vote on. So, the feedback about well that's a bad idea, we don't want them voting on it or that a great idea we do, that's good feedback. But regardless, they have to vote on the policy manual. So, I wouldn't say the policy manual is baked is kind of the point.

But the -- those are two separate things that have to be voted. What we're asking today is really on the VVSG itself. The feedback on what should be in the policy manual is very good feedback, but that has to be then -- that's the next step for us, right is to take that feedback into the policy manual. Does that help at all? Am I saying this wrong? Cliff, or --

MR. GILES:

Well, that's all well and good if you walk away and say okay we vote on the VVSG 2.0 today and we're fine, but we don't know what's in the policy, and then you turn around and vote on a policy that basically throws us back to the old formula, the VVSG where it requires Commissioners to vote on the requirements is to me, goes against ever we've worked on for the last three years. And I don't know -- so do we have input as a Standards Board to say we don't agree with that policy because -- or is the TGDC going to weigh in on that? Because otherwise we could have just done a VVSG big

giant document and let it sit there for as many years as it takes to get another quorum to make another change.

So, I don't like voting on the VVSG not knowing what the policy is going to be that you guys -- that we could do a little switch-a-roo after the fact and have the old VVSG -- is a disservice to everybody who's worked super hard for the last three years. What is going to be the policy or the process of how you're going to develop that policy manual is what I'd like to know.

MR. NEWBY:

Right, but I think that's what this process is. So the switch-a-roo, if you thought of it that way, there couldn't be with that because we don't know who's going to vote on it. So, it would seem that we would take the feedback from the Standards Board, feedback from the Board of Advisors, feedback from public comment, and say this is what we think should be in the policy or not and the Commissioners would then -- and the policy manual and they would vote on it.

So, I would think -- I don't think any of us know what would really be in it. We can say what we would like proposed based on feedback, but I don't know beyond that. I'm just trying to think -- policy manual will have to be voted on.

MR. HANCOCK:

I think that's exactly right. I also think -- two things. One, we're here to talk about the VVSG 2.0 principles and guidelines, but that certainly doesn't stop this body from passing a resolution on anything they like. The Commission hears you, we listen to you, that's been something that we've done ever since the very beginning and the Commissioners are responsive. They always have been.

MR. GILES:

I just -- you're throwing something new at us, and to me it's a curve ball. This was not discussed leading up to it, this has never been discussed at a TGDC meeting to my knowledge that the requirements and the test assertions would be voted on by the Commissioners.

If anything, the exact opposite was the whole focal point of what we've been working on. So, I'm just -- I'm floored that we're going to now vote on a VVSG, and obviously somebody came up with this policy that was not the Standards Board and was not the TGDC because we're not aware of it. So, somebody at the EAC said I think it's a good idea for the Commissioners to vote on requirements and test assertions, even though they've never voted on test assertions before. And we're going to put it in a couple slides today and just run it by everybody and -- to be honest, I feel

like and hope nobody pays attention and we vote on it today, and it goes right through and that's that. I got to be honest, I'm a little upset with the way this is going down today.

MR. POSER:

Yeah, Gary Poser, Minnesota. I wholeheartedly back what Bob has been saying. I think that has been our whole piece with NASED all along was we wanted a process where the voting and voluntary voting systems guidelines VVSG could be high level so that -- that would be adopted by the Commissioners and that we would be able to keep things going if the Commissioners were -- didn't have a quorum and we always -- it's always been talked that way throughout the past three years, that we would be able to continue to update the requirements and test assertions so we could continue to be nimble.

So I totally agree with Bob that I think this is a big curve ball that I don't think this Standards Board should support this type of a policy, and I guess I would ask our resolution committee to take the resolution of this board to try and direct that policy. I'd love to see a resolution adopted by this body that we do not support the requirements and test assertions having to be approved by the Commissioners, because I think we will be eventually down the road back in the same spot we've been before. And that is not where we want to be.

MR. HANCOCK:

Other comments? Questions?

UNKNOWN:

In the back. Very back.

MR. LOVATO:

Jerome Lovato with EAC. I have a couple of questions. One is for the Standards Board, which is what is the proposal for if you don't want the Commission to vote on test requirements and test assertions or requirements and test assertions, what is the proposal for approving requirements? Because I mean it could be as easy as leave it up to the testing certification program director, or leave it up to Ryan and myself to approve those. I mean, what is the proposal? I hear and understand what's being said about not wanting the Commission to vote on the requirements, but what is the proposal? Who will decide what's a requirement and what isn't, and then what does that process look like? Because it could take a week or a year or two years or however long it takes to approve requirements.

And so that's a question I have for the Standards Board is what's the proposal? Because whatever it is will have to be, I'm sure, looked at from all angles on, is that a good enough process.

And then the second question I have for our office. There was a slide about when requirements come, if requirements get

deleted, what's the process for decertifying a voting system. So, if a voting system is certified to certain requirements, and then a year later those requirements are deleted, does that system all of a sudden become void, and what's the process for decertification in that, because it won't -- the voting systems no longer meet the requirements.

And so, I don't know if that's part of this discussion, but having worked for the state of Colorado for ten years, I know that's a question Dwight and I discussed at different times about decertification, when do we decertify a system. That's something that we as an agency I think should look at as well. If we do delete requirements, when do we decertify a system?

MR. DEZMELYK:

Robert Dezmelyk from New Hampshire. Just perhaps a point for people that are not involved in some of the testing and certification process. Perhaps Brian or Ryan or one of the people would like to address this could speak as to how the current set of test assertions for 1.0, who approved them? What was the process by which they came into being who voted on them and who approved them?

MR. HANCOCK:

Right now, we as an agency don't have test assertions. That is something that's currently proprietary to each of the test labs.

They do it, I would say, similarly but not necessarily the same. And that's sort of part of our challenge moving forward or, in the past actually, that we hope to improve moving forward is trying to make sure the labs are testing the same requirements in more or less the same way, right. And we've heard from manufacturers that this can be an issue, and certainly in the past, and hopefully moving forward having these out there for the manufacturers to look at as they're developing their systems will somewhat alleviate that.

MR. MACIAS:

Yeah. So, two points to add onto what Brian was saying, two points to that is. There's two ways. They're proprietary, but in every single test campaign we go through every test assertion to make sure they meet the requirements. We have what's called a requirements matrix, so when a system is submitted to us as a new system, we right now I'm going through it, I have around 1400 test assertions that I'm going through, and checking off the test assertion to make sure that the way that it was tested fulfilled the requirement. And so that is in essence how the test assertions are approved, is if they are unclear or don't seem to have met the requirements, then we send it back to the lab and say you have to update the test assertion, provide additional clarification, show us how it was done.

Then there was a second process that moved through NIST on the 1.1, where there was a public comment on a subset of the test assertions that went out for public comment then got adopted, and then once they -- after went through a public comment period, got implemented by the EAC. So, we took them and said now, labs, these have already gone through public comment, they've been looked at, they've been vetted, so you must at least for the subset in which they fulfill the requirements, you must use those test assertions because they've been publicly vetted.

MR. DEZMELYK:

So if I might follow up. I don't want to sound like I asked that question with an intent, but to date the entire certification process has run with test assertions which were not even in the public domain, and they were drafted by engineers in cubicles somewhere in the United States probably, by people who, you know, knew how to do that -- because they're test engineers. And they've never been vetted by this group. They've never been vetted by any group at NIST. They've never been vetted by anyone other than people like Ryan -- who's doing what of course you should be doing, which is looking and saying does this test line up with the requirements.

So, just kind of address the question of how does that process work, they're not the same as requirements. They're a method that people use to determine the requirements. And I'll

suggest, just as a way of explaining the idea, that at one level, if someone came to you with a set of tests, developed in a laboratory somewhere you know in the United States, and said, look, my set of tests will establish that you meet the VVSG 2.0 principle, right because I simply wrote a set of tests that match up with those principles. And for every test in my test list, I've got a principle associated with it, and it might well be that, Ryan conducting the same matrix you did with the current requirements would in fact conclude your right, Mr. Test company, that set of tests actually would establish -- as a matter of fact, if that can't be done we're all sunk, right? Because that's the entire purpose of this process. That there is a set of tests that can achieve that.

So, I don't think the test assertions of course, they're not even in the public domain now. They probably should be. That would be helpful I agree, but I don't think they necessarily need any form of approval other than that approval that you make during the testing process against the requirements, which are really the top level requirements. Having an intermediate set of requirements is helpful. And that is something that the EAC clearly wants, the test labs clearly want that, the public would like that, but those intermediate requirements are solely tested against the principles. In other words, an intermediate requirement which doesn't align

with one the principles, is like a test which doesn't align with a requirement in the current standards.

So I think there's a forward direction designed into the architecture we have to simplify the process, to reduce the burden on the kind of complicated administrative process that includes multiple boards and Commissioners, and I think that's some of the objectives behind this structure of having an approved set of guidelines and then requirements and ultimately test assertions which are developed in a different kind of context, a more -- process within the organization I guess is what I am saying.

CHAIRMAN KING:

I'd like to take this opportunity as Chair to make a procedural point. It's in response to a comment made by Mr. Poser earlier. And that's to remind the membership that later this afternoon we are scheduled to deliberate on and vote on Resolution 2018-01. As part of that process it's perfectly appropriate for members to propose amendments to either add or delete language to address the concerns we're talking about.

So, I would suggest if members have concerns that they think rise to the level of an amendment, that they be prepared to compose that language, so that when we do take up consideration of the resolution, we will be working from some text that's had some opportunity for review. Thank you.

MR. MACIAS:

Thank you, Brad. Robert, as I'm taking down some notes, I wanted to make sure that I heard this correctly. So, it sounded like the process that was described was that the test assertions would basically remain the way that they are so at the testing and certification level as it's going through a test campaign. I wasn't quite sure whether the requirements were saying -- was a proposal for lack of better word, for that to go through the exact same process as well or would that be a different process?

For instance, would it be something like the Executive Director versus the testing and certification program and so it's kind of a tiered, or was it basically the requirements and test assertions were a single entity handled in a specific process and then the VVSG 2.0 in a different?

MR. DEZMELYK:

Well, I think in all fairness, I wasn't trying to set forth an exact detailed process that would govern that whole complicated set of affairs. I was just pointing out that at the bottom level the test assertions are clearly a kind of separable activity that is like how you're going to do it. Right? And that that -- in the public domain is good, perhaps most importantly it doesn't have to be something the Commission votes on. And again, I'm not in a position to saying what the Commission should or shouldn't be voting on. That's a

different kind of legal question. I'm just suggesting the nature of those test plans would be more detailed and more engineering oriented, more kind of taken to each task, and they should be guided by the Commission, but not the kind of detailed thing where they have to sit down and vote about you know how many machines are going to be in what test facility in what day and that kind of thing.

So, the assertions certainly are -- the requirements are similar to assertions. And so, if they are in service of the VVSG guidelines, then it may well be that the appropriate forum for those to be developed is among the professional staff tasked with making a test system, which you already do, that allows systems to be evaluated relative to the guidelines. Testing requirements and test assertions are kind of very similar.

MR. RIDDLEMOSER:

Let me jump in if I can so we don't go too far down any rabbit holes and get into non-sequitur debates about the nuances of all this whole thing. VVSG principles and guidelines, and I'm going to purposefully over simplify this for those who haven't thought about this ever or recently. Principle or guideline that says roughly, and I'm paraphrasing, that a tabulation system should be designed to operate under various environmental conditions. The requirement is written that the election tabulation system must operate between

20 degrees Fahrenheit and 120 degrees Fahrenheit. The piece of election tabulation equipment must be able to operate between 20 percent humidity and a hundred percent humidity. Okay? Then the test assertions are how that particular laboratory proves to the world that this product will operate when it's hot, when it's cold, when it's dry, when it's humid. Okay?

Bob's point, and I think is very well taken, is that those kind of things don't change. They haven't changed from the original concept of election equipment requirements, and they're not going to change now. But what we need to divorce ourselves from is that the Commissioners needing to vote on whether 20 degrees means 20 degrees Celsius or 20 degrees Fahrenheit, and I'm being hyperbolic on purpose. We need to stay out of the weeds here because there are scientists and experts and other things like that that do those kind of things, and they certainly are not the Commissioners.

Now, the staff at NIST is very cognizant of all of these things. The professionals at the equipment manufacturing companies are cognizant of all of these things. The professional staff at the EAC is cognizant of these things. I don't want to get into a debate here whether 20 degrees Celsius is a robust enough factor or not. That's not where we're going here. What we need to do is, and I think Bob's point is very well taken, is we need to divorce ourselves,

the VVSG 2.0, the principles and guidelines that we spent of the last two years working on, it's required that the Commissioners under HAVA vote on that. There is no requirement in HAVA that the Commissioners vote on the other things. When you don't have a Commission, it is impossible for the vendor community to be robust and agile and innovative because there's nobody to vote on this new thing that's out there that may be exactly what we need.

So, I think Bob and I and some other people will be very interested in perhaps altering this resolution or offering one tomorrow that's more specific, but I would like to see that happen.

And Chairman King, there's some ways we could do that certainly. One of which would be to take our cookie break, or any number of things, but we could -- (laughter) -- we could compress the schedule, we could do a bunch of different things to get those of us that are very interested in making sure that the staff recommendation to the EAC once properly reconstituted, is exactly where we want it to go. And I think that's critical that we do that before we adjourn tomorrow.

CHAIRMAN KING:

Thank you very much. I would say a motion involving cookies is always a privileged motion. (Laughter). There we have it. Beyond that, we have approved an agenda. Of course we can amend an agenda, but my suggestion to the body would be that

we, unless there's an immediate need for discussion at this moment, proceed to take the break.

When we reconvene, our agenda calls for us to take up Resolution 2018-1, and I would suggest, as I did earlier, that language be prepared for discussion. If the body determines that the language prepared is one that it wishes to adopt, then we certainly can proceed further with final consideration of the resolution. If it determines that additional time is needed, we can amend the agenda to have a vote on Resolution 2018-1 tomorrow.

But I suggest we see where we end up after our labors, and we may be able to wrap this up yet this afternoon. Any questions? If not, then motion having been made and seconded for a cookie break, we are in recess.

(Recess).

CHAIRMAN KING:

If everyone could please resume their seats if they're not already seated. I hope everyone enjoyed the break even though I am told there were in fact no cookies. We can address that certainly. If everyone as it taken their seat, we'll resume our consideration. The next item on the agenda is consideration of Resolution 2018-01. I recognize Greg Riddlemoser for a motion.

MR. RIDDLEMOSER:

Mr. Chairman, I move adoption of Resolution 2018-01, which states whereas United States Election Assistance Commission in accordance section 222 of Public Law 107 252, also designated as the Help America Vote Act of 2002, adopted a voluntary voting system guideline on December 13, 2005 which was subsequently modified by the Election Assistance Commission in accordance with section 222 on March 31st of 2015. And whereas the United States Election Assistance Commission Standards Board was established by section 211 of HAVA, and whereas the Standards Board is required under section 212 of HAVA to review the Voluntary Voting System Guidelines in accordance with section 222 bravo 3 of HAVA, and whereas the Executive Director of the United States Election Assistance Commission has submitted to the Executive Board of the Standards Board proposals for further modification of the Voluntary Voting System Guidelines recommended on September 12, 2017 by the technical guideline development committee under section 221 of HAVA, and whereas the Executive Board has reviewed the proposed modifications to the voluntary voting system guideline and forwarded its recommendation to the entire membership of the Standards Board, that the proposed modifications be adopted as presented. And whereas the Executive Board has recommended that the

membership of the Standards Board consider this recommendation at the next annual meeting of the Standards Board required under section 215 alpha 2 of HAVA, and whereas after thorough and diligent review of the proposed modifications by the membership of the Standards Board, now therefore be it resolved that the Election Assistance Commission Standards Board that section one, the United States Election Assistance Commission Standards Board recommends to 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 of 2017 be adopted by the Commission.

Section two, the United States Election Assistance Commission Standards Board further recommends that these modifications be designated as voluntary voting system guidelines 2.0 to reflect the comprehensive nature of these modifications, and section three the United States Election Assistance Commission Standards Board further recommends United States Election Assistance Commission in its consideration of the recommendation modifications taken into account the following: One -- the schedule and procedures to implement voluntary voting system guideline 2.0 should be as efficient as possible to ensure a smooth transition to the new guidelines. Two -- the role of the entire membership of the

Standards Board under HAVA should be respected and preserved with regard to implementation modification of the more detailed technical procedures and standards to employed to conduct the certification of voting systems under the voluntary voting systems guidelines 2.0. And third -- the requirements under section 311 charlie of HAVA, that the United States Election Assistance Commission review and update recommendations adopted with respect to voting system standards no less frequently than once every four years.

CHAIRMAN KING:

The Chair recognizes Mr. Giles.

MR. GILES:

I second the motion.

CHAIRMAN KING:

Thank you. The Chair recognizes Mr. Goins for a request.

MR. GOINS:

I request that we take a roll call vote when the vote is had.

CHAIRMAN KING:

Thank you. When the board considers the resolution that's pending before us, there will be opportunity for discussion and potential amendments. At the end of that discussion and consideration, without objection, a roll call vote will be ordered. Is there objection? Hearing none, so ordered. We'll now proceed to

consideration of the resolution with Mr. Giles. You're prepared to be recognized?

MR. GILES:

Thank you. I'd like to offer an amendment to section three by moving current number three to new number four and inserting the proposed amendment up on the screen as the new number three, which would read adopt within the testing and certification program quality and program manage 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 then read number section three as section four, or number four.

CHAIRMAN KING:

Is there a second?

MR. POSER:

Gary Poser. I'll second.

CHAIRMAN KING:

Thank you. We now begin discussion of the proposed amendment. I'll remind members to please identify yourself and your jurisdiction before you speak.

MR. KELLNER:

This is Doug Kellner from New York. I oppose the amendment because it does not describe who would have the

authority to approve the test requirements. And these are significant issues. The Election Assistance Commission is set up to operate on a bipartisan basis under the existing rules that's assured by having the Commissioners involved in the process.

In 2008, New York had the experience of finding that the test plans that had been submitted for the testing of two voting systems, the ES and SDS200 and the image scan were woefully inadequate. When the New York State Technical Enterprise Corporation, which was working with our board of elections noted those problems, they were brought to the attention of the EAC and that process of de-accrediting (inaudible), which was the voting system laboratory at that time was brought to the Commissioners. And it was resolved on a bipartisan basis.

We should also not forget that one of the first actions of the incumbent Executive Director was to act unilaterally in changing the EAC's voter registration form policy, which generated an incredible amount of controversy, and in the long run has not served the EAC well. We are better off by sticking to the bipartisan model, and without having addressed how to maintain that bipartisan process in the proposed amendment, I urge people to vote no.

CHAIRMAN KING:

Further discussion on the proposed amendment?

MR. INGRAM:

Brad?

CHAIRMAN KING:

Yes, Keith?

MR. INGRAM:

Keith Ingram from Texas and I support the amendment, and the way it's drafted, lets the EAC, in a bipartisan manner, determine the method by which test assertions and requirements would be approved, and I think it doesn't tie their hands and it leaves in place their discretion in that regard.

CHAIRMAN KING:

Further discussion on the proposed amendment?

MR. SHELLMAN:

Dwight Shellman from Colorado, and I'm not sure of the completely correct way to do this in accordance with parliamentary procedure, but the – in my mind it may be sufficient if the Commission adopts in the testing and certification program quality and program manual a procedure enabling, you know -- in the event the EAC does not have a quorum, they provide an alternative procedure under which the requirement and test assertions can be updated.

So, what I'm recommending is as opposed to saying the Commissioners themselves should never vote on this, it may be

sufficient to say give us an alternative procedure that we can follow in the event a quorum disappears again.

CHAIRMAN KING:

Thank you. I understand your comments to be in the nature of a proposed amendment to the amendment, but we'll require specific language to be offered for that. And so, I think we can continue discussion, and then if you have an opportunity to do that, there will be an opportunity to propose that.

MR. SHELLMAN:

Thank you. And I guess I would just like to hear others' thoughts about that –

CHAIRMAN KING:

That can be part of the discussion. Thank you.

MR. GILES:

Just to respond to that. I thought it was covered under where it says to be updated in the absence of a quorum of the EAC Commissioners. We're not saying that they necessarily wouldn't. So, in the absence, that's exactly what we're looking to do. Our concern is if we lose a quorum, we can still move forward.

MR. SHELLMAN:

I withdraw my comment. Sorry, I wasn't reading carefully.

Thank you.

CHAIRMAN KING:

Thank you. Is there further discussion on the proposed amendment? Mr. Goins?

MR. GOINS:

So, for the record, if there is a quorum of the EAC Commissioners, we would expect them to be presented to them, but in the absence of a quorum, then that instance there could be other processes. Is that correct, I guess, I'm asking the sponsor of the amendment.

MR. GILES:

Yes, I would be fine with that aspect of it because if it's going to -- whether it's a vote of the Executive Director or the Commissioners themselves, it really comes down to the absence of a quorum, and we're stuck without the ability to move forward again. And that's our biggest concern.

CHAIRMAN KING:

Further discussion on the proposed amendment?

MR. PETTIT:

Jerry Pettit, Washington. I agree with this amendment. My point is if you read the words it specifically provides for the EAC Commissioners to adopt a process by which that could be managed outside of a quorum of the EAC. Through that process, there can be some other ways that the EAC could provide that as well. The Commissioners could actually adopt some level of way of

us -- of managing that even for the adoption of those things outside of the Commission themselves as well even if they do have a quorum.

So, my issue with this is specifically that it provides for that opportunity for the Commissioners to set some procedure to allow for that to occur, so that we don't end up with what occurred for multiple years under which we were not able to update anything.

CHAIRMAN KING:

Further discussion on the proposed amendment?

MR. SHELLMAN:

I had one other question, and maybe Brian or Ryan can answer this. Will the next iteration of the testing and certification program quality and program manual be made available for public comment? Because, you know, the devil is in the details here, and the procedure that the Commissioners propose to allow the updating in the absence of a quorum is a very important issue, and I certainly would like the opportunity to chime in on that.

CHAIRMAN KING:

The Board is currently in the process of considering a motion among the members, and generally it's not provided for non-members to participate in that discussion. However, if there is no objection to the membership, I will permit the question to be posed. Is there objection?

MR. RIDDLEMOSER:

Mr. Chairman Greg Riddlemoser from Virginia. I object.

CHAIRMAN KING:

So noted. Objection sustained.

MR. RIDDLEMOSER:

Mr. Chairman, point of order.

CHAIRMAN KING:

Please proceed.

MR. RIDDLEMOSER:

If I may address the delegate from the great state of  
Colorado. (laughter)

CHAIRMAN KING:

Certainly.

MR. RIDDLEMOSER:

Dwight, in section three, paragraph two, it says that the  
Standards Board shall be respected in the future as we go forward.  
And what is meant by that is that it won't be open for public  
comment, but it will be sent to us for in house or private comment, if  
you will.

CHAIRMAN KING:

Is there further discussion on the proposed amendment  
number 1? Seeing none, all those in favor of adopting amendment  
number one signify by saying aye. Opposed, no. In the opinion of

the Chair, the ayes have it. The motion is adopted. The resolution is amended. The main question is now on the adoption of Resolution 2018-01 as amended. Is there discussion on the resolution in its entirety? Yes, Mr. Kellner?

MR. KELLNER:

Thank you. So, in evaluating the guidelines, I suggest that there are four key values that we should consider as the fundamentals for election administration. Those four values are that the process be uniform, that it be accurate, that it be transparent, and verifiable. And those four values apply to all aspects of election administration, including the ballot access process, the voter registration process, as well as the voting process, which are the subject of these particular guidelines.

In evaluating these guidelines, I think the most important thing that are very positive aspect of these guidelines is part 9, that the voting system is auditable and enables evidence based elections. And then with the four subparts that define that. And I believe that these guidelines correct a significant error in the drafting of the Help America Vote Act audit provisions by effectively requiring a voter verifiable paper audit trail, that there's no way to meet these four standards without having a voter verifiable paper audit trail, and therefore I endorse and thank the drafters for including those provisions.

However, there are two other deficiencies that make these problematic. With the evidence of the attempts of the Russian interference with our elections in the last year or so, one of the key things that so many election administrators said was that our system is secured because our voting machines are not connected to the internet. And yet in guideline 15.4, it explicitly provides that a voting system with networking capabilities employs appropriate well-vetted modern defenses against network-based attacks commensurate with best practice.

In effect, this language blesses the concept of networking capabilities being included within our voting equipment. And I urge that that is a major flaw in these guidelines, that our role is to set minimum standards. Those minimum standards are voluntary. But they should be real standards. And I think it's important that the standard explicitly provide that there should be no internet or wireless capabilities included in any voting equipment.

Second problem that I had with these guidelines is in principle 14 which is an excellent principle and the first four paragraphs are good, but what's missing is that there be a record of the software included in every voting system. In essence, that are the software be escrowed either at the federal level or by the states. And I would urge that the minimum standards require that

there be a record of the software that is actually used by each voting machine that is used to record votes. Thank you.

CHAIRMAN KING:

Is there further discussion of the proposed resolution as amended? Yes?

MS. DEGRAFFENREID:

I'm Veronica DeGraffenreid with North Carolina. North Carolina has a statutory provision that I've made the committee aware of. For that reason, I cannot vote to support the resolution for that statutory provision.

Specifically, it is principle 10.2. I will bring it up. Ballot secrecy. The voting system does not contain nor produce records notifications information about the voter or other election artifacts that can be used to associate the voter's identity with the voter's intent, choices or elections. North Carolina has a statutory provision that absentee ballots must be retrievable. We have to associate an identification number to every single absentee ballot both in person and by mail and for that reason, I cannot support, because of statutory reasons, the resolution. Thank you.

CHAIRMAN KING:

Thank you.

MR. INGRAM:

Brad?

CHAIRMAN KING:

Yes?

MR. INGRAM:

Keith Ingram from Texas. I have exactly the same problem with 10.2. The way that it's worded, it would be prevent us from having provisional balloting capability with voting systems. We would have to do it in a completely separate way with paper or whatever – and so, for that reason I also oppose 10.2.

CHAIRMAN KING:

Thank you. Further discussion on the proposed resolution?  
Final call for further discussion on the proposed resolution as amended. Yes?

MR. SHELLMAN:

Thank you. Just –

CHAIRMAN KING:

Identify –

MR. SHELLMAN:

I'm sorry. Dwight Shellman from Colorado. Just wanted to respond to a couple of the comments made. First with respect to Mr. Kellner's comment regarding the principles and guidelines -- principle 15 and the guidelines. I disagree with Mr. Kellner's interpretation of guideline 15.4. Numerous -- many voting systems

have network capabilities. They utilize a server and client kind of architecture.

In Colorado, those must be on a closed network, meaning they have no exposure to the internet at all. But network attacks are still theoretically possible, and what the guideline says is the system needs to detect and prevent those attacks according to best practices. So in that respect, I like the current phrasing of 15.4, and I would have no objection if prior to adoption by the Commission, a 15.5 was added to clarify that the error gap must be maintained, and a voting system or its components cannot be connected to the internet or something, you know, like that, but I think that issue can be addressed in subsequent public comment.

And then with respect to the comments made by representatives from Texas and North Carolina on ballot secrecy, that is a -- their proposal would create a real problem for Colorado because our state constitution guarantees ballot secrecy, and what I would simply note for the record is that if adopted, these are voluntary voting system guidelines and I believe that all states retain the kind of inherent authority to adopt some or all of them and perhaps the best approach in the case of North Carolina and Texas is, you know, assuming there are no changes to their laws in that regard, is not to adopt that particular principle. Thank you.

CHAIRMAN KING:

Further discussion?

MR. INGRAM:

This is Keith Ingram from Texas again. The thing that we're talking about is an indirect association with the voter. What we're talking about is a system that can generate a code that can go into provisional ballot envelope. That provisional ballot envelope will have the voter's name and signature on it, but the system itself doesn't have any idea who that voter is and the system doesn't care.

So, in the requirements discussion with regard to the secrecy of 10.2, there has been a statement made repeatedly that that sort of indirect association where a code in an envelope is somehow violative of this provision and that's been my problem. We have to have the ability outside of the voting system to adjudicate a provisional ballot without having to do a completely separate voting system for provisional ballots.

CHAIRMAN KING:

Further discussions regarding the proposed resolution?

Yes?

MR. KELLNER:

This is Doug Kellner. I accept Dwight Shellman's analysis of 15.4 that -- that would be acceptable to me if there were additional

language that were added that explicitly provided that the voting machine that records votes should not have capability to be connected to the internet or for wireless communication. But in the absence of that text, I have a problem with that part of the guideline.

CHAIRMAN KING:

Thank you. Further discussion of the proposed resolution? Final call for further discussion. Hearing none, the clerk or rather, pardon me the Secretary will proceed to call the roll. Remember that as in the attendance roll call if you are a proxy for an individual, please respond when their name is called indicating your vote being cast as their proxy.

MR. PARROT:

Mr. Chair would you explain again – exactly what we're voting on. Are we voting on the whole amendment, or some of these other ideas that have been ....

CHAIRMAN KING:

Let me ask you to identify yourself.

MR. PARROT:

I'm sorry. Dennis Parrot from Iowa.

CHAIRMAN KING:

The proposed amendment was adopted earlier. The motion that's pending before the body now is the adoption of Resolution

2018-01 as read by Mr. Riddlemoser and subsequently amended.

So, it is on the final vote on the resolution. Further questions? If

not, please proceed to call the roll.

(Roll call)

MS. WILLIAMS:

Marci Andino, Kyle Ardoin

MR. JONES:

Lynn Jones by proxy, Kyle votes Yes.

MS. WILLIAMS:

Josie Bahnke

MS. THOMPSON:

Yes, voting by proxy, Carol Thompson.

MS. WILLIAMS:

Lori Augustine. Lynn Bailey.

MR. GOINS:

Mark Goins by proxy, Yes.

MS. WILLIAMS:

Kenny Barger.

MR. BARGER:

Yes.

MS. WILLIAMS:

Rachel Bledi.

MS. BLEDI:

No.

MS. WILLIAMS:

Sheri Brewer. Katie Browne. DeAnn Buckhouse.

MS. BUCKHOUSE:

Yes.

MS. WILLIAMS:

Bryan Caskey. Nikki Charlson.

MS. CHARLESON:

Yes.

MS. WILLIAMS:

Melanie Clark. Dana Corson. Carri Crum.

MS. CRUM:

Yes.

MS. WILLIAMS:

Timothy DeCarlo

MR. DECARLO:

Yes.

MS. WILLIAMS:

Jared Dearing.

MR. BARGER:

Kenny Barger voting by proxy, Yes.

MS. WILLIAMS:

Dana Debeauvoir.

MS. DEBEAUVOIR:

Yes.

MS. WILLIAMS:

Veronica DeGraffenreid

MS. DEGRAFFENREID:

North Carolina votes No, due to principal 10.2.

MS. WILLIAMS:

Robert Dezmelyk.

MR. DEZMELYK:

Yes.

MS. WILLIAMS:

Michael Dickerson. Heather Doxon.

MS. DOXON:

Yes.

MS. WILLIAMS:

Debby Erickson.

MS. ERIKSON:

Yes.

MS. WILLIAMS:

Julie Flynn. RIna Fontana Moore. Kari Fresquez.

MS. FRESQUEZ:

Yes.

MS. WILLIAMS:

Kristin Gabriel.

MS. GABRIEL:

Yes.

MS. WILLIAMS:

Robert Giles

MR. GILES:

Yes.

MS. WILLIAMS:

Michael Gill. Joseph Gloria

MR. GLORIA:

Yes.

MS. WILLIAMS:

Barbara Goeckner

MS. GOECKNER:

Yes.

MS. WILLIAMS:

Mark Goins

MR. GOINS:

Yes.

MS. WILLIAMS:

Jackie Gonzalez

MS. GONZALEZ:

Yes.

MS. WILLIAMS:

Lance Gough

MR. GOUGH:

Yes.

MS. WILLIAMS:

Lisa Harris Moorehead

MS. HARRIS MOOREHEAD:

Yes.

MS. WILLIAMS:

Steve Harsman, Wanda Hemphill

MS. HEMPHILL:

Yes.

MS. WILLIAMS:

Stuart Holmes

MR. GILES:

Bob Giles by proxy, Yes.

MS. WILLIAMS:

Tim Hurst

MR. HURST:

Yes.

MS. WILLIAMS:

Keith Ingram

MR. INGRAM:

No.

MS. WILLIAMS:

Joseph Iseke

MR. ISEKE:

Yes.

MS. WILLIAMS:

Katherine Jones, H. Lynn Jones

MR. JONES:

Yes.

MS. WILLIAMS:

Neal Kelley

MR. GILES:

Bob Giles by proxy, Yes.

MS. WILLIAMS:

Douglas Kellner

MR. KELLNER:

No.

MS. WILLIAMS:

Brian Kemp

MR. GOINS:

Mark Goins by proxy, Yes.

MS. WILLIAMS:

Jay Bradley King

MR. KING:

Yes.

MS. WILLIAMS:

Ken Kline

MR. PARROT:

Dennis Parrot, voting proxy for Ken Kline, Yes.

MS. WILLIAMS:

Dave Kunko

MR. KUNKO:

Yes.

MS. WILLIAMS:

Susan Lapsley, Uiagalelei Lealofi, Justin Lee, Paul Lux

MR. GILES:

Bob Giles by proxy, Yes.

MS. WILLIAMS:

Shirley Magarifuji, Elaine Manlove

MS. MANLOVE:

Yes.

MS. WILLIAMS:

Jonanthan Marks

MR. MARKS:

Yes.

MS. WILLIAMS:

Walter Martinez Velez, Bernadette Matthews

MS. MATTHEWS:

Yes.

MS. WILLIAMS:

Maria Matthews

MR. POSER:

Gary Poser by proxy, Yes.

MS. WILLIAMS:

John Merrill

MR. GOINS:

Mark Goins by proxy, Yes

MS. WILLIAMS:

Alice Miller

MS. MILLER:

Yes.

MS. WILLIAMS:

Carol Morris

MR. KING:

Brad King as proxy, Yes.

MS. WILLIAMS:

Baretta Mosley

MS. MOSLEY:

Yes.

MS. WILLIAMS:

Maria Pangelinan

MS. PANGELINAN:

Yes.

MS. WILLIAMS:

Dennis Parrot

MR. PARROT :

Yes.

MS. WILLIAMS:

Chad Pekron

MR. MARTIN:

Mark Martin voting by proxy, Yes.

MS. WILLIAMS:

Chrissy Peters, Jerry Pettit

MR. PETTIT:

Yes.

MS. WILLIAMS:

Louise Phaneuf

MS. PHANEUF:

Yes.

MS. WILLIAMS:

Sandy Pinsonnault, Chris Piper

MR. PIPER:

Yes.

MS. WILLIAMS:

Gary Poser

MR. POSER:

Yes.

MS. WILLIAMS:

Steven Reed, Peggy Reeves

MS. REEVES:

Yes.

MS. WILLIAMS:

Terry Rethlake

MS. WHITAKER:

Genevieve Whitaker as proxy, Yes.

MS. WILLIAMS:

Greg Riddlemoser

MR. RIDDLEMOSER:

Yes.

MS. WILLIAMS:

Hawley Robertson

MS. ROBERTSON:

Yes.

MS. WILLIAMS:

Dag Robinson

MR. ROBINSON:

Yes.

MS. WILLIAMS:

Rob Rock

MR. ROCK:

Yes

MS. WILLIAMS:

Jan Roncelli

MS. RONCELLI:

Yes.

MS. WILLIAMS:

Doug Sanderson

MR. KING:

Yes by proxy, Brad King

MS. WILLIAMS:

Ramon Santos, Rudy Santos

MR. SANTOS:

Yes.

MS. WILLIAMS:

Kai Schon

MR. SCHON:

Yes.

MS. WILLIAMS:

William Senning, Dwight Shellman

MR. SHELLMAN:

Yes.

MS. WILLIAMS:

David Shively

MR. SHIVELY:

Yes.

MS. WILLIAMS:

Howard Sholl

MR. SHOLL:

Yes.

MS. WILLIAMS:

Jim Silrum

MR. KING:

Yes by proxy, Brad King

MS. WILLIAMS:

Eric Spencer

MR. VALENZUELA:

Yes by proxy, Ray Valenzuela

MS. WILLIAMS:

AJ Starling, Anthony Stevens

MR. STEVENS:

Yes.

MS. WILLIAMS:

Sherrie Swanson, Michelle Tassinari, Fiti Tavai

MS. WHITAKER:

Yes, Genevieve Whitaker by proxy.

MS. WILLIAMS:

Aulii Tenn, Carol Thompson

MS. THOMPSON:

Yes.

MS. WILLIAMS:

Steve Trout

MR. TROUT:

Abstain

MS. WILLIAMS:

Raymond Valenzuela

MR. VALENZUELA:

Yes.

MS. WILLIAMS:

Dennis Von Allman, Linda Von Nessi

MR. GILES:

Yes by proxy, Bob Giles

MS. WILLIAMS:

Patty Weeks

MS. WEEKS:

Yes.

MS. WILLIAMS:

Justus Wendland

MR. WENDLAND:

Yes.

MS. WILLIAMS:

Brittany Westfall

MS. WESTFALL:

Yes.

MS. WILLIAMS:

Genevieve Whitaker

MS. WHITAKER:

Yes.

MS. WILLIAMS:

Sally Williams

MS. WILLIAMS:

Yes.

MS. WILLIAMS:

Meagan Wolfe

MS. WOLFE:

Yes.

MS. WILLIAMS:

Patricia Wolfe, Brian Wood

MS. WESTFALL:

By proxy, Brittany Westfall, Yes.

UNKNOWN:

Mr. Chair, point of order.

CHAIRMAN KING:

One moment. We're in the middle of the roll call. At least one member arrived after the beginning of the roll call. So, I'll ask the Secretary to call that member's name.

MS. WILLIAMS:

Marci Andino.

MS. ANDINO

Yes.

CHAIRMAN KING:

Are there any other members present who have not voted?

Hearing none.

MR. POSER:

Mr. Chair, I heard a proxy made by Mark Martin, and I don't believe that's a proxy that was approved by the proxy committee or submitted to the proxy committee. So, I just wanted to clarify if he

would who he voted for and for the record whether that is a valid vote.

CHAIRMAN KING:

Let's direct that to the member who cast the proxy. Mr. Poser, could I ask you to repeat the name again of the member whose proxy you raised in question.

MR. POSER:

Yes, Mr. Chair. The member making the proxy vote of yes was I believe Mark Martin. I don't know the member that was called by the Secretary when he voted a proxy.

CHAIRMAN KING:

Thank you. Yes, please proceed. Identify yourself.

MR. MARTIN:

My name is Mark Martin -- Secretary of State Mark Martin. I am the proxy for Chad Pekron. Arrangements were made in advance. I'm the one that appoints the guy so I mean --

CHAIRMAN KING:

Let me ask Mr. Poser, was this proxy included in the proxy's committees report?

MR. POSER:

Mr. Chair, no it was not. We did not receive a proxy for Mr. Martin.

CHAIRMAN KING:

Then it's the ruling of the Chair that the vote cast in this matter cannot be counted because the proxy has not been duly authorized by the proxy committee in accordance with our bylaws.

MR. MARTIN:

Mr. Chairman, I have an inquiry.

CHAIRMAN KING:

One moment, please. Yes, a member asked for recognition. The secretary reports that the motion received 75 aye votes, four no votes, one abstention. Resolution 2018-01 as amended is adopted. Is there further business at this point to come before the board? If not, the board stands in recess until tomorrow morning in accordance with the agenda. Thank you.

(Meeting in recess)