

Minutes of the Public Meeting

United States Election Assistance Commission

Hyatt Regency Denver at Colorado Convention Center
Mineral Hall
650 15th Street

Denver, CO 80202

Held on Thursday, March 20, 2008

VERBATIM TRANSCRIPT

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission (“EAC”) held on Thursday, March 20, 2008. The meeting convened at 8:35 a.m., MST. The meeting was adjourned at 2:06 p.m., MST.

PUBLIC MEETING

CHAIR RODRIGUEZ:

Good morning. Welcome to the March 20th meeting of the United States Election Assistance Commission. I’m going to exercise a little privilege this morning and ask Mike Coffman who is the Secretary of State from the State of Colorado and an Iraq Veteran to lead us this morning in the Pledge of Allegiance.

Secretary Coffman.

SECRETARY COFFMAN:

Good morning. Please stand and join me in the Pledge of Allegiance.

[Whereupon, Colorado Secretary of State Mike Coffman led all in attendance in the recitation of the Pledge of Allegiance.]

CHAIR RODRIGUEZ:

Madam Counsel, roll call please.

COUNSEL HODGKINS:

Thank you Madam Chair. Members please respond by saying “here” or “present” when I call your name.

Rosemary Rodriguez, Chair.

CHAIR RODRIGUEZ:

Here.

COUNSEL HODGKINS:

Caroline Hunter, Vice-Chair.

VICE-CHAIR HUNTER:

Here.

COUNSEL HODGKINS:

Gracia Hillman, Commissioner.

COMMISSIONER HILLMAN:

Here.

COUNSEL HODGKINS:

Donetta Davidson, Commissioner.

COMMISSIONER DAVIDSON:

Here.

COUNSEL HODGKINS:

Madam Chair there are four members present and a quorum.

CHAIR RODRIGUEZ:

Thank you. Before we adopt the agenda, I breached protocol a little bit by calling on the Secretary of State but the Governor gave me permission, I'd like to offer Governor Ritter the opportunity to welcome the EAC and to make a statement that he has prepared.

Governor Ritter.

GOVERNOR RITTER:

Thank you Madam Chair. I appreciate the opportunity to make just a statement. I don't think as a matter of protocol you have to have my permission to have the Secretary of State deliver the Pledge of Allegiance. It's good to be here with the Secretary and certainly it's good to welcome you home Madam Chair, to welcome your fellow Commissioner home as well, our former Secretary of State Donetta Davidson. Commissioner Hunter, Commissioner Hillman we also hope that you enjoy your time here and given the type of day we're

having outside I'd suggest you urge your Chair to take this outside like you might a fourth grade class.

Colorado welcomes the opportunity to host the meeting by the Election Assistance Commission which we believe plays an essential role in establishing voluntary standards for voting technology and overseeing the use of funds provided by the Help America Vote Act.

Among the many important issues to be discussed today is a proposed policy change enabling states to use HAVA funds to replace voting systems previously purchased with HAVA dollars. As the House Appropriations Committee has noted, our experience with voting systems has changed dramatically since HAVA was passed in 2002. In the last six years the technology itself has changed and states have learned both the costs and the benefits of working with direct record electronic equipment, optical scanners and other voting systems. Policy considered today enables states, like Colorado, to capitalize on their experience, improving the reliability and the security of our voting systems by updating them where appropriate. With this policy change Colorado could assist counties in moving from central count to precinct count optical scanners which provide lower rates of over and under votes. In counties that continue to use direct record electronic equipment, or DREs, Colorado could purchase voter verified paper audit trail equipment to be used for this election, the 2008 election.

Like many of our sister states, Colorado has faced significant challenges planning for the 2008 elections. Greater flexibility in the use of HAVA funds will help ensure we can conduct a safe,

trustworthy election this fall, a goal consistent with the underlying purpose of HAVA. And it is my understanding that the GOA has given you at least a favorable opinion about the ability to adopt this policy and be commensurate with where the law is. It is something that would be very helpful for us as a state which has been through a process that involved the decertification and recertification of machines in accord with the law.

We are doing all that we can to try and inspire the voters of this state, number one, to vote, not just because it's such an important election but because we think voting is intrinsically a Democratic activity. Secondly, we are ready to do all we can to maintain the trust of the voters. And I think, Madam Chair, you understand in Colorado how important that is and we want to make this a system that works and a system where every vote counts but also that people trust their vote. And things like this policy change could help us to talk with the voters about all those things that we're doing as it relates to DREs and the purchase of any kind of equipment that we can say is the best and the most recent technology that helps that reliability factor, we think is just essential to people's confidence in the system.

So with that I thank you for the opportunity to speak. And I'll entertain any questions as I'm sure the Secretary of State will.

CHAIR RODRIGUEZ:

Thank you Governor Ritter. Are there any questions for the Governor? We're pulling for you.

GOVERNOR RITTER:

Okay.

CHAIR RODRIGUEZ:

We want Colorado's election to be one of the best and so we've been following everything. And again, we're pulling for you.

GOVERNOR RITTER:

Well, thank you. And thank you for your service and your work. This is important, obviously, across the entire country and we appreciate this form of public service that you've devoted yourself to.

So thanks.

CHAIR RODRIGUEZ:

Thank you.

VICE-CHAIR HUNTER:

Thank you.

COMMISSIONER DAVIDSON:

Pick up some material on the way out and share it with some of our legislators.

GOVERNOR RITTER:

Will do.

COMMISSIONER DAVIDSON:

All right.

CHAIR RODRIGUEZ:

Okay. And now do we have a motion to adopt the agenda?

COMMISSIONER DAVIDSON:

I so move the adoption of the agenda.

VICE-CHAIR HUNTER:

Second.

CHAIR RODRIGUEZ:

All those in favor of adopting the agenda indicate by saying aye.

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

I'm not going to give welcoming remarks. I think the Governor did that nicely for us. And the mayor will join us later in the morning and also welcome us to Colorado.

Our first order of business this morning is the correction and/or approval of minutes from the February 7, 2008, meeting. Is there a motion to approve?

COMMISSIONER HILLMAN:

Move approval.

VICE-CHAIR HUNTER:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to approve the minutes from February 7, 2008. All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

COMMISSIONER HILLMAN:

Madam Chair, can I just say that I really appreciate the attention that was given to the minutes that we have before us. I think it reflects the kind of record that the EAC should post, so I thank all the staff for the work they did to make sure that we're on track.

Thank you.

CHAIR RODRIGUEZ:

Thank you Commissioner Hillman.

And now I'll invite the Executive Director to give his report,
Mr. Wilkey.

EXECUTIVE DIRECTOR WILKEY:

Thank you Madam Chair. First I want to welcome everyone here to this meeting. It's particularly nice on my part since Denver is one of my favorite cities and it's always good to be able to get back here, and I know a number of the staff that are here today also feel the same way.

I want to thank first of all Commissioner Hillman for moving to adopt the minutes. It's a major step forward and I appreciate her comments.

Under activities that happened during this past month, the EAC Commissioners testified before the House Appropriations Subcommittee on Financial Services and General Government in February and before our oversight committee, the House Administration Subcommittee on Elections, this month. Members had questions about the EAC's clearinghouse role, the security of voting systems currently in the field, how HAVA funds have been spent, EAC's overall operations and goals for this year. Testimony is available, as always, on our website. And we will continue to keep Congress and the public updated about all of our activities.

Under our Office of Inspector General, our Inspector General has issued two reports about the EAC. Our overall operations he found 29 specific areas that need improvement. EAC is working on a plan of action to address these issues. EAC has already started addressing these issues and will meet monthly with the Inspector General and provide a written report to him as well as to the

Congress and the public. This plan provides a roadmap for improvements and it will be our top priority.

Commissioners' request to review EAC's fraud and intimidation project. That report was issued. The report stated that there was no evidence to support allegations that the changes were made to the report due to improper reasons or political motivations. We recognize that some election administration topics are difficult and can be divisive. That is why the EAC is making the adoption of internal policies and procedures a top priority to clearly demonstrate the basis for the contents of reports issued by the EAC. As always, both of these reports are available on our website eac.gov and we ask anyone who is interested in our activities to take a look particularly at this report.

Under our language accessibility program, this is one of our most popular and well received programs. Our work was recently cited in a GAO report about providing language assistance to voters. In May we will offer a Glossary of Election Terminology in five Asian languages: Chinese, Japanese, Korean, Vietnamese and Tagalog, and we will translate portions of our website into those five Asian languages. In June we will host a Native American language working group. Participants will include election officials, tribal representatives and advocates. Focus will be, how to meet the needs of voters who use languages that are primarily oral and not written.

Under HAVA funds, as many of you know Congress appropriated \$115 million in requirements payments for the states. We have provided information about applying for these funds on

our website, which you will find on the homepage under “In the Spotlight.” In this page you will find amounts each state will receive, the match amounts for each state, applications instructions. And we will immediately notify states about the outcome of today’s vote that we’ll take which will have some influence on HAVA funding.

Voting system testing and certification program. A certification manual is out for public comment and is available on our website. The deadline for comments is April 4th. The deadline for commenting on the Technical Guideline Development Committee’s recommended guidelines for the VVSG has been extended to May 5th. You can submit comments at eac.gov.

Roundtable discussions on the Technical Guideline Development Committee’s recommended guidelines. The EAC will host a roundtable discussion about the VVSG with usability/accessibility professionals. The meeting will take place on March 27, 2008, at Gallaudet University in Washington, D.C. We urge you if you would like to attend, more information on our website eac.gov. And let me first state also Commissioners, as you know, these roundtables have been very successful. We’ve been very pleased with them. We have had one with the academic group back in last month, or two months ago. We have had one with our manufacturers. We had a very successful one yesterday with our laboratories, and we will move on with the one at Galludette on March 27th, on April 24th with advocacy organizations, April 25th with election officials, May 5th an interdisciplinary discussion with representatives from all of the major stakeholders.

These meetings will be in Washington and we will notify everyone when we finalize the details. And of course, as always, information will be available on our website.

The latest program correspondence under the certification program. A letter to EAC-accredited laboratories regarding submission of test methods was issued March 4th. A letter to the National Institute of Standards and Technology, the National Voluntary Laboratory Accreditation program, which as you know, is responsible under HAVA for accrediting our laboratories, received a letter on March 13th, 2008. All correspondence to anyone under our certification program is immediately available on our website.

Under EAC grants, EAC is now accepting grant applications for the HAVA college pollworker program, a very successful program, that we are pleased again to do this year. And the mock election programs, the deadline is April 7. And we urge anyone who is interested to contact us at eac.gov.

Under election data grants, we recently put out that information for public comment. We received a great number of comments back, and our Research Director Karen Lynn-Dyson will update us later on in our agenda today and we look forward to hearing more about this.

Under general updates, EAC distributes a monthly electronic newsletter packed with lots of information. To sign up, call us at 866-747-1471 or at havainfo@eac.gov. We are now using our website calendar to post events and program updates. You can click on this calendar and it provides an overview of items we've added to the site in all program areas. For instance, when a new

voting system manufacturer registers, we post an update on the calendar as well as any correspondence that we send to anyone.

Madam Chair and Commissioners that is my report.

CHAIR RODRIGUEZ:

Thank you Mr. Wilkey. Are there any questions or comments from the Commissioners?

Thank you very much.

EXECUTIVE DIRECTOR WILKEY:

Thank you Madam Chair.

CHAIR RODRIGUEZ:

We have an ambitious agenda this morning, so I appreciate your concise report.

Now I'll look, to Mr. Brian Hancock and ask him to introduce his team this morning and the agenda item under New Business, the Election Management Guideline Update.

Brian.

MR. HANCOCK:

Thank you, Madam Chair, Commissioners. Good morning. We appreciate the opportunity to provide you an update on the Election Management Guidelines Project this morning. With me is Laiza Otero, our Elections Research Specialist, and Mr. Brit Williams, one of our contractors for the Election Management Guidelines Project. I also want to recognize Ms. Connie Schmidt who will be speaking to you about another project later this morning, but Connie is also one of our co-project managers here. So thanks to Connie as well.

The way we'll work it this morning is, I'm just going to give you kind of an overview to remind everyone sort of what the

election management guidelines are. Laiza will talk broadly about what we are doing this year in this area. And Brit will give a more detailed discussion about some of the documents that you will be very shortly receiving.

So with that, as you remember the Election Management Guidelines Project was originally envisioned quite some time ago, in fact back in the 1990s. At that point the Federal Election Commission had just published its Voting System Guidelines, the 1990 version of that document. And the National Association of State Election Directors, in fact, at that point I think, led by our current Executive Director Tom Wilkey, envisioned the importance of having a companion document to those technical guidelines because I think as they recognized back then, and as we still recognize now, technology is only half of the equation, and maybe not even the most important half of the equation. It's really the people and the practices and the management processes that drive a successful election. And to that end, NASED was never able to get the funds at that time to initiate this project, but we are very proud that the Commission several years ago decided that this was now priority and time to get this good work underway. So we appreciate that and so far I think we've been fairly successful in achieving the goals we have here.

I think I want to emphasize more than anything that this project is a cooperative effort. It is not sort of a traditional Federally focused initiative. The way we work it, the EAC essentially manages the project, edits the drafts and then publishes the final documents. Our contractors essentially synthesize information and

prepare and write drafts. State and local election officials however do provide the management practices themselves. That's where we get the information. And we receive that via working groups of these individuals. And I think we're very proud to say that we have received input from state and local election officials from the vast majority of states in the United States so far in this project. And we will continue to outreach to all of the states large, small, rural, urban, because we think that's the best way to achieve a quality product here.

Essentially these are lessons learned and best practices from state and local jurisdictions. Another important issue is that these are not requirements. These are essentially guidelines. They do not endorse one method of election administration over another method. And they're really, again, designed as a resource to serve election officials better. Certainly local jurisdictions may consider these and they may adopt them, but we always counsel that they should work with their state election officials and bring these into play in conjunction with state law and procedures.

The document you see is the document that came out last year. It was the full management guidelines document and initially we published it with three chapters; a chapter on certification, a chapter on voting system security, and the third chapter on the physical security of elections.

One of the sort of interesting outcroppings of this project, and it sort of came as kind of a brainstorming session, is that we developed these Quick Start Management guidelines. We wanted to find a way to get the information that we are collecting out to

state and local election officials more quickly than we could via the chapters, and in a very easy-to-use format. So you see we've come up with the Quick Start Management guides. In 2006 we had the following ones: We had one on the new voting systems, ballot preparation, printing and pre-election testing, voting system security, and pollworkers. In 2007 we had the ones you see there on voting system certification, contingency and disaster planning, managing change in an election office, polling places and vote centers, acceptance testing, absentee voting and vote by mail, and media and public relations.

I should also note that all of these are outside this room in the back available for anyone in the audience who wishes to take those home.

CHAIR RODRIGUEZ:

Artfully displayed I might add.

MR. HANCOCK:

Thank you. With that, you know, I think we'll maybe hold questions to the end and we can all answer any of the questions. But again we are very pleased at not only the quality of the work but at the way election officials across the country have received this product. We were at several election conferences last summer and the products were put out on the table and before we were even finished with our presentation on the topic they were all gone. In fact we had to order more from the office and have them FedEx'd in. So, you know, I think they are really being used in the manner that we intended, so we're pleased with that Madam Chair.

CHAIR RODRIGUEZ:

Thank you Brian.

MS. OTERO:

Well, good morning and thank you very much again for this opportunity to brief you on this project.

In 2008 we have a very ambitious agenda. We want to make sure that we get as much information as we can prior to the general election to election officials because we recognize that there's the potential for high voter turnout and just a lot of administrative issues that go around that. So in 2008, in the next couple of weeks, actually it's in the printing and mailing process, so it will be released in March, we have two new Quick Starts coming out. One on developing an audit trail and a second one on uniformed and overseas voters, and you can actually see the cover. I do have the PDF files that have been submitted by GPO, so those will be available on our website as of next week because we recognize the need for it. I think, just to reiterate what Brian has mentioned, the Quick Starts have been very useful and they just highlight the information that's going to be in the chapter. So while we may not have the full chapter out, which we hopefully will be able to do, they have been tremendously successful. In April, we will have one on central count optical scan ballots, and up next we will have provisional ballots, canvassing and certifying an election, conducting a recount, developing community and university partnerships. We will also have one on elderly and disabled voters in long-term care facilities and also one on language accessibility. So those are the Quick Start Management guides that are in the works.

We have already had three working groups in February to address three of these topics. We've had the ones concerning canvassing and certifying elections, conducting a recount and provisional ballots. So that is already in development. Also in 2008, because we do have a full chapter and a Quick Start for each of the topics, we will go ahead and work on this and publish them and this will come later on in the year. And it's just the same topics and just with the addition of the media and public relations that you see there, which we already have a Quick Start for.

Now for the good stuff, and I'm trying to just keep it concise because I know you have a busy agenda for the rest of the day, we would like, you know, to officially just submit for the Commissioners for comments, we have eight chapters that we have drafted and that we would like to publish very soon, so we would like your substantive comments on these chapters and also to make them available to our boards so that they can also comment, because that was the practice we followed for the first three chapters. So the chapters that we would like to publish in the very near future are absentee voting and vote by mail, acceptance testing, ballot building, contingency planning and change management, developing an audit trail, polling place and vote center management, pre-election and parallel testing, and uniformed and overseas voters. So, as you can see, I think these topics are very important to the election officials out there.

I'm just going to give a quick overview of four of the chapters and then Brit will follow with the other four, just so you get an idea of the information that will be there. In the absentee voting and

vote by mail chapter, it's divided into five general sections; ballot preparation and mailing, ballot reception, ballot processing, storage and security, and voter education. This chapter also discusses the staffing needs, facility requirements and equipment and supplies recommended for improving the efficiency of the absentee voting process. Two other key areas that are covered are the importance of balancing ballots requested to the number issued and the number that came back and whether they were counted or rejected, because that's something at least, you know, in the EAC when we collect information whether it's for the 2006 election day survey or the 2004, we encountered problems where we asked local election officials to provide information but they don't necessarily have the methods for tracking it. So we're trying to encourage them, "Hey, this is information that is collected. Make sure that there is some process for it." And also, we believe this chapter is very pertinent as I believe in the 2006 election survey it demonstrated that 29 states allow for no excuse absentee voting while 21 require an excuse and then Oregon allows for all vote by mail. So there is a slightly increasing number of jurisdictions that allow this and are looking at it as a way for increasing voter turnout.

For developing an audit trail, this is personally one of my favorite ones along with the contingency planning and change management. To ensure that elections are administered fairly, accurately, transparently and efficiently requires not documentation of just the vote at the end and recounting that, but it's, what were all the components that made up that election; the pre-election processes, the supplies, requesting supplies, the logic and

accuracy testing, making sure that you have the documentation, in case, especially if the election is questioned afterwards. So as the chapter notes, there is no such thing as too much documentation, and I think this is Connie's favorite line. So we like to emphasize that.

For the contingency planning and change management we have two Quick Starts, and we decided for the chapter purposes, that it fit together, because the goal of this chapter is to provide them just general guidelines on how to identify, assess and respond to events that may disrupt election and voter registration services in their local jurisdictions. Sometimes they're unexpected, they're crisis, so that's where you need to have your contingency planning. But sometimes you can anticipate change, so we want to make sure that, don't leave it for the last minute, where it becomes a disaster and a crisis. It's, learn to do some of the strategic planning and make sure that you learn to address all the factors that go with that, so that the change is smooth and efficient and there's no disruption.

Then the last one, on polling place and vote center management, again, this one just looks at how one can improve the location, accessibility, layout, and work flow of a polling place or a vote center. And we have some very good information that Connie actually pulled in from the Department of Justice's ADA compliance checklist, so that we make sure to incorporate that and election officials have it. It also guides the reader on how to locate and inspect a potential polling place location and including how to set

up the interior layout and how to deploy supplies and equipment to it.

So we're very excited about these four and now I'm just going to allow Dr. Brit Williams to speak about the other four.

DR. WILLIAMS:

Madam Chair, Commissioners, Director Wilkey, Counselor Thompson-Hodgkins, I'm honored today to have the privilege of presenting these four chapters for your consideration.

I've personally been involved in evaluating and certifying electronic voting systems for over 20 years and have been privileged to participate in the development and implementation of all of the previous generations of voting systems standards.

However this project to develop management guidelines is by far the highlight of my career. Voting system standards and guidelines are directed toward perfecting voting machines, but elections aren't run by machines they're run by people and the success of election is determined entirely by how well the people involved understand their jobs and carry them out. And so those of us who are participating in this project feel that we are making a significant contribution to this effort.

And now I'm going to just go through a brief description of these four chapters. The first one is acceptance testing. Acceptance tests are performed on newly acquired systems and components to assure that they comply with the conditions of the acquisition and that they're correctly configured for use in an election. And if a component of a voting system leaves your control for any reason, for repair or what have you, when it comes back it

should again undergo acceptance testing to reestablish your chain of command. The chapter recommends that acceptance tests be conducted either directly by or under the strict control of the jurisdiction's election officials and we recommend that under no circumstance should vendors be conducting your acceptance test. There are three distinct parts to an acceptance test. There's a physical examination of the device to see to it that it's not damaged, that it functions properly. There's a diagnostic analysis to ensure that all the mechanical and electromagnetic components are functioning correctly. And then there's a functional analysis to verify that the software and firmware installed on the device is the correct software and firmware and that it will function correctly in an election. The chapter presents a generic outline for conducting acceptance tests on the most common devices, the ballot scanners, touchscreen voting stations, and election management.

The ballot building chapter. Ballots are the foundation of a successful election. Your election is not going to be any better than your ballot and if you've got problems in your ballots that is invariably going to lead to problems in the election. A typical ballot involves a Federal section, a state section and a local section and building that ballot involves coordinating with all three of those levels. We think it's impossible to review and critique a ballot too much. Notice up there I say, "Review, review, review and then review some more." We recommend that ballot reviews be conducted by people who were not involved in initially building the ballot, because it's human nature if you make a mistake in the production of something, you'll like that mistake the next time you

see it. So we make recommendations in that. The chapter is organized in five sections. The first section discusses issues that are common to all ballots. These include things such as instructions in plain language separate from other ballot content, use of separation and delineation marks, et cetera. The next three sections discuss issues that are specific to optical scan ballots, touchscreen ballots and audio ballots. The optical scan section addresses things like coordinating with printers, reviewing ballots for text relative to fold lines, bleed through, ink quality, paper opaqueness, and we also have a little bit on ballot on demand and chain of custody issues of your optical scan ballots. The touchscreen section addresses such issues as color and texture, instructions for ancillary input and feedback devices for the handicapped, avoidance of three-column screens and recommendation for testing ballot style layouts. The audio section provides guidelines for choosing between synthesized or natural voices and male or female voices, using visually impaired persons to test the ballot and maintaining uniformity of style and volume, et cetera, throughout the ballot. And then the final section addresses testing and validation of the completed ballot.

The pre-election and parallel testing, these are two very separate and very different types of tests. Pre-election test also referred to frequently as logic and accuracy test is the act of testing every ballot style on every component that is going to be used in that election. And we stress the “every” there, because the members of our focus group and the people that participated in the development of this chapter feel very strongly that in a logic and

accuracy test you should test every ballot style on every voting device. There are vendors that don't recommend this. They say that these things are all the same and if you test one -- you got 15 machines in a voting location and you test one, the other 14 are going to be okay too. We don't recommend that. We recommend that you test all 15. Labor intensive? Yes, but it leads to good elections. The primary purpose of the pre-election testing is to detect and correct errors before they occur. So there you're looking at, we present guidelines for preparing test strips, for voting the test strips, for completing the election recycle and comparing the results with the known results of the test strip. Parallel testing on the other hand is the act of duplicating a portion of the election, a sample of the election, under conditions that as nearly as possible mirror the actual conditions of the election. And the purpose of these types of tests is to detect things that might be invisible in the code. Our computer scientist friends talk about Trojan Horses all the time. If you've got a Trojan Horse that would only reveal itself under the actual circumstances of the election, then we try to duplicate and parallel test those identical circumstances to coax that out. Now the thing about -- the difference between pre-election and parallel testing is that parallel testing is going to tell you after the fact that you've got a problem, so you're in a remedial situation as opposed to pre-election testing which gives you an opportunity to correct the problem. In the guidelines for parallel testing we talk about how to select voting locations, how to select the ballot stations, how to select the ballot styles, guidelines for preparing voting strips that reflect the demographics of the voting location testing. And these

demographics would consider things like the number of ballots that are usually accumulated on a voting station in that precinct, the distribution of those ballots by political party, sex, race, et cetera, and we end with a recommendation that a video recording be made of the parallel testing. And the reason for that video recording is so that if your numbers don't match at the end you can go back through the video recording and determine whether or not you've got a human mistake or a system mistake.

And finally let me talk about the uniformed and overseas voting chapter. We have over 6 million uniformed and overseas persons in this category, the so-called UOCAVA voters. That's 3 million civilians, one-and-a-half million military, 1.3 million military dependents, and 100,000 Federal employees. UOCAVA voters face unique challenges in registering to vote, requesting and receiving ballots, and returning their voted ballots. This chapter provides guidelines for communicating with the UOCAVA voters, developing office guidelines for serving those voters and understanding the forms and procedures for UOCAVA voters. The chapter also contains instructions for contacting the Federal Voting Assistance Program via mail, telephone, web, et cetera, along with toll free numbers for the voting information center.

And finally, I'd like to conclude by thanking Laiza. Laiza is our guardian angel on this project. She arranges all of the focus group meetings. She handles all of the arrangements for hotels and meeting rooms and airline schedules and provides our lunch.

MR. HANCOCK:

She doesn't cook herself. That's the only thing she doesn't do.

DR. WILLIAMS:

And then when we produce these drafts and copies, Laiza manages them through coordination with the focus group members and with EAC staff. And then finally when they become final products she becomes our publisher and distributor. So thank you.

MS. OTERO:

You're welcome.

CHAIR RODRIGUEZ:

Thank you Mr. Hancock and Dr. Williams and Ms. Otero. Are you ready for questions at this point?

MR. HANCOCK:

Yes, Madam Chair.

DR. WILLIAMS:

Uh-huh.

MS. OTERO:

Uh-huh.

CHAIR RODRIGUEZ:

Are there any questions or comments for our team here?

Commissioner Hillman.

COMMISSIONER HILLMAN:

I have a couple of questions and a comment. My first question is to Dr. Williams. And I appreciate that you've been a true long-distance runner in the field of election administration and your experiences and knowledge have certainly helped EAC.

You talked about the concern about Trojan Horses being imbedded in code within voting systems and the usefulness of doing both pre-election and parallel testing. Assuming a code

specific to date of election at any time on election day, have you ever in your long-distance running, either encountered directly through testing or the work that you've done or work reported that anybody has found this kind of a Trojan Horse?

DR. WILLIAMS:

No ma'am, and I think there's a reason for that. If you think about what would be involved, you've got to imbed that Trojan Horse back when the system is being developed by the vendor. And it's got to go through the certification process at the Federal level. It's got to go through the certification process at the state level. It's got to go through all of your acceptance testing and then at some future election. And there's usually at least a two-year span between the time a system is developed by the vendor and it actually is used in an election. So it's got to sit there dormant for that whole two years and not be discovered and then all of a sudden appear on some magical election date in the future. Now two years later, how is that Trojan Horse going to know who the candidates are and how to move votes and what have you? So I think the best you could do with a Trojan Horse would be to disrupt the election. I really don't think you could alter the outcome with a Trojan Horse.

COMMISSIONER HILLMAN:

Thank you. The comment I'd like to make, and this is really for EAC and the staff, is that we still have to do a lot of public education on this. I mean we have significant projects going on that cover the issues of the testing and certification of machines, the guidelines that are being developed, the management guidelines we're putting out. And a lot of this information is useful

not only to election administrators but equally important to the groups that get engaged, maybe not so much the individual voters. We may have individual voters around the country who really love this stuff and follow it on a regular basis, but in particular the voting groups who do monitor this and have questions about the reliability and security of machines. And so, I am suggesting that EAC on its WebPage and other materials put together something very simple that connects the dots, because I really don't think we are promoting as aggressively as we can and should, how we're covering these bases, how people can learn about this and what it means to the community group, to the everyday citizen. I don't have off the top of my head an idea how we'd do that. I know it can be done and I'm going to encourage that we do it early this year, so as to reduce some of the anxiety before we get to November.

And my last question really doesn't have to do with the management guidelines, although, tangentially related, and that is we have out for comment a certification manual and those comments are due April 4th?

MS. OTERO:

Yes.

MR. HANCOCK:

Yes, ma'am.

COMMISSIONER HILLMAN:

And then we have out for comment the draft recommended Voluntary Voting System Guidelines as recommended by the Technical Guidelines Development Committee. And my question is, do we have anything available? Have we been providing

information to the public that explains the correlation between those two documents, given timeframe implementations, one is sooner than the other, and how the public can discern between the two and understand how they relate and how they're different?

MR. HANCOCK:

Commissioner Hillman I think we do and I'll certainly go back and review what we have on the website, but on the website we have a section that's dedicated to voting systems and sort of everything that we do surrounding voting systems. And that would include the Laboratory Accreditation Manual that you were speaking of, our certification -- Testing and Certification Manual. Those are really our program manuals, you know, for our internal policies and procedures. They certainly do, as you know, go hand-in-hand with the VVSG 2005 and the draft that we're seeking public comment on now. I do think we have an explanation of how they work on the website, but I think we can certainly go back and review that to make sure it's clear, as clear as possible.

COMMISSIONER HILLMAN:

My only comment would be, and it's a good thing, because it's the first time that the Federal Government has really delved into this and is covering everything from "A" to "Z," but it's a lot of information. It's overwhelming to the public and I think it's our responsibility to present it in the clearest, most useful way because otherwise people shut down and don't realize that the very questions they're raising are being addressed, that we are on top of these issues. It's just that they're hidden in the myriad of volumes of information we're cranking out. Thank you.

MR. HANCOCK:

It sounds like you might be suggesting a Quick Start guide on...

COMMISSIONER HILLMAN:

Right.

MR. HANCOCK:

...how we do our program.

COMMISSIONER HILLMAN:

Right.

CHAIR RODRIGUEZ:

Thank you Commissioner Hillman. Commissioner Hunter?

VICE-CHAIR HUNTER:

Thank you. I have one quick question about a Quick Start that Laiza referred to is coming in April about central count voting machines. And I haven't, you know, seen any drafts of that or been involved in it, but my question to you is, how do we address the requirement of Section 301 of the Help America Vote Act which requires voting systems to provide the voter with the opportunity to change the ballot or correct any error before the ballot is cast and counted?

DR. WILLIAMS:

We can't address that directly. The way we address that is, we point out to people who are considering central count, that when you get those ballots in there the voter is no longer available. Now this is the same situation you have with mail in absentee votes. And so what we say in the guideline is that however you handle this problem with absentee mail in votes you're going to have to handle it the same way with the central count because the feature is the

same, and that is at the time you count -- you're handing and counting the ballot the voter is not available.

MS. OTERO:

I think also, and it happens with some of the other topics as well, but for this one in particular where, you know, HAVA does have a specific requirement in it but the reality of it is that there are jurisdictions out there using the system. So we would feel -- we feel the need that if they're going to use it that we should at least provide some guidance as to how to ensure -- and there is a section on it in voter education to try to teach voters to make sure that they understand the difference between the central count system and a precinct count system and that they don't have that opportunity to review that. So we are aware of it and it's one of those items that as Connie and Brit and Brian and I are like aware of the news and that's what's going on and being implemented we wanted to make sure that there was something just to improve the administration of it.

VICE-CHAIR HUNTER:

Right, I appreciate that.

MS. OTERO:

Uh-huh.

VICE-CHAIR HUNTER:

And I agree that we should address things that are happening whether we agree with them or not. However, I think there's a -- I understand that it's the same situation with absentee ballots, but to me that whether or not it violates HAVA, it's more clear that it's impossible to allow someone to verify unless they have, you know,

something in their home to check how their vote was counted. So that seems more in line with HAVA because in some ways you sort of waive that right because you decide to vote from home or whatever. But to the extent that somebody is showing up in a polling place, to me that's a different scenario, and I hope that at a minimum we put in the Quick Start the requirement of HAVA. And I don't know for one whether the central count system satisfies that requirement of HAVA.

DR. WILLIAMS:

Well you're right, and this is a question that's above our level so to speak. This is a legal question to look at the central count and see whether or not it satisfies HAVA. But the motivation behind this Quick Start was that we realized that a number of jurisdictions were making quick decisions to implement central count on very short notice as a way of getting around concerns about voter receipts and what have you. And we felt that we needed to get as much information as we could out to those people as soon as we could, cautioning them about the concerns that we have about attempting to use central count in large jurisdictions. We think that's a problem.

VICE-CHAIR HUNTER:

Thank you.

CHAIR RODRIGUEZ:

Thank you. Commissioner Davidson?

COMMISSIONER DAVIDSON:

Dr. Williams on the same subject, I have a question of residual votes. And are they -- are we putting a statement in there or giving

them instructions that they really need to have the type of equipment that is counting centrally to throw out a ballot that maybe is an overvote, so that that ballot can be looked at to see if it needs to be duplicated because of the issues?

DR. WILLIAMS:

Right.

COMMISSIONER DAVIDSON:

Are we addressing that in the...

DR. WILLIAMS:

Yes. Yes, in central count you can reject ballots that are overvoted, because an overvoted ballot most often is a voter error. And sometimes, through your intent of the voter, however you handle intent of the voter, you can determine why that overvote occurred and maybe correct that ballot. And we have all of that in the Quick Start.

But what you usually cannot do is under voted ballots...

COMMISSIONER DAVIDSON:

Right.

DR. WILLIAMS:

...because, as you know, toward the end of the ballots you get such a plethora of under voted ballots that that's just not feasible.

COMMISSIONER DAVIDSON:

And, you know, we hear and see things in the newspapers, and that's not always correct information, but there are states that are, you know, saying don't worry about any overvotes or under votes or whatever. I mean they just want their ballots counted and concerned about timing, getting results out. And so that definitely

we, I feel need to make that a concern in our manual -- or our Quick Start, to make sure that we address those.

DR. WILLIAMS:

Uh-huh.

COMMISSIONER DAVIDSON:

The other question I have for, I don't care who might want to answer it, is the cutoff time that we're going to actually get this material out because, as we know, elections are slipping up on us very quickly. And for states or counties to be able to react to our information, what is our timeframe that you can tell us of when we think that our information will be out to the states?

MR. HANCOCK:

Well we're certainly going to get them out as quickly as possible. The draft chapters for your comment have been emailed actually to you this morning to begin your review. We will work with you to see what, you know, what your schedules will allow, but I would suggest as quick a review as your schedules allow. Again, as we did last year, we will send it to the Boards for a very quick review as well. Laiza do you remember what timeframe we gave the Boards last year?

MS. OTERO:

I believe we had given them ten weeks. And it was one of the first...

MR. HANCOCK:

Ten days?

MS. OTERO:

Yes, that we had used the virtual meeting room. I remember it was one of the first times that it had been used. So...

COMMISSIONER DAVIDSON:

I think that's a great opportunity and I think the information coming back from the states, you know, if we did leave anything out or their reviewing them I think will be very important.

And I just want to say thank you to all of you because this is one project that I feel is very, very important. And as you said it's been a big success. I know in taking documents out when I go out to states, it disappears immediately and they've been very, very pleased with what we've done. And obviously the support that you have given to accomplish this has been unreal and I do really appreciate all of you. Thank you.

MR. HANCOCK:

Thank you.

DR. WILLIAMS:

Thank you.

CHAIR RODRIGUEZ:

Thank you. I have maybe two, at least one question for Dr. Williams. The logic and accuracy test, you stressed in your comments that there's an opportunity to correct issues that show up at that point. Is there any -- I've heard and I don't know this firsthand, but I've heard that some jurisdictions allow vendors to conduct their logic and accuracy tests and I just wonder if your Quick Start addresses that.

DR. WILLIAMS:

We recommend against that. You're right, there are a number of jurisdictions, and particularly smaller jurisdictions...

CHAIR RODRIGUEZ:

Sure.

DR. WILLIAMS:

...with limited resources that are 100 percent dependent on their vendors. We recommend against that with the realization that some of them don't have any options.

CHAIR RODRIGUEZ:

Right. Very good. And...

MR. HANCOCK:

Madam Chair, let me just add to what Dr. Williams was saying.

CHAIR RODRIGUEZ:

Oh yes, please.

MR. HANCOCK:

It is, what we found in our meetings, a very significant problem, that is, smaller jurisdictions, that do lack the funding. And I think one of the long-term issues that we would like to address, and we haven't quite figured it out how, but with, you know, your input we will deal with this in the future, as to what additional help we can provide to those small jurisdictions. Perhaps working with states, you know, so they aren't in the future so dependent on the manufacturers for things like this type of testing.

CHAIR RODRIGUEZ:

Very good. All right.

DR. WILLIAMS:

An ambitious answer to that is that, in the states -- if you look at it on a state-by-state basis, we could investigate the feasibility of forming regional type support groups. And I think all of you are familiar with what we do at Kennesaw State University for the State of Georgia, but do that on a smaller scale on a regional basis in these states for different manufacturing groups, where if they've got a significant number of small counties that are using a particular vendor, then help them organize a support group that does ballot -- a lot of the stuff we do for that group of counties.

CHAIR RODRIGUEZ:

Very good. Very good. Mr. Hancock we do not need to take any action on this today is my understanding, this is a briefing?

MR. HANCOCK:

Yes ma'am, just an update.

CHAIR RODRIGUEZ:

All right, thank you very much. If there are no further questions, Mr. Wilkey? Ms. Hodgkins? Thank you.

And we'll call up the next panel and I'm going to ask the Commissioners to tell me when and if they want to take a break. But our next panel under new business is the Voter Hotline Study and this is an action item for us this morning.

COMMISSIONER HILLMAN:

I'm going to give myself a break.

CHAIR RODRIGUEZ:

Okay, well let's take a five-minute break then.

[The Commission recessed 9:37 a.m. and returned to open session at 9:43 a.m.]

CHAIR RODRIGUEZ:

We have a very distinguished guest among us now, Richard W. Soudriette, President Emeritus of IFES, which is the International Foundation for Election Systems. And he's now a resident of Colorado and took this opportunity to join us. And I thank you for coming this morning.

COMMISSIONER HILLMAN:

That's when you know we have a true groupie, bless his heart, he's traveled up to be at our meeting.

CHAIR RODRIGUEZ:

Thank you Commissioner Hillman.

Ms. Lynn-Dyson I'll ask you to introduce your panel and your topic, the Voter Hotline Study.

MS. LYNN-DYSON:

Good morning Commissioners. Connie Schmidt, whom you all know is no stranger to the EAC or the elections community, worked along with Jennifer Collins-Foley at the Pollworker Institute on this project. And so I will just begin with my formal testimony to you all and provide my recommendation to you, and then Miss Schmidt will give her presentation on the key findings of this study.

Commissioners, Mr. Wilkey and General Counsel Hodgkins, I come before the Commission today to share the draft report from the voter hotline study conducted by the Pollworker Institute. This 14-month study completed in December 2007 was designed to capture the key functional and administrative characteristics of government-sponsored voter hotlines. Close to 6,000 local and state level election offices were contacted and asked to respond to the 43 question survey. More than 1,400 state and local election

offices responded. In a moment Connie Schmidt, who, as I mentioned along with Jennifer Collins-Foley, served as the principal investigator on this contract, will describe for you in some detail the key findings that came from this project.

However, allow me to highlight several of the findings, best practices and key components of a successfully managed and administered voter hotline that were uncovered during the project and I believe are particularly noteworthy. As we might expect, larger jurisdictions are more likely to have voter hotlines than are smaller ones. The majority of questions hotlines receive are inquiries about where to vote or registration status. And more states and jurisdictions are starting to rely more heavily on websites rather than phone hotlines to provide information to voters. Half of the localities that responded to the survey indicated that their hotline services are accessible to the hearing impaired, although unfortunately the majority of those who responded to the survey indicated that they operate their hotlines in English only. Responses to this national survey seem to indicate that operating a voter hotline from the perspective of state and local government is not a costly proposition.

A review of the study findings indicate that the services provided through a government administered voter hotline are fairly labor intensive, require the operator to have a good working knowledge of elections and thus good training, along with up-to-date, accurate information about voter registrations and polling place locations. It is also significant to note that an in-person customer driven approach to providing voters with a service even in

this era of high technology was key for those who responded to this survey.

Finally, I recommend to the Commissioners and others the section of this report that highlights some of the best practices which have been used by certain state and county level election offices in the management and administration of their voter hotlines.

In closing, I am recommending that the Commission accept this draft report and pending its final editing to GPO style that the report be formally adopted. Thank you.

So Connie will share with you the details.

MS. SCHMIDT:

Thank you, Karen. And thank you to the Commission for the opportunity, as always, to work on a project of this type and to provide you an update on what we found. The study, as Karen indicated, was conducted by the Pollworker Institute with IFES working with us as a subcontractor.

I want to begin by telling you that the focus of the survey was to gather information and provide assistance to election officials who are seeking to start up or improve their phone services. The survey questions included the sets of questions set forth in the Statement of Work from the EAC, and we also worked with Karen Lynn-Dyson to broaden the definition of voter hotline. We thought it was very important to expand it. Originally it was limited to just toll free numbers, but by being able to expand that definition to include non toll free numbers we were able to gather a lot more information

and get responses back from a lot of election jurisdictions across the country.

The survey was web based. We sent invitations out to a total of 5,900 election offices, including three Federal agencies, 27 state and 1,438 local offices. The survey was collected -- the information was collected between August the 28th and September the 17th of 2007. A total of 1,466 people participated and the response by region, which I thought was significant because it showed that we had kind of an equal response across the country, 29 percent in the Western region, 25 percent in the Southern region, 23 percent in the Northeast region and 23 percent in the Midwest. So we were very -- we felt very good about the response rate.

The prevalence of hotlines. The survey response indicated that state level election offices are the most likely to have these dedicated phone hotlines, and again larger local election offices as well are more likely to have dedicated phone hotlines because of their size. Again those offices have full-time staff of three to 22 people and one to 20 part-time staff members. But the smaller local election offices were more likely to not have a "dedicated" phone line for hotline. Those offices, and there's a lot of them, that have a full-time staff of one to three people that get supplemented during election time with maybe one to three part-time people. And again as Karen noted, the survey really showed us that many, many election offices are now supplementing phone lines with the Internet to provide that web-based customer service because that's available to all the voters and the public 24 hours a day seven days

a week. And election offices are really figuring that out as a way to really pump up the customer service.

A variety of services are provided to voters on the websites we found. The most popular ones were viewing their voter registration status. In other words, find out if you are in fact registered, find your polling place, review and print your sample ballots so you can study what the ballot questions are and the candidates before going to vote. Learn how to use your voting equipment. And again, online pollworker training is another thing that the election offices are using their web pages for. And a few election offices are even expanding beyond that to include text messaging and pod casting, which we found interesting. That's really starting to provide election officials an instant communication technique, and we also found that that's primarily used by the voters in that 18 to 35 year old category. So by supplementing their phone lines with the web page and then text messaging to the younger voters we're really getting that communication going.

Throughout the survey responses we found a consistent message that one size doesn't fit all. And so I wanted to give you a couple of -- three examples of comments that we received back. And I quote from a small jurisdiction in Wisconsin, "We don't need a hotline. If someone has a question, they just walk into the office and ask me." And so, you know, we have the very small offices that this was kind of like a strange question to them, why would I need this. And then we counter that with Los Angeles County in California, "In a major election our call centers field more than 10,000 calls an hour." And then from Forsyth County, Georgia,

"We don't have a hotline per se. Rather, we use our website to interface with a majority of our voters and that's worked extremely well." And so it's the full gamut of responses.

The features of the hotlines from the survey responses revealed that the majority of them in fact are just normal toll phone lines. And the 13 state election offices that responded told us that they all operated a toll free line, and so that told us that that toll free thing is basically being provided at the state level in at least the responses we received. Most of the hotlines are operational all day or during the time that the polling places are open on election day. When we asked them if the hotlines were available all the time throughout the whole year, 21 percent told us that they operated them 24 hours a day all the time, 53 percent said they're only operational during normal business hours except during election time, and 26 percent told us that they only operate their hotlines during election season.

Information available to the callers was another series of questions. When asked if they made the information available directly to voters through the hotline or whether the hotline had provisions for transferring a caller to an appropriate person or office, we found that most of the hotlines provided information directly or they referred the caller to an appropriate staff person. Over 75 percent of their respondents provide information on the biggie, the request and return of my absentee ballot. Did you get my request? Have you mailed it out? Have you received it back? Whether or not I'm registered to vote. Any of us that have answered the phones on election day know that you spend the

entire day reaffirming that people either are or are not registered and where their voting location is and the operating hours.

Now some other services that were provided via hotline that we uncovered were information on the voting systems, answering questions about that, the basic general complaints and concerns, clarifying laws and procedures. Again, rechecking or requesting or checking the status of their absentee ballot, polling place accessibility questions, how to become a pollworker, provisional ballot status. Did you count my provisional ballot? UOCAVA voter information and, of course, reporting fraud and filing a HAVA complaint.

The survey results also provided us information on additional uses of the hotlines, including the ability to communicate with pollworkers. This is really important to me on election morning, specifically recruitment efforts for pollworkers and most importantly troubleshooting problems on election day. If the pollworkers are out there, as we all know, on election day and we don't have a capable phone system to answer the voter calls and the pollworker calls, the process begins to break down immediately. Voters with limited English proficiency can call a hotline number and request translated material. An example of such a system is the one in Los Angeles County. They have a 1-800 multi-lingual assistance hotline. And again as Karen mentioned, when we asked about providing TDY or TDD services for the hearing impaired, our survey indicated that 39 percent of the states and 58 percent of the locals don't provide that service. I'm key to that because my former

county was the home of the Kansas State School for the Deaf, so I found that interesting that many of them don't provide that service.

As far as the use of the hotline, again it's that same thing. The majority of calls are "Where do I vote?" and "Am I registered?" We found that very few of the hotlines are answered exclusively by an automated system. Again, as Karen mentioned, election officials are very keen into customer service. The majority of them were answered by a live operator, 83 percent. Of the automated systems, over three-quarters of them allow the caller the option to speak to a live operator, so you have the ability to immediately talk to a person if you want to. Almost all of the hotline operators have access to the voter databases to look up the information that the voters are calling about and often the automated system -- the automated hotlines are integrated seamlessly to that data to provide the voter's answers to "Am I registered?" and "Where do I go to vote?" A majority of the offices with operator assisted hotlines use a very non-structured approach to how they answer their calls. Basically they just answer the calls as they're coming in. Others provide a script or forms or checklist for the operators to use. We found that less than 50 percent of the respondents actually have the ability to track the call volume and the caller wait time. Those are services that are more available to a computerized phone system where you can know how many calls were in the queue and for how long have those calls been waiting out there. A majority of them do not track the type of calls received and of those that do track those calls, they very much use a manual by hand tracking system. When we asked about call volume, again the survey

responses indicated that the automated and the state ran hotlines have the highest call volumes, and that would just mean the automated ones are primarily in the large jurisdictions and of course the state offices.

Nearly all of the jurisdictions responding indicated that the development of their hotline was easy. Two-thirds of them indicated that it was developed in-house and is usually done by city, county, or state information technology staff. Of the jurisdictions who utilize the live operator systems, they listed, of course, customer service as their main reason for sticking with the person answering the phone. Of those who utilize the automated hotlines, they indicated that the system was chosen because the availability of staff, so they have more calls coming in than they have staff people to answer them, the anticipated high call volume and special needs of the voters. We found that some of those jurisdictions also have chosen to implement what I call the “blended system.” They have both an automated hotline and they have a live operator system. So the automated system is going to handle those routine calls of “Am I registered vote?” and “Where’s my polling place?” And they would have those connected seamlessly to the database, and then that frees up their live operators to handle those more customized calls.

Almost all of the jurisdictions that operate a dedicated hotline handle the maintenance in-house. Likewise, almost all staffing is also managed in-house. So they basically are managing the whole thing themselves. When asked about staff and training techniques, the most common answer was the people being trained are

shadowing an experienced operator to kind of listen and figure out how to do the responding. A majority of offices do train their call operators before every election, which I was pleased to hear. So they go through a whole training process prior to beginning to get the bulk of the phone calls coming in. Most of the operators have to use a password in order to access the voter data on the system. We asked about publicizing these numbers, how do they do that, and the most common approaches were of course they have the hotline number posted on their website, they print the hotline number on any kind of printed material; handouts, posters, fliers, mailings, and they advertise it in their local newspapers.

So now, we're to my favorite part which is tips and successful practices from the people who are actually doing the work. And that's in the last chapter of the report and it's devoted to the implementation and management tips, as well as the successful practices that we gleaned from some of the people across the country. For advice, I kind of listed those, the most important ones we received were to make sure that the operator has access to the latest updated information. So, in other words, be sure everybody has the same information and they're all providing the same answer, map out details and requirements before programming if you're going to do an automated hotline, seek input from the line staff that actually answer and handle the phone calls, provide a quality training program, and this one I think is really important, and that's stress test the lines and install a backup generator in case of power failure on election day, which by the way did happen to me on one election day and the phones were on a computer and they

stopped. Anticipate problems and think through the best way to assist the caller, very important.

Some successful practices that are highlighted, some of our favorite ones, are Clark County, Nevada. They have something called a line of business program. The operators, when the calls come in, they push this little button that has “LOB” on it on their phone and they enter a three-digit code and that allows them to track the types of calls that they’re getting, which allows you to do a lot of other things if you know what types of calls are coming in, on ways to address issues to try to communicate or educate the population a little better.

The New York City Board of Elections has something they call “Vote NYC.” And they have a toll free attended phone bank that has multi-lingual staff of English, Chinese, Mandarin, Cantonese, Korean and Spanish-speaking operators. They also have an interactive voice response, an IVR, that operates 24 hours a day seven days a week. And they also have something where the voters can call 311 at any time and get election information. So we thought that one was really good.

Maricopa County, Arizona has an online tracking database. This sounds really cool. It serves as basically an information distribution center for the entire office. It’s available to any staff member at any time during election day and it provides documentation at the end that they can use to support new legislation or new budget requests or new produces. So they are actually able to end with reports that tell them what types of calls

came in, you know, where problems were occurring and they can follow up on that.

The Indiana Secretary of State, and specifically the Lake County Indiana election office, provide a toll free hotline. The state one is, of course, provided at the state level but they have it monitored by something called the Joint Vote Fraud Task Force, which we found interesting. And we wanted to point out Lake County because it is the only county in the State of Indiana that implemented its own toll free hotline. So the counties were kind of starting to mirror what the state was doing.

Some alternatives to the phone line, which kind of came out of this study that we did, which we wanted to point out to you, New York State now provides online access to verify your voter registration status, which is really becoming a common practice, I think.

Jefferson County, Colorado has online access to view the date your ballot was mailed, the date it was returned and the date it was processed. So in other words we're empowering the voter to know about their ballot because when you put it in the mail you don't know where it went. So by having this online look up kind of thing they can track that, which we thought was really cool.

The Federal Voting Assistance Program also has compiled a listing of jurisdictions that provide these online voter services. So people can go to their website like the military overseas voters and find out if their jurisdiction has online access.

The Johnson County Election office provides -- in Kansas provides online access to voter registration, polling place and

sample ballot. And recently the election administrator there started providing text messaging and pod casting. The voters can receive an alert on their cell phone or their wireless PDA, pager and/or via email about a polling place change or early voting that started, those kinds of things, which is becoming the way people are communicating.

So in closing, on behalf again of the Pollworker Institute and IFES I want to thank the EAC for the opportunity to conduct this study and work on it. I also want to express my appreciation to my colleagues who worked with me on the project, specifically Jennifer Collins-Foley, President of the Pollworker Institute, and Karen Berkley, who is the former Research Director at IFES did a lot of the online survey support for us. And finally, I want to recognize the hard work and efforts of Karen Lynn-Dyson. Her assistance in modifying the survey made that survey much more user friendly to the election officials, which translates them into them actually answering the survey and giving us back this data, and her continued support and effort to get the report finalized.

And so that's my report and I'd be happy to answer any questions that you might have or comments.

CHAIR RODRIGUEZ:

Thank you very much.

MS. LYNN-DYSON:

Madam Chair, questions we can entertain from the Commissioners.

COMMISSIONER DAVIDSON:

The only question I had is, did I hear you correctly when you said there was a very small amount of states that had the TDD lines?

MS. LYNN-DYSON:

Right.

COMMISSIONER DAVIDSON:

That's a Federal law that they have to have that.

MS. SCHMIDT:

Of the -- I think we had 13 states that responded and that could have meant that maybe only two of the 13 didn't have it.

COMMISSIONER DAVIDSON:

Okay. All right.

MS. SCHMIDT:

So it's probably it's not a big -- you have to remember there are only 13 states that took this survey.

COMMISSIONER DAVIDSON:

Thank you.

MS. SCHMIDT:

You're welcome.

COMMISSIONER DAVIDSON:

That all of a sudden...

MS. SCHMIDT:

Yes.

COMMISSIONER DAVIDSON:

...really threw up a red flag for me...

MS. SCHMIDT:

Right.

COMMISSIONER DAVIDSON:

...and I thought, wow. Okay, I appreciate that. Thank you for your hard work. We really do appreciate that.

MS. SCHMIDT:

Thank you.

COMMISSIONER DAVIDSON:

I think that's the only question I have.

CHAIR RODRIGUEZ:

Commissioner Hillman?

COMMISSIONER HILLMAN:

My first question actually dovetails with Commissioner Davidson's question and that was requirements of government operated phone hotlines, or whatever, to be accessible and if that is a requirement then perhaps it's something that EAC needs to remind states, whether it's two or ten, that this is something they must be doing. I wasn't clear whether the ADA or some other Federal law required that, but if it does we should remind jurisdictions of that requirement.

And my other question is, if the survey asked questions about the cost of operating the hotline, and if it did, were most of the jurisdictions who responded able to answer that question?

MS. LYNN-DYSON:

Most of the jurisdictions did respond to the cost question and it was that they -- the cost was really not anything that they reported because it was provided within their county or their state information technology department. So, in other words, it's all provided in-house. So very few of them outsourced.

COMMISSIONER HILLMAN:

So they don't...

MS. LYNN-DYSON:

So they didn't quantify.

COMMISSIONER HILLMAN:

Jurisdictions don't know what it costs to do this. So if another jurisdiction that doesn't do it wanted guidance?

MS. LYNN-DYSON:

Again, most of them that responded to the survey, the hotline is developed in-house by their technology department.

COMMISSIONER HILLMAN:

Okay, thank you.

CHAIR RODRIGUEZ:

I have...

COMMISSIONER HILLMAN:

I did have -- I wanted clarification from Ms. Lynn-Dyson about the action we're being asked to take today. Is it to accept the report and then later there will be a second action once the report is edited?

MS. LYNN-DYSON:

That's correct. That is correct.

COMMISSIONER HILLMAN:

So today it's just to accept the report?

MS. LYNN-DYSON:

Accept this draft. We will go back. We will have this draft report formally edited to our GPO standards and I will come before you next month in Minneapolis with the recommendation that the finally developed, edited report be adopted and then, suggest that we, you know, post it to our website.

CHAIR RODRIGUEZ:

Thank you. Seeing no further questions, I just want to say that I used to -- I see Matt Crane who worked for Commissioner Davidson in the Denver office once. I used to sit at a desk and answer the phone for the weeks before, because that's the only way you find out what's going on out there. And it's instructive work, exactly. Thank you.

Is there a motion to accept the voter hotline study?

VICE-CHAIR HUNTER:

So moved

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to accept the Voter Hotline Study with our appreciation. All those in favor indicate by saying aye.

Any against?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Thank you very much. We accept the report.

MS. LYNN-DYSON:

Thank you very much.

CHAIR RODRIGUEZ:

Mr. Wilkey?

EXECUTIVE DIRECTOR WILKEY:

I'm grateful for that report because we often get criticized in New York of late, for still having our lever machines, but apparently we do a very good job of getting the voters there and getting them the

information, so that they can use those lever machines. I'm glad to see that.

CHAIR RODRIGUEZ:

Thank you. The next item of business again will involve our Director of Research Karen Lynn-Dyson and the UOCAVA voters' study. And what action are you going to ask of us?

MS. LYNN-DYSON:

I will ask you to adopt...

CHAIR RODRIGUEZ:

Adopt? Okay, very good.

MS. LYNN-DYSON:

...this report of which there are three components.

This is going to take a few minutes. We have to hook up the laptop.

[Pause]

CHAIR RODRIGUEZ:

We're going to resume. Commissioner Hunter is in the room, so please begin.

MS. LYNN-DYSON:

Okay. Commissioners, Mr. Wilkey and General Counsel Hodgkins, I come before the Commission today with the recommendation that it adopts three reports being presented by Q₂ Data & Research for its contract with the U.S. Election Assistance Commission. Q₂ Data & Research was charged with creating a series of case studies highlighting the experiences of states serving their UOCAVA voters, with conducting an international survey of UOCAVA voters, and with convening a conference of state officials and others interested

in UOVACA voters. The presentation of these final reports represents the culmination of work Q₂ Data & Research began in September 2006 and completed in November 2007. Karin MacDonald and her colleague Bonnie Glaser will describe for you in some detail the activities, key findings and recommendations that resulted from the case studies that they conducted in Illinois, Florida, Montana and South Carolina, the key findings from an international survey that was conducted of over 5,500 UOCAVA voters, and highlights from that September 2007 conference that we participated in on serving UOCAVA voters.

I recommend that local officials and others who are interested in learning more about how states are serving their UOCAVA voters examine the case studies that Q₂ Data developed. From them we just will learn about the numerous procedural and administrative challenges states face when trying to deliver ballots to UOCAVA voters, and in some instances how states have been able to address these difficulties. I further encourage readers to turn their attention to the recommendation section of the case studies in which Q₂ Data presents a series of general and specific recommendations for practices that states, EAC and other organizations that serve UOCAVA voters might implement in order to improve the manner in which absentee UOCAVA ballots are sent and received.

Second, are the findings from the survey of UOCAVA voters. This survey, which is, to my knowledge, the largest and most comprehensive one done on attitudes and voting behaviors of UOCAVA voters, is noteworthy and it's instructive. From the over

5,500 UOCAVA voters who participated in the 55-question survey, significant findings include the fact that uniformed members of the armed services and their families report an 82.6 percent voting participation rate, a particular significance in a non-Federal election year. Other noteworthy findings include the fact that uniformed service members seemed more satisfied with the process of receiving their electronic ballots than were overseas civilians and that participation in the electronic options for receiving and transmitting ballots, that is, via fax or email, was low for all UOCAVA voters. However, of those surveyed who did use these electronic methods of receiving and/or having their ballots transmitted, the experience was reported to be overwhelmingly positive. Finally and significantly, is the fact that surveyed respondents have somewhat high, but not major concerns about security and privacy when it comes to the electronic transmission and delivery of ballots.

The final and significant portion of Q₂ Data's contract work involving planning and executing a national conference on UOCAVA voting that took place in Washington in late September. Over 40 persons from around the country, a majority of whom were election officials, participated in our one-day meeting. Discussion topics, you may remember, included administrative and legal practices, policies and procedures that impede UOCAVA voting, state laws that might be enacted to enhance the UOCAVA voting process, non-technical processes and practices that have been used to improve the transmission of UOCAVA ballots, the particular privacy and security issues attended to UOCAVA ballot transition

and how these problems can be overcome from the standpoint of technology and public policy.

Taken together, the recommendations which were developed from the field studies, from the discussions, and the best practices that were uncovered during the September conference, and the findings from the survey of UOCAVA voters, we now have, we think, an important set of guidance and suggestions for future research and for future programs. This contract and the outcomes from it are a critical first step towards helping the EAC meet its mandate of HAVA Section 245 that relates to the study and reporting of electronic voting in the electoral process, that is the practical experience of states along with the survey data that demonstrates a willingness of UOCAVA voters to consider electronic voting is useful information, I believe, for NIST to consider as it works to explore the advisability and feasibility of establishing Internet voting.

In closing, I believe that the work that was accomplished through this contract is a good beginning and I recommend that EAC consider providing additional follow-on studies and activities that will move forward the matter of providing better service to UOCAVA voters.

And with that I'm going to turn it over to our contractors who will give you some highlights.

CHAIR RODRIGUEZ:

Thank you.

MS. MACDONALD:

Good morning Chair Rodriguez, Vice-Chair Hunter, Commissioners Hillman and Davidson. My name is Karin MacDonald and I'm the Senior Researcher and the Managing Partner of Q2 Data & Research, a small, women-owned consulting firm in Oakland, California. Thank you for inviting us, Bonnie and me, to summarize for you the UOCAVA study that we conducted for you between September of 2006 and October of 2007. Bonnie and I have split up the presentation of our work. I'm going to give you a brief overview of the entire study and then go into detail about two of its three components, the case studies and the conference. And Bonnie will follow-up by telling you about the UOCAVA voter survey.

UOCAVA, as you know, is the acronym of the Uniformed and Overseas Citizen Absentee Voting Act. Our study was designed to look at UOCAVA voting from two perspectives, one from the voters' perspective that are covered by the Act; and, two, the election administrators that are charged with implementing it. We concluded the study with a national conference of UOCAVA experts and implementers. This conference of study of UOCAVA voting included qualitative and quantitative components, and that's actually what we specialize in, that were designed to provide us with the broadest possible understanding of the challenges that are faced by voters and by policy implementers. We began by selecting a sample of four states that were chosen based on the transmission methods of voting materials that they allowed for UOCAVA voters, along with the size of their UOCAVA population and other factors, such as region and their participation in pilot

projects or Federal Voting Assistance Program, or FVAP projects. The final sample included South Carolina, a Southeastern state with a large UOCAVA population, at least we thought initially when we picked that state that it was a very large population, and they allow for emailing and faxing of voted ballots; Montana, a Northwestern state, with a small UOCAVA population that also allows for emailing and faxing of voted ballots; Florida, a Southern state, with a large UOCAVA population that allows the emailing of blank ballots and the faxing of voted ballots; and Illinois finally, a Midwestern state, with a medium size UOCAVA population that allows for emailing of blank ballots in two jurisdictions and faxing of FVAP ballot requests statewide, so that was somewhat of a hybrid state.

In the months of January through March of 2007 Bonnie and I visited 15 local jurisdictions in these four states, in addition to each state's election authority and two statewide election official conferences. We conducted interviews with state and local election officials and staff responsible for UOCAVA administration. The following findings were derived from this part of the research:

- (1). There's much enthusiasm about facilitating UOCAVA voting, in particular for members of the armed forces.
- (2) Most local election jurisdictions are hampered by limited resources and a lack of an adequate technical infrastructure.
- (3) There is a general lack of knowledge about resources that are available, including the free mailing option for UOCAVA voters for election materials.

(4) The two-cycle Federal registration requirement is not well liked by most election administrators, who complain that it is a waste of resources to be forced to mail election materials to addresses they know to be bad. However, others offered that this requirement benefits voters who do not have to re-register as frequently as before.

(5) There was much concern about the authentication of voters and there were varying perspectives of the best methods to authenticate them.

(6) There is little variation in the general administration of UOCAVA voting based on the sample selection criteria, which included size of UOCAVA population, region and transmission methods. Any differences that we found out, washed out as the size of the overall population increased.

(7) Administrative differences were found based on the relationship of the states to the local jurisdictions. Uniformity increased as UOCAVA administration became more centralized on the state levels on the top.

(8) Local election administrators have many innovative ideas for the better facilitation of UOCAVA voting. There's a great desire to gain permission to conduct pilot projects.

(9) There are no mechanisms to share or promote innovative procedures among local election administrators. While we found some instances of collaboration, this is generally not the case.

(10) There is a lack of communication between local election administrators and voting assistance officers.

(11) Most interviewees reported problems with the United States Postal Service, which included USPS employees not understanding rules regarding mailing of election mails overseas.

(12) Most voters remain uninformed about electronic transmission options available to them and local election administrators are often cautious about encouraging their widespread use because ballots have to be remade if they come in via fax or email and thus create a whole lot more work.

The case studies of the four states resulted in a list of recommendations and best practices, some of which I will summarize shortly. Many of them were echoed during the third component of this study, which is the UOCAVA conference that was held on September 23, 2007, in Washington, D.C. This conference brought together representatives from the Department of Defense's Federal Voting Assistance Program, non-profit group that serves civilian and uniformed UOCAVA voters, vendors and technology experts that are tackling issues involving the electronic transmission of election materials, and state and local election administrators with first-hand knowledge of the implementation of UOCAVA. The conference was also attended by representatives from various Congressional offices and the U.S. Department of Justice.

Some of the recommendations and best practices that came out of this study are very specific and others are broader. Here are some examples about legislation. Local election officials should use the nibble approach, which means they should go back to the legislature at every possible opportunity to get laws passed that

improve UOCAVA voting. They should use the broad term “electronic transmission” in anticipation of technology that may emerge and to avoid having to go back to the legislature to ask for changes later. So “electronic transmission” rather than being very specific. Find champions for UOCAVA voters in the legislature, preferably high-ranking members that have military experience. Try to introduce bipartisan sponsored bills. Add to legislation that local or state election administrators can promulgate regulations and develop implementation procedures to avoid having to go back to the legislature again.

Some suggestions regarding mailing and address problems included local jurisdictions sending letters to the last known address to verify the address prior to sending election materials, so that should be between elections. A state system that tracks absentee ballots so that voters who return home by election day can vote at the polls. Local election administrators working with the county mail system local postmaster, main post office and military post office to get ballots out at least 45 days before the election and to expedite ballots. Accepting the date when the voter signed the affidavit rather than the postmark which is often eligible and sometimes there is no postmark. All local jurisdictions need to be informed on a regular basis about the Federally paid postage for official ballot materials for UOCAVA voters. Even though the local election administrators always say that that is a fractional cost of what it really costs to process UOCAVA voters, it still helps.

Recommendations about communications with UOCAVA voters included local jurisdictions emailing the list of candidates 30

days before the election to all overseas voters with email addresses, so that whichever ballot voters use, they know the candidates because they could just download a ballot from FVAP. Confirmation of receipt of fax or from the voter through a simultaneous phone call or an email allows both voters and election administrators confirmation of the transmission. States should encourage voters to provide email addresses and local election officials to use email to communicate with UOCAVA voters. Email is an easy, low-cost and fast way to communicate. Email addresses should also be integrated into the statewide registration databases.

Best practices concerning automation and electronic submissions including authentication and privacy included automating the sending of the sample ballot in the state database, to ensure the secrecy for faxed and email ballots, setting up dedicated fax numbers or email addresses and after printing the ballots deleting the emails, giving local election offices access to software programs to generate correct ballot styles for faxing or emailing. This allows election administrators to add candidates that file at the last minute and then immediately send the ballot to the UOCAVA voters rather than creating a delay by having to send the information to the ballot vendor first. States that accept faxed voted ballots should also accept ballots that are emailed to a fax machine because some uniformed voters report not having access to fax machines. Some local offices provide toll free fax phone numbers for UOCAVA voters. This reduces the cost of voting for UOCAVA

voters while at the same time allowing them to submit their FPCA ballot requests or voted ballot by the deadline.

Recommendations about state administrations included development of training programs at the state level and inviting local election administrators to collaborate with the state on optional courses. For states to provide resources and infrastructure support for better local computer and fax systems and to ensure that assistance for setting up and troubleshooting systems is available uniformly throughout the state. The state election authorities should encourage diffusion of useful technology and practices across jurisdictions. The states should also facilitate the communication of best practices by local jurisdictions that do electronic transmission to other jurisdictions in the state. States must encourage and provide resources to their local offices to do periodic mailings to verify UOCAVA addresses and decrease the number of undeliverable or unreturned blank ballots.

Let me conclude with some recommendations that were directed to Federal agencies especially regarding education and outreach. Establish a nationwide training program and guide the technology of electronic transmission of voting materials. Training should start at the Federal level through FVAP and be consistently available at the state and local levels. FVAP should sponsor regular meetings between voting assistance officers, or VAOs, and local election officials in applicable jurisdictions to share information, forums and educational materials and to update each other on changes, bring civilian VAOs into the process by hosting a bi-yearly conference in the U.S. with FVAP military VAOs, local and

state election administrators, and USPS representatives to discuss UOCAVA voting. This could be a forum to educate local election administrators about various UOCAVA populations, overseas civilian, overseas military and domestic military in the context in which they are voting including, for example, military structure postal systems in the military and other countries and embassy counselor resources. And finally FVAP should also develop standard outreach materials about voting options that states and local election officials can adapt and disseminate. For example, they could develop a sample outreach letter which is also an address verification letter. Simply providing information about electronic transmission options and websites is just not enough.

I will now turn over this presentation to Bonnie who will tell you about the UOCAVA voters' perspectives.

DR. GLASER:

Thank you Commissioners for this opportunity to report on our research. My name is Bonnie Glaser and I'm an Associate at Q2 Data & Research. As Karin said, I'm going to briefly highlight findings from the survey of UOCAVA voters around the world.

The primary survey was conducted using UOCAVA voters from the same 15 jurisdictions that were studied in the case studies. Karin has explained how we arrived at those 15 jurisdictions for our sample. At the same time we were contacting and interviewing the local election officials in these jurisdictions, we were obtaining from them the postal and email addresses of all their UOCAVA voters who were registered for the November 2006 election. The goal of the survey was to examine the issues and

challenges that these voters faced in voting or trying to vote and assess their experiences with using electronic transmission methods available in these jurisdictions. Those who did not vote in the 2006 election were also encouraged to complete the survey and report their attitudes toward various electronic means of voting, including email, fax and over the Internet.

The 55-question survey was completed online or on paper. We sent email invitations to take the survey online to 1,199 voters for which the local election officials had email addresses. We mailed the hardcopy survey to 12,752 postal addresses which were provided for the rest of the voters in those jurisdictions. Recipients of the hardcopy survey had the option of going online to complete the survey or to complete the paper survey and mail it back and pay for their own postage. Between these two invitation and response methods, we were pleased to receive 1,603 responses from the four states. We also received a large response from an open invitation to voting systems officers around the world to invite voters to complete the survey online. 4,166 additional surveys were completed by voters from all 50 states and in 132 different countries. While a portion of these voters could not report on the use of electronic transmission because they are from states which do not allow it, these supplemental surveys did provide useful information about UOCAVA voting experiences and attitudes towards potential electronic transmission methods.

I will discuss the results from the combined sample of 5,769 responses. The overwhelming finding from the survey was that military voters, including their spouses and dependents, voted at

higher rates in 2006 and had an easier time completing the process than their civilian counterparts. 84 percent of military respondents and their dependents voted, and in contrast less than half of civilian respondents voted. 20 percent of overseas civilian respondents tried to vote but were unable to complete the process, while only five percent of military respondents and their dependents reported this problem. The remaining respondents did not try to vote in this mid-term election but did complete our survey nevertheless. In order to test if the military status made the difference, we controlled for age, gender, education level, time spent abroad, whether the respondent was in a developed country or not and whether he or she had voted as a UOCAVA voter before. The result we found was that the probability of military voting was more than twice the probability of non-military voting. Also, military voters were almost twice as satisfied with the voting process and had an easier time receiving their blank ballot, completing it and sending the voted ballot back.

The use of electronic transmission methods among respondents was very low. From the four states which allow some form of electronic transmission, nine percent used email or fax to register or request a ballot, four percent received a blank ballot by fax or email, and three percent sent their voted ballot back by fax or email. The supplemental sample had even fewer electronic means to navigate the voting process. Interestingly, younger voters who had spent less time abroad and lived in developing countries were most likely to use electronic transmission methods. Those who used electronic transmission methods were very satisfied with the

voting process, although slightly less so when they had to send the hardcopy ballot back as well.

In terms of voters' perceptions of security, receiving blank ballots by email was perceived as the most secure method and much more secure than regular mail. However when it comes to sending the voted ballot back in, the level of concern is similar between regular mail and electronic options. Sending a voted ballot back through the military postal service drew the least amount of concern. Finally, 80 to 90 percent of voters who used any one method, either electronic or physical, to send their voted ballot would use that same method again, which bodes well for electronic transmission.

We conclude that providing the option of electronic transmission for UOCAVA voters with the option of traditional postal type methods still available would be appreciated and met with enthusiasm by a range of U.S. citizens in the military and/or living abroad.

MS. MACDONALD:

I wanted to finish by just acknowledging a few people. One, members of the Overseas Vote Foundation who collaborated with us on parts of the survey. I wanted to thank Karen for putting up with us and many, many people at the EAC who helped us in the various stages of this project, including Laiza, Bert, Al and, you know, many others. Also I wanted to thank all the people in the four states that welcomed us and really helped us and were just phenomenal in explaining their various methods to us and their procedures. And I wanted to thank you for trusting us with this

project. This was a really incredible project to be part of. It doesn't happen very often in academia that one has the opportunity to study a phenomenon like, you know, a process like UOCAVA voting from all these different perspectives. And we're just really grateful to be able to, you know, be part of this and we thank you very much. We think it was a really good project. It was very well received by everybody. We still get emails from overseas voters actually thanking us and asking us for the report and we keep on telling them that it will be available.

So thank you.

CHAIR RODRIGUEZ:

Very good. Miss Lynn-Dyson with your indulgence we'll take action in a minute or two, or a few minutes, but at this time I'd like to recognize the Mayor of Denver who has joined us, Mayor Hickenlooper, and it's good to see you again and wonder if you have any comments for us this morning.

MAYOR HICKENLOOPER:

I would be glad to. And thank you very much for inviting me. It's great to see you all again. It's especially nice to see Rosemary Rodriguez, your Chair, who was, when I first took office, never having any political experience, she was one of the senior city council members and in most cases took me under the wing. A couple of times she left me out in the cold, but generally she showed me the ground rules and the ropes and...

CHAIR RODRIGUEZ:

I worked for you.

MAYOR HICKENLOOPER:

Exactly. I just wanted to describe and say how much we appreciate what you're doing and how important we see it. We recognize that this is -- this election especially, and it's not just because we're going to have the National Democratic Convention in Denver, but this is going to be a remarkably important election. It's the first open election since 1928, so in 80 years there has never been an election where you didn't have either an incumbent Vice-President or an incumbent President running for the office. So this is really a wide-open election. I think that that sends a focus and renewed energy around the level of engagement that we're seeing from the primaries all the way through the campaigns. We have seen no lessening, it's been over a month since we had our caucuses here, and we have seen no lessening of the political energy and political will around this campaign. And I think when you take a historical election and then we're blessed to have this National Democratic Convention here, it is going to be a remarkable -- the next eight months are going to be a remarkable period of time. It's been a hundred years since we've had a national political convention in this time zone, let alone in Denver, but in this time zone. These days a political convention, people don't think of it in these terms, but it's just about a half a notch below an Olympics. Right? 35,000 people come, but over 15,000 of those people are journalists from all over the world, so it becomes an opportunity to really showcase a region, you know. And we're going to try and do it, not so much about Denver and even Colorado, but about the Rocky Mountain West and what are those values of self-reliance and yet collaboration. I've always been fond of saying there were a lot

more barn raisings than there were shoot-outs. But we're also going to try and make it a real celebration of Democracy and those elements of Democracy that too often get forgotten, which you all are working to ensure and protect, you know, that the facility and the fairness of the process of voting is crucially dependent upon some of the basic freedoms and rights that, you know, our founding fathers created in their great experiment, rule by law and our five freedoms of speech and press, of assembly and religion. And the fifth one I always end up forgetting, but the right to petition our government with grievances, which we take for granted but actually turns out to be as important as any. Those freedoms and those rights which are the platform on which all voting, true voting and fair voting takes place, are as critical to this country and certainly I think the world as the actual votes itself.

We have been full swing on the preparations for the convention and the election. We are going to make this convention the greenest, not the meanest, but the greenest national political convention in history, where we've worked already with the hoteliers and restaurateurs and had full-day seminars on how they can, not just for the convention but going forward, leave a legacy of having -- use less energy, less water, as well. We're also going to make it the most inclusive convention ever. We've set up, you can go to cinemocracy.org. We have a two to five minute short film contest asking people, "What does democracy mean to you?" And we're actually going to give chalk crayons to elementary schools all over the region and ask children to go out and scratch -- do drawings on the sidewalks outside their schools about what

democracy means to them and really just try and start an eight-month conversation about democracy that won't end with the political convention but will go right up until the election and try and again raise awareness, raise engagement, get people to recognize and support the importance of what you guys are doing every day.

We've had -- you know, 2008 obviously is going to have record turnout based on the primaries, based on what we saw in 2006. Our General Elections Division is fully ready to handle these numbers. Our clerk and recorder has incorporated the lessons we learned in 2006. I'm sure you are all aware of the challenges we had in 2006 with the failure of our poll -- our electronic polling system. Those lessons -- we're going to have combined polling places -- I don't know, has somebody already said all of this stuff?

CHAIR RODRIGUEZ:

No.

MAYOR HICKENLOOPER:

That we're going to take our 426 traditional precincts and combine them to 175 precincts that function like super vote centers, super -- like vote centers and they are disaggregated enough in the community so people still feel like they're having their traditional way of voting. We're going to again have early voting for ten days prior to the August 12th primary election and 15 days prior to the November 4th election again, to try and space out and make sure that we do everything we can to maximize this opportunity of voting and actually the counting of voting, as much counting as possible. And we'll mail out the mail-in ballots, which will be our third phase, 32 days prior to the election day, so that people have plenty of time

to not only look at the ballots and the information but also talk to their neighbors and their family and hopefully again pursue that engagement.

Our Secretary of State Mike Coffman has been hard at work on this. Stephanie O'Malley who is our clerk and recorder, and I think most of you got a chance to meet her last night, is a very, very talented woman. Her Elections Director, Michael Scarpello, I'm sure you'll talk to today, and former Colorado Secretary of State Donetta Davidson has been supporting and helping this. And as always Rosemary Rodriguez as, you know, our former council woman manages to keep informed and provide useful advice. I keep hearing back, "Oh, you know, Rosemary suggested this. What a great idea."

So the details are still evolving but we're going to do everything we can to educate all voters and make sure that we do everything we can to get everyone out there to vote. And in that process leading up to the election, having the convention here, really focus people on that this is the West and this is a place where it doesn't matter who your grandparents were, it matters who you are and it matters what your dreams are and how hard you're willing to work for them, that we are pro-environment, we're pro-business, that we're collaborative, we're innovative. And all of that stuff demands people to be a part of the election and to engage.

So we are delighted to have you here in town. And thank you sincerely and deeply for all of your work to help, you know, ensure that we have -- that we get the maximum out of our elections.

CHAIR RODRIGUEZ:

Thank you. Really inspiring comments. Thank you very much. Are there any questions for the Mayor before he goes? I know you're on a big schedule. Thank you so much for making time.

[Applause]

CHAIR RODRIGUEZ:

Okay, back to the matter at hand. Are there questions or comments for our panel? You know I think because we participated -- we actually -- I was very excited about the conference when we went through it. I mean, I think it's a model of an experience that we should replicate with some of our other studies. It really gave us hands-on access to your work.

And so I think what I'll do right now is take the formal motion to -- I'm sorry, Commissioner Hillman?

COMMISSIONER HILLMAN:

I did have a couple of questions for Karin.

CHAIR RODRIGUEZ:

Okay, I'm sorry.

COMMISSIONER HILLMAN:

That's all right. As a result of the study and the ongoing conversations and the conference, has any state indicated whether it was going to try to, even as a pilot project, incorporate the recommendations and advice and tips that had come out of this? I mean, are we going to be able to track in any way, even though EAC probably can't do this formally right now, because we'd have to go through all kinds of procedural Paperwork Reduction Act, it

would just be really exciting to see if any state is saying, "We can try to do most or all of this for 2008." Do we know?

MS. MACDONALD:

Actually, coincidentally, I spoke to Secretary Coffman this morning who said that they are working on legislation right now based on what came out of the conference. And I don't know the specifics because you all started with the meeting, but there are definitely things going on out there.

MS. LYNN-DYSON:

And I think similarly, Commissioner Hillman, we're aware of the kind of work that's going on presently in Alabama and perhaps other places, of which I'm not aware, that people are moving forward with electronic approaches to ballot transmission and/or receipt. And I do anticipate that what we will begin to do this summer is put in place a more formal evaluation plan and system where we can actually follow-up on each of our studies and the impact of the various work that we've done, the products that we've created, the outcomes from particular studies to actually see over the long-term what the effect of products, of publications, of findings, of ideas, of recommendations, best practices, what is really happening in the field, to the extent that we can track it directly to our work.

COMMISSIONER HILLMAN:

And just a question. The products that we're going to adopt, that's the correct word, this morning...

MS. LYNN-DYSON:

Correct, yes.

COMMISSIONER HILLMAN:

...have they been posted on our website?

MS. LYNN-DYSON:

Not yet, no. We are waiting for the formal adoption/acceptance.

COMMISSIONER HILLMAN:

But the drafts have not been?

MS. MACDONALD:

No, there have been drafts.

MS. LYNN-DYSON:

Yes, the drafts have been on the site.

COMMISSIONER HILLMAN:

Right, that's what I meant. The drafts have been posted.

MS. LYNN-DYSON:

Right.

COMMISSIONER HILLMAN:

And if I can just step back. The draft report that we just accepted, on the hotlines, was that posted?

MS. LYNN-DYSON:

I believe no.

COMMISSIONER HILLMAN:

Okay, thank you.

CHAIR RODRIGUEZ:

One of the things that we're working on, is our election day survey for 2008 and one of the things we're going to ask for, is a summary of legislative activity in the years preceding -- the two years preceding that election, and so, I think that will give us a good handle on what legislation is going on around the country. I mean

we can obviously read clippings. I think Virginia has something going on right now. I haven't seen the Colorado bill, but I heard about it yesterday. So it's pretty exciting that the states are trying to accommodate the voter who needs a ballot by electronic means.

Are there any further comments or questions from the Commission? Is there a motion to adopt the report?

VICE-CHAIR HUNTER:

So moved.

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

Okay, it's been moved and seconded to adopt the UOCAVA voter study. All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

You are adopted. Thank you so much for the work. I know it's been a labor of love.

COMMISSIONER HILLMAN:

Thank you as well. And Madam Chair if I might say that for the record, it might be good if our motion spells out the three documents that we adopted, so in the future there will be no confusion as to what we actually did.

CHAIR RODRIGUEZ:

Very good. The record will reflect that.

At 11:00, which is in six minutes, so we'll start now, we're going to take a very brief break. We'll reconvene at 11:30 with our briefing and conversation with the National Association of State

Election Directors. We have lunch for the -- we can't provide lunch for everybody because of the Federal laws, but we do have boxed lunches for the EAC folks. And we'll be back here at 11:30 sharp.

Thank you.

COMMISSIONER HILLMAN:

The Election Data Survey, can we do that?

CHAIR RODRIGUEZ:

Karen, we have one more.

MS. LYNN-DYSON:

That's fine with me.

CHAIR RODRIGUEZ:

I'm sorry, I'm sorry. Hold on. Let's do the Election Data Survey before we break.

MS. LYNN-DYSON:

Okay, I can do it very quickly.

CHAIR RODRIGUEZ:

Okay, hold on.

MS. LYNN-DYSON:

I'm going to give everyone a very, very brief update on two pieces, because I think the public in particular will be interested in knowing where we are with our Election Data Collection Grant Program.

That's, for the public, the \$10 million grant program.

Quickly. The first public comment period in which we posted the request for application and we strongly encouraged states to give us their feedback, we did hear from three states and we -- and others, a couple of others from the public, in terms of their ideas and suggestions. And we think by and large the comments that we

received can be accommodated through the question and answer portion of the application process. And what will happen is, those questions and the answers to them will be formally posted during the application process and procedure. I know there was some folks who've asked, "Well suppose we have questions? And how do we get them answered?" And that's the way it will be accommodated, is in a very formal public kind of way on our website. The request for application has now been sent to the Office of Management and Budget for approval and we anticipate that we will receive this approval from OMB not later than March 24th. Once we have this approval the request for application will appear in the Federal Register. We anticipate that the application will be posted in the Federal Register on or about March 28th and this will still allow us to meet our congressionally-mandated March 30th deadline. Because we've asked the states to complete an intent to apply form, we hope that we'll have a sense of who might be applying for this grant program sometime during the first week in April.

For the election day survey in general, we've now filed the necessary paperwork related to the Paperwork Reduction Act on that with OMB, so that the Paperwork Reduction Act process can begin. The survey has now, I've just been told by my Deputy Director Shelly Anderson, it has now appeared in the Federal Register this week and the Election Day Survey is now posted, or should be today posted, on EAC's website. Once this notice has appeared, which it now has, the 60-day clock is now ticking. The comment period has now begun. This will take us through about

May 19th, at which time we will integrate, as we have in years past, all of the recommendations and the considerations that we receive. And we are hoping that we will be able to get the additional 30-day process, which is normally required, after that May 19th timeframe, we're hoping that we can get that waived. If it is waived, we will return to OMB with a final survey instrument. OMB will then have anywhere from two to four weeks to process the information and give us this number that we have to have, that is attached to the survey instrument. We're hoping that this final approval for the actual election day survey that will be used, will take place the first week in June. At the very latest we anticipate it will be the latter part of June. While that's a little scary as it sounds, in terms of June and a November completion, I'm very confident at this point all the states have seen the survey, they've seen it many times, they've had an ample opportunity to review it, to comment on it.

And just let me say in closing, to let you and the public know, that I anticipate that the requests for proposals that we're going to issue on two major contracts related to this work, one, helping us administer the 2008 election day survey and; two, helping us evaluate the grant program and help us prepare reports to Congress, I anticipate that we will be advertising both of those requests for proposals for these formal contracts during the first week in April with Gov Works.

CHAIR RODRIGUEZ:

Very good.

VICE-CHAIR HUNTER:

I just have a very quick question.

CHAIR RODRIGUEZ:

Commissioner Hunter.

VICE-CHAIR HUNTER:

Miss Lynn-Dyson, how many parties commented on the grant proposal?

MS. LYNN-DYSON:

How many parties?

VICE-CHAIR HUNTER:

Yes, how many people? How many different groups or entities?

MS. LYNN-DYSON:

Six different entities.

VICE-CHAIR HUNTER:

Thank you.

CHAIR RODRIGUEZ:

Commissioner Hillman do you have any questions?

COMMISSIONER HILLMAN:

No, I don't.

CHAIR RODRIGUEZ:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

No questions.

MS. LYNN-DYSON:

Can I just say, as an aside, because I know Commissioner Hunter will be especially interested in this, if I were to characterize the nature of the questions, in a general way, if there was a similarity among them it had to do with the expenditure of funds and if

the expectation was that all the funds would be expended, the \$2 million in other words, by the November election. In that question and answer period, as indicated, we will indicate that no, that is not the expectation; that the monies that are awarded for this will not have to be expended in fiscal year 2008. However, the expectation is that the survey will be completed by March of 2009, so that we may meet our obligation to report to Congress by June. So they will have to answer in some fashion the questions on the survey in a complete manner.

VICE-CHAIR HUNTER:

Thank you.

CHAIR RODRIGUEZ:

Very good. I wonder -- I have a request and that is if we could get a timeline with all of these dates for the two different tracks that you're going on.

MS. LYNN-DYSON:

Not a problem.

CHAIR RODRIGUEZ:

And I thank you very much for this report.

Okay, now we'll take a half-hour break. I know it's not very long, but we'll be back at 11:30.

[The Commission recessed at 11:00 a.m. and returned to open session at 11:40 a.m.]

CHAIR RODRIGUEZ:

Thank you very much. We will resume the second half of the Election Assistance Commission meeting of March 20th, 2008.

Commissioner Davidson I'll recognize you for a motion to amend the agenda.

COMMISSIONER DAVIDSON:

Thank you Madam Chair. I would like to amend the agenda to move the briefing by the National Association of State Election Directors to the end of our agenda and that we move forward with consideration of the policy changes -- Change of Policy.

CHAIR RODRIGUEZ:

I'm not sure we need this motion, I didn't even ask General Counsel, but if it's appropriate, is there a second?

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Okay, then we will go to the -- sorry, I had a bit of a scramble -- I propose a Change to Guidance previously issued by the EAC regarding HAVA Funds. And I don't believe copies are available for people, but it has been posted since February 21st I think. At the time I proposed the policy clarification, I asked the GAO to take a look at it too, because I wanted to be sure that the Commissioners wouldn't have to fear it being overturned or not, depending on how they opined. And the GAO yesterday issued a decision which I will summarize here, because it also references the proposed policy change. So it basically says, "Section 251 of the Help America Vote Act of 2002 HAVA 42 U.S.C. Section 15401 authorizes the

Election Assistance Commission to provide payments to states for a variety of enumerated purposes, including procurement of HAVA-compliant voting systems to improve the administration of Federal elections. HAVA leaves to the states what type of voting equipment the individual state should use, as long as the equipment complies with HAVA. At issue in this decision, is whether under Section 251 of HAVA, a state may fund the replacement of HAVA-compliant voting systems, originally purchased with HAVA funds, with a different kind of HAVA-compliant voting system. We conclude that EAC's proposed policy to permit such expenses is within EAC's discretion in its exercise of statutory authority under HAVA."

I do want to thank the GAO, they're not here, for the record, because when we initially contemplated asking for their opinion we understood that it might take as long as nine months to hear back from them. And because we had some pretty specific input from the House Appropriations Committee, with respect to the EAC policy, they expedited their delivery of this opinion. And so understanding that states all over the country are making decisions about what types of equipment to use this year, months from now in their elections, so I do want to recognize and appreciate the GAO's expeditious handling of this policy.

Another important point I want to make is, the EAC has no authority/desire to dictate to the states what types of -- or jurisdictions, what types of equipment to use. It is not the intent of HAVA that the EAC do that. It is the spirit and intent of HAVA that the states make voting systems decisions based upon what will best serve the individual state. And by adopting the policy I'm

proposing today would effect a Commission reversal of staff guidance and assert that it is reasonable pursuant to the OMB Circulars for state governing jurisdictions to use HAVA funds to replace voting systems purchased with HAVA funds, as long as such purchases comply with HAVA. Therefore, states will have the flexibility and opportunity to use these funds to meet the requirements of Title III or to improve the administration of elections for Federal office. And I'm chairing this meeting, but I'm also placing that on the floor in the form of a motion. I move adoption of the revised policy. Is there a second?

VICE-CHAIR HUNTER:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt the proposed policy clarification. And may we have discussion now? Does anybody? Commissioner Hunter?

VICE-CHAIR HUNTER:

Thank you, Chair Rodriguez. I appreciate your efforts in this regard and putting out the statement a month ago, to give people the opportunity to consider the policy and for your efforts to go to GAO to get clarification from them. I think we all agree that that was important to make sure that there was some clarity on this issue going forward. We have requests from numerous states before us on this issue, Tennessee, Iowa, California, just to name a few. I believe there's one or two others. So it's clearly an issue of great import to a number of our states and jurisdictions and it's important to clarify at this stage in the election process.

I released a statement today regarding this issue and it's now posted on our website. I'm going to try to get hardcopies of it for this meeting, but it is now posted on our website and it essentially explains my position on this issue and I plan to vote in favor of the policy that Rosemary Rodriguez has put forward today. And my reasoning for doing so, which is explained in the statement, but briefly because I think the statutory framework of HAVA requires the EAC to allow states to purchase machines as they see fit. And I think the statutory framework is incredibly important. That's our first point of departure. I mean that's where our guidance -- it's our authorizing legislation. That's what we should always start with and I think in this case there's nothing in the Help America Vote Act that tells states what kind of equipment to buy, that gives any kind of limitation to states on what type of equipment to buy and when to buy it. And so I think that HAVA provides guidance for me that's very instructive. In addition, you know, there's a whole series in HAVA that discusses the requirement for states to implement a state plan to explain how the state will use the requirements payment to meet the applicable sections of HAVA. States are required to consult with local election officials to publish the state plan for public notice and comment, to include the state's proposed budget for activities funded and to update the plan if the state makes a material change in the administration of the plan. So in my view, that's the mechanism that HAVA set up for states to ensure that there is buy-in from local election officials, that there's buy-in from the public, because these plans must be posted and the public has an opportunity to comment on them. And I think

that's very important to keep in mind. This isn't just something that, in my view, a state can make a decision, sort of willy-nilly. They have to do all the things that I just discussed. So I think it's perfectly contemplated within HAVA to allow states to purchase machines in this scenario, and I will vote to adopt.

In addition, in my statement, I lay out a new policy that is also posted within the statement, on a way that the Commission might move forward in releasing advisory opinions on HAVA funding issues. Up to this point we've had a practice that the staff makes a recommendation, and unless a state appeals the decision the Commissioners haven't been involved in the past. And I think that it's important for the Commission to provide the public an opportunity to comment on these issues, to make sure the public knows how the Commission is making up their mind on these issues. And so my policy very closely mirrors the policy of the Federal Election Commission, which is incorporated in their regulations, and some of the practices of the Federal Election Commission. And it requires that a state or government official, any local election official provided the local jurisdiction received or anticipates receiving HAVA funds, or the Inspector General of the EAC may request in writing an advisory opinion concerning the use of HAVA funds. That opinion will then be posted for public comment for ten days. Then the EAC will vote on the determination within 60 days. And there is a mechanism for an expedited review of 20 days if the Executive Director or the General Counsel agrees that that question should in fact be expedited. So I hope that this

policy will help the Commission move forward in a more transparent manner, including the comments of the public.

Thank you very much. Oh, and I'll put this policy forward for a formal vote. I cannot do that today because it wasn't properly -- it wasn't publicly noticed for this meeting, but I will bring it to a vote of the Commission sometime in the very near future. Thank you.

CHAIR RODRIGUEZ:

Thank you Commissioner Hunter. Any other -- Commissioner Hillman?

COMMISSIONER HILLMAN:

Thank you. Let me just join Commissioner Hunter in thanking you for putting us in a position to revisit how we could be of greatest assistance to the states, particularly on the issue of sufficient resources to buy the kind of voting systems that they feel will best meet the needs of their state.

And while it may be obvious, I do think it is always important that any policy that we put out be as specific as possible. I've been around long enough to have had numerous experiences where people will point to a policy and say, "But that's not what you said." So while we know we are talking about HAVA-compliant voting systems, I think it's very important that the policy be very specific when we refer to the states buying voting systems, that we are talking about HAVA-compliant voting systems.

To that end, Madam Chair, I too, am prepared to support the policy. There are a couple of places where I would like to ask us to give consideration to some editing. And I don't want to make the discussion here too confusing in that regard, and so if there is a

way that I could at least explain what I am offering and then see if there's a way that we can either accommodate it with the amended language today or perhaps at a future point, I am open to suggestions on that.

But, I was reminded this morning when our consultants were making presentations to us that we always advise state and local election officials that when they're setting up a procedure they should anticipate problems and think through the best solution. And so my concern is that, while we are working to provide the greatest assistance to the states to enable to them to do what they feel they need to do, we need to do that in a way that balances EAC's responsibility to provide appropriate stewardship of the Federal funds that we disperse. And I just want to make sure that there is, by absence of language, nothing about this policy that would preclude us in the future from being able to, one, issue guidance about what we mean, what reasonableness standard are we applying in this particular policy, so that if we know either ourselves or through audit, that a state has engaged in what could be considered an unreasonable expenditure of HAVA dollars, if a state is replacing their voting systems every year. And I know this is hypothetical, but we've all been around long enough to know that we've been confronted with things we could have never thought would have happened. And I'm just afraid that the policy doesn't provide us, as it is written, the ability to make clear to the states that we are still talking about a reasonableness application. And so there may be, by amending some words that we can make clear, that that's what we're talking about, if you agree, and that would

give the EAC the appropriate responsibility it has to provide oversight and good stewardship of Harvard funds -- HAVA funds that we have dispersed to the states. It would be nice if we could disperse Harvard's funds, they've got a lot more than we do, but in this case I am talking about HAVA funds.

CHAIR RODRIGUEZ:

Thank you Commission Hillman. Do you at this time have particular language you'd like us to consider?

COMMISSIONER HILLMAN:

Unfortunately I don't, not to the point where I am prepared to offer it right now. I couldn't develop it until after I saw what the GAO opinion was and, you know, the period of time between last night and this morning didn't give me enough time to write the language and circulate it. I can just offer a couple of things in broad statements. So I apologize for that, but I am concerned that EAC retain the kind of language in this policy that allows us to make very clear, what it is that we are saying and to not box us in the position where we can't exercise the stewardship we have if a state -- if we believe a state is not handling it responsibly.

CHAIR RODRIGUEZ:

I had thought that the state plan process that the states have to undertake might mitigate arbitrary decisions or expenditures.

COMMISSIONER HILLMAN:

But -- we can't do anything with the state plans, but -- I mean the states provide it to us and as long as they're not blatantly violating HAVA in their state plans, we have no discretion over the state plans. So if a state plan says, you know, we will spend "X" number

of dollars over the next ten years and if we do or don't think that's reasonable, I'm just concerned if we haven't made it clear that there is a demonstration that the state will make about the reasonableness of its intention. It's my understanding that we don't have much to say over the state plan. I would appreciate if our General Counsel has any clarification for that, if I'm wrong, and I notice that our Inspector General is in the audience, and, you know, if there's a question that he can help clarify. But I've tried every way I can to look at this to see where we have wiggle room and I don't see any. And by "wiggle room" I don't mean wiggle room to stop a state from doing anything, but I mean, I know full well Congress and the Administration expects us to perform our responsibility to make sure that HAVA funds, taxpayer dollars are appropriately spent. And if we know they are not, but if this policy says states can spend the money any way they want, I'm not sure what we could do about that except take criticism.

CHAIR RODRIGUEZ:

Is that a question to the General Counsel?

COMMISSIONER HILLMAN:

Yes, a long question but I think she understands what my concern is.

COUNSEL HODGKINS:

I'll do my best. Commissioner Hillman, I think that -- I don't have the policy that was originally adopted by the Commission in terms of the review of state plans in front of me, but I think it's a fair assessment of that to say that the Commission did not take votes to approve the state plans. That was the policy position the

Commission took in advance. In addition, the Commission has not taken a position on what constitutes a material change and thus defining for the states when they have to amend their state plan. Now we know that some states, when they have chosen to deviate from their original plans in terms of purchasing voting equipment have, in fact, changed their state plans, published them through their state processes and requested that we publish them as well. I think it's also fair to say that we believe that there are also states out there that may have made changes that did not opt to go through the change of the state plan process. So that's probably not an exceptionally helpful answer to your question, but I think it at least restates what the current policy of the Commission is.

CHAIR RODRIGUEZ:

What if we, Commissioner Hillman, were to add to this language of my motion, a statement basically saying that the EAC will issue guidance on how to implement the proposed policy? Would that address your concerns?

COMMISSIONER HILLMAN:

If the policy allows us to issue guidance that says, if a state either through audit or otherwise has been deemed to be a bit irresponsible in the spending of HAVA dollars, you know, that we can address that. I mean I don't -- it is conceivable, it is not beyond the realm of imagination that a state could have two or three Secretaries of State in a four-year cycle, because of resignations or other situations, and if every Secretary of State came in and went back to square one and started over again, the question really does come down to how the Federal tax dollars are being spent. And I

just think that -- and I know I'm repeating myself, but I want to make certain that EAC doesn't box itself into a position, where we don't have any authority or standing to be able to say, you know, enough is enough, and if then we get criticized by Congress. I'm thinking ahead, so that we aren't having to come back and redo a policy that is well thought out, and so it's not policy.

And there are just a couple of places where I would have a couple of word edits to add to this, but the point I'm making that I was just on the bigger issue of making sure that we have sufficient language in there to make it clear what EAC's intention is.

CHAIR RODRIGUEZ:

Commissioner Hunter?

VICE-CHAIR HUNTER:

Thank you Chair Rodriguez. I think my reading of the policy is that we don't have wiggle room to later say that a state's decision was not reasonable, in the hypothetical that Commissioner Hillman expressed. And I think it's important that we adopt a bright line policy on this and if we are taking the position, as I am, that we don't have the authority to tell states that they can't purchase machines as long as they're compliant with HAVA, then to me that's the end of the story. And while it would certainly be unfortunate if a state changed voting machines every year, that's, in my view, not within our jurisdiction to tell them that they cannot do that. And, again, the state plan process, even if we're not able to specifically reject a state plan, at a minimum it allows -- it requires consultation with local election officials, public comment and notice, and a lot of other safeguards that I think are important. So, I know you don't

have specific language, and I appreciate the timely nature, you know, that we just got the GAO opinion yesterday, I appreciate that, but I think the thoughts you're suggesting would sort of put a big hole in the policy that one might be able to drive a truck through.

COMMISSIONER HILLMAN:

Well I appreciate the point, and I think Madam Chair, my concern is, I don't want it to be considered that EAC is not accepting the responsibility or suggesting that states may use the dollars in ways that could be deemed as not providing good stewardship. States also have a responsibility, and I don't think that the state plans provide us that kind of cover. We've already heard that some states have gone ahead and done things that were not in their state plans. It's after the fact that we find out. But still, if we said you can spend HAVA dollars any way you want to purchase HAVA-compliant systems and if a state is just what somebody might consider out of control, basically EAC will have sent a nod, it's okay to do that. And so, I want to be able to support your policy, but I want to be very clear, I for one, am not sending a signal to states that the Federal dollars are there to be spent any way they want. So, if there are five different leaders in five years, they can then set about to spend the money the way that they think they should be, resulting in what could be deemed as a low-level stewardship, if you will.

CHAIR RODRIGUEZ:

Commissioner Hillman I'll just -- I'm going to point out again the GAO opinion. On page two, the top paragraph.

COMMISSIONER HILLMAN:

I have it.

CHAIR RODRIGUEZ:

The very top paragraph, it's not a complete paragraph, the last two sentences, "We conclude that it is within EAC's legitimate range of discretion to determine that Section 251 funds may be used to replace systems that are already HAVA-compliant and were purchased with HAVA funds. Accordingly, we would not object to the proposed policy." I haven't heard, I don't know if Commissioner Davidson wants to opine, but I would like to hear from Commissioner Davidson.

COMMISSIONER DAVIDSON:

I think there's a couple of issues and I appreciate the GAO getting back with us, because that was my only concern is being able to hear from the GAO.

And the states received a lot of money, but we know that nearly the last report, a half of it has been spent and we do know how expensive voting systems are. Unless Congress continues to give money, I don't see states being able to do this very many times, because it's very costly to buy voting systems. So giving them the flexibility this one time, I would say that that's about all their funds are going to be able to withstand. And I may be incorrect, but I can't see them doing it very often. So -- and I also feel that with their state plans there is things that they have to do to go through it and if they -- if we feel -- I mean if the state feels that the election official has not gone through the proper steps, they're going to take a lot of heat from citizens, as well as their county officials or municipal officials, I think, as they move forward

because really, this is something they've got to go back and talk to their officials about. And as they move forward in moving a change of equipment it's not a state's decision unless they really have legislation to go one system and that's very costly to have one system. And I think that would be pretty well done in state law, unless a state felt like they had authority with the election officials. So I don't see that we're going to have as much of a problem as possibly you thought there might be Commissioner.

COMMISSIONER HILLMAN:

I'm not trying to describe the amount of problems. I'm just saying you can bet my next paycheck that sooner or later that issue is going to come to the Commission, whether it comes this year, next year to the next Commission, but you can bet my next paycheck it's going to come. And I'm just hoping that we have provided EAC, the Commission, with the ability to move forward and not have boxed ourselves out of the race. But I'm not trying to anticipate lots of problems.

So, I won't, as they say beat a dead horse, but I would like to offer a couple of specific words. And just one other thing to say. The GAO did, in its letter, tell us that we have to set standards and if the General Counsel suggests that this policy allows us the framework we need to set the standards, then we will do it in that way. And I guess what I'm referring to is in the GAO letter, where it says...

CHAIR RODRIGUEZ:

What page are you on, please?

COMMISSIONER HILLMAN:

Page four, under Discussion, "Where a given expenditure is neither specifically provided for, nor prohibited, an agency's appropriation is available so long as the proposed expenditure," et cetera, et cetera. Then it says, "The question for the agency is whether the proposed use falls within the agency's legitimate range of discussion," and so on and so forth. And so, you know, if our policy gives us that broad framework and we can make it clear to the states what it is that they must be doing to make sure that they're not going outside the intent -- our intention, then I'll move on to my specific word edit requests.

CHAIR RODRIGUEZ:

Okay. I'm going to ask the General Counsel to address that point.

COUNSEL HODGKINS:

I'm going to try to address the question by -- I think the question that you're asking, is taking this policy, assuming that it passes from this date forward, how would I interpret that to the staff, as they are required to implement this policy. I would say that there is no -- the staff would have no discretion. The staff would be required to approve any expenditure of HAVA funds on HAVA-compliant voting systems in the future. Does that answer your question?

COMMISSIONER HILLMAN:

Yes, it does. And I see Mr. Crider has joined us so...

CHAIR RODRIGUEZ:

Just a moment. Can you repeat that?

COUNSEL HODGKINS:

Oh certainly, Madam Chair. I interpreted Commissioner Hillman's question a little bit, but I think what she was asking me to do is say that, assuming that this policy passes and I was asked to interpret that on behalf of the staff, as to how they are to implement this policy, that the staff would have no discretion. They would have to approve any expenditure of HAVA funds on HAVA-compliant voting equipment in the future.

CHAIR RODRIGUEZ:

Are there steps that states have to undertake when they submit a claim to spend HAVA funds?

COUNSEL HODGKINS:

Well, this is a very unique grant program, in the respect that the funds were distributed on the front end. Most Federal grant programs are distributed as the expenditure is made. This is not the case here. So the states would -- the only requirement that I'm aware of that they would have to comply with, is making a change to their state plan if it is in fact material. Now we have not opined on what is material, so there's no statement from the EAC as to when that must happen. So, in some respects, as I've stated earlier, states have stepped to the plate and said, "We believe this is material and therefore we're going to make a change to our state plan and inform not only the EAC, but also the public in that state and the country as to what it is that we're doing." But I believe Mr. Crider can probably also talk about the fact that there's some ramification in the back end, in terms of auditing those funds, in terms of what they may have to prove.

CHAIR RODRIGUEZ:

Well -- and I would like to make a point about state plans because we are undertaking at this very moment a tally vote and a tally vote is the process by which we vote on something not in a public meeting but are usually brought to the Commission because time is of the essence, but we're voting on a number of state plans that the EAC has had for, some of them, for a number of months and had not acted on. So...

COMMISSIONER HILLMAN:

Madam Chair I'm sorry, we're not voting -- we didn't vote on the plans. I thought the tally vote was to publish them...

CHAIR RODRIGUEZ:

To publish, exactly. I'm sorry.

COMMISSIONER HILLMAN:

We don't vote on the plans, right.

CHAIR RODRIGUEZ:

We don't vote on a plan...

COMMISSIONER HILLMAN:

Right.

CHAIR RODRIGUEZ:

...but we have to vote to publish the plans. And what if in one of those state plans, one of the states wanted to use HAVA funds in the way that we're contemplating today? Would they have just been waiting and waiting on the EAC to publish their plan? Is some indication that -- or would they have gone forward if they hadn't sought advice from us?

COUNSEL HODGKINS:

Technically speaking the Help America Vote Act says that a state should not implement a change that is subject of a change to their state plan, until that state plan has been approved. Now that assumes the facts that the state has actually made a change to the state plan, so the answer is maybe, because it depends upon whether or not they submitted a change to us through the state plan process. If they did, then that plan cannot be implemented until it is approved and published -- I'm sorry not approved, but published through the processes that are set forth in HAVA.

CHAIR RODRIGUEZ:

Okay, Commissioner Davidson. And then I'm going to call on the Inspector General.

COMMISSIONER DAVIDSON:

I think the question that I have is on the state plans. If they submitted a state plan and said they wanted to purchase new equipment, would we reject that plan when we have always taken an opinion we don't have the ability to approve or reject a plan?

COUNSEL HODGKINS:

As I've stated, assuming that this policy passes, I don't believe the staff would have any discretion to disallow the expense. And we wouldn't -- we didn't approve the plan in the first place, so we wouldn't have acted on the plan to disapprove it anyway.

COMMISSIONER DAVIDSON:

I'm talking about if we -- without this, what would you have done beforehand? If we hadn't -- this is not on the table. We're back to what we had originally.

COUNSEL HODGKINS:

I understand.

COMMISSIONER DAVIDSON:

What would our office have done when a state plan had been received, that they indicated they were going to purchase new equipment?

COUNSEL HODGKINS:

I don't know that I'm best suited to answer that question. Perhaps Mr. Cortes who is responsible for -- in taking the state plans can talk about how that process works through, but my understanding generally speaking, is that the Commission has never approved the substance of a state plan. So, therefore, there would be no approval process for the changes of a state plan.

CHAIR RODRIGUEZ:

Very good. Mr. Crider?

MR. CRIDER:

Good morning Madam Chair -- or good afternoon. I would like to make a couple comments. We have not had a chance to review Commissioner Hunter's proposal and advisory opinions.

CHAIR RODRIGUEZ:

We're not voting on that today.

VICE-CHAIR HUNTER:

We're not voting on that.

MR. CRIDER:

Well, there's an issue here that in terms of the Inspector General's Office, that I want to go on public record for, is that, we need to be careful of that, and I'm willing to work with Commissioner Hunter in terms of trying to outline a process. But our -- when we go to legal

-- General Counsel, it is outside the process of the U.S. Election Assistance Commission and I have the authority under the Inspector General Act to request outside counsel also. So I want to work with Commissioner Hunter in terms of trying to work out a process but with the understanding that we operate differently than the rest of the EAC.

COMMISSIONER HILLMAN:

Okay.

MR. CRIDER:

All right? And like I said, I just wanted to be on record with that.

In terms of the equipment, we are very concerned about the implementation of the policy as it is currently written. When we go out and do an audit, is that if we find what we think is an abuse or a misuse of our funds, we are under a professional responsibility to report that, and we will. And I think the states are looking for guidance too, in terms of what is reasonable. When you look at the GAO -- I just got the GAO opinion this morning, so I have not had a chance to go through it in detail and look at some of the other opinions that were cited, but I do think that a reasonableness criteria is required. They say we have the discretion. It did not talk about reasonableness at all, so I think that that issue is still on the table in terms of what is reasonable. Like I said, I haven't had a chance to digest the opinion fully, but I do think this is a concern for us in terms of when we go out and do our audits, because like I said we will be looking at this and if we think there is a problem we will be raising it. Like I said, we're very concerned about it. And I think Commissioner Hillman in terms of trying to put some language

into the policy to allow the EAC the discretion of looking at what was done and then arriving at a conclusion is a very good idea. Maybe you get an aberration, maybe once, maybe twice, that this issue may come up, but it will probably come up at some point. And we're talking about, well, there's no additional funding coming for this program. Well, we thought that last year too. Congress appropriated another \$115 million, so we do not know what Congress is going to do in the future. This program may be ongoing for all we know.

CHAIR RODRIGUEZ:

Commissioner Hunter?

VICE-CHAIR HUNTER:

Mr. Crider could you please restate what you said a minute ago about when you go out and look at things you'll...

MR. CRIDER:

If we go out and we think we have a situation where there's an abuse or a misuse of our funds, we are under a professional responsibility to report that, and we will. Even though the EAC may have a policy, I still have to look at it in terms of whether or not it's a reasonable expenditure and whether or not we think it's an appropriate expenditure.

VICE-CHAIR HUNTER:

But isn't it true that even though we've advised states that we expect them to follow the OMB Circulars, it's within the discretion of the agency to provide further interpretation of the Circular? And the way I see...

MR. CRIDER:

If I don't agree with the interpretation that the agency has taken,
then I can...

VICE-CHAIR HUNTER:

I'm sorry?

MR. CRIDER:

If I do not agree with the interpretation that the agency has taken,
then I can report it as I see fit.

VICE-CHAIR HUNTER:

To whom?

MR. CRIDER:

Okay. Like I said, you know, if we go out there and we find that
they're just going out and spending our money replacing equipment
every year, we would probably end up reporting on that.

VICE-CHAIR HUNTER:

To the EAC?

MR. CRIDER:

To the EAC.

VICE-CHAIR HUNTER:

Okay. And then what would happen at that point?

MR. CRIDER:

Is that the EAC would then be required to respond to my audit
report in terms of whether or not they are going to question the
cost, disallow the cost or accept the cost. And then if you choose
to accept the cost and not follow through with the audit
recommendations, I have the option of reporting directly to
Congress, as a part of my semi-annual report management
decisions on which I disagree with. And I could put it in there or I

could report directly to Congress because under the Inspector General Act I have dual reporting, not only to the agency but also to Congress.

VICE-CHAIR HUNTER:

And so, to me that sounds like a reasonable solution to this, is that there is a mechanism for you...

MR. CRIDER:

But I think that you're opening up a Pandora's box. And we're going to be looking for some reasonableness criteria, too, because I do think that there is a legitimate reason to replace some of this equipment and I'm not disputing that. But we're trying -- what we're trying to do is say, okay, what would be reasonable and what would not be reasonable? Because, like I said, as auditors we don't like to go out and set our own criteria. We like for the agency to set the criteria, but if the criteria is not there then we will interpret it as best we can.

VICE-CHAIR HUNTER:

But you just said you like the agency to set the criteria and that's what we're doing and we're trying to make it as clear as possible for you and for the states.

MR. CRIDER:

But what I think you're doing is, you're saying to the states, you can do whatever you want to and that may not be the right answer. We have to look at potential situations for misuse of our money or abuse of our money. And that's what I mean, when we go out and do an audit, we will look at that. And like I said, we will try to use

the agency criteria as much as we possibly can, but if we get into a situation where we think there's an abuse we will report it.

VICE-CHAIR HUNTER:

But aren't there other areas of the law that address the issue of fraud and abuse? And certainly nobody wants anybody to do anything fraudulently. And to me, even though we've adopted a clear policy, of course, if somebody acts fraudulently that's handled by a completely separate section of the code. And so, to me those are not in conflict.

MR. CRIDER:

Abuse might be or misuse of our funds in terms of, if they're going out and spending our money without taking in consideration -- we don't want to see -- from a taxpayer's perspective also, is that, going out and replacing equipment on an annual basis, in my view, would be a misuse of our funds.

VICE-CHAIR HUNTER:

It would be a misuse of our funds under what?

MR. CRIDER:

Reasonableness.

VICE-CHAIR HUNTER:

Under this same reasonableness that we're now talking about?

MR. CRIDER:

We're looking at it in terms of whether or not it's reasonable in terms of a Federal program.

VICE-CHAIR HUNTER:

Okay, but you said that you look at reasonableness with the interpretation from the agency.

MR. CRIDER:

We try to. And like I said, if we get into a situation where we think that what the auditee is doing is not reasonable, then in relationship to the policy we'll report it.

VICE-CHAIR HUNTER:

So you're not talking about fraud or misuse of taxpayer dollars, you're more talking about reasonableness?

MR. CRIDER:

Basically reasonableness. If we get into a fraudulent -- if we get into fraud, that's a totally different issue...

VICE-CHAIR HUNTER:

Right.

MR. CRIDER:

...and that would fall under separate parts of the code.

VICE-CHAIR HUNTER:

Okay, I appreciate your bringing up those concerns. But -- I'm not sure how we're going to proceed on this, but I think that the process that you laid out for me adequately safeguards the taxpayers and the public by allowing you the opportunity to report to Congress, and I would hope obviously that you do that if you find something inappropriate, and that we are covered by other areas of the law which safeguard against fraud and abuse.

MR. CRIDER:

But I think the EAC is putting itself out there too, without having the discretion or the option of going back at some point in time and disallowing those costs. Under your current policy I don't think you have that option.

VICE-CHAIR HUNTER:

But I think what I was trying to say earlier, and then I'll leave it to other people to discuss this, is, I think everybody wants clarity. I mean that's what we've heard from many states. I think you've said that on different matters before, I mean, that everybody wants to operate with clear rules. And so, to the extent that we open it up and say, "Oh, but we might find a time when it's not reasonable," then that defeats the purpose of providing clarity, in my mind.

So thank you.

CHAIR RODRIGUEZ:

Thank you. Commissioner Hillman you said you had some suggested edits.

COMMISSIONER HILLMAN:

I do and I think I've come up with some language. At least I'd like to offer some language that, while it won't get directly to my point, it will at least make our intention a little clearer.

But if I might, let me just start on page one and that is in that first paragraph line one, two, three, four, it's the sentence that says, "The EAC has determined that it is a reasonable use of HAVA funds to purchase any." I'd like to recommend that we insert in there "HAVA-compliant voting system." Right now it says "funds to purchase any voting system regardless" and I'd like to just recommend that we make it crystal clear that we're talking about HAVA-compliant voting.

CHAIR RODRIGUEZ:

After the word "any"...

COMMISSIONER HILLMAN:

“Any”...

CHAIR RODRIGUEZ:

...insert “HAVA-compliant”?

COMMISSIONER HILLMAN:

“HAVA compliant,” right. That might be HAVA hyphenated compliant, I’m not sure, but HAVA-compliant. That would be one.

CHAIR RODRIGUEZ:

Okay.

COMMISSIONER HILLMAN:

The other is -- I must say in footnote one, it was not my understanding that we “had previously determined the use of HAVA funds to replace voting systems purchased with HAVA funds was unreasonable.” That had been qualified and it is very possible that systems purchased previously with HAVA funds may not be operating or there may be some legitimate reason why they have to be replaced. And so, my only concern about footnote one, is that it seemed to make it sound like we were saying all of those things were unreasonable and therefore not allowable and that is not my understanding or interpretation of what we had previously done.

And so, I will just move to just strike that footnote.

CHAIR RODRIGUEZ:

Before I accept that change, I’m going to ask the General Counsel if that’s a correct statement or not.

COUNSEL HODGKINS:

The Commission, through its staff, has made two decisions with regard to the use of HAVA funds to replace voting equipment that

was purchased using HAVA funds. And those two decisions, came two different results.

The first decision was addressed in a May public meeting and it involved the State of Florida, in which the State of Florida introduced a piece of pending legislation that would require that they change certain portions of their direct record electronic voting equipment with optical scan voting equipment, retaining a portion of the original DREs to be used for the disability community and to comply with the requirements of accessibility under HAVA. In that instance, the staff issued an opinion saying that that was not a reasonable use of HAVA funds, because the State of Florida did not identify any reason that, for instance, the machines were not working, were not maintainable, that they were making a choice to move to a different type of voting system -- voting equipment essentially.

The same concepts were applied to a request from the State of Kentucky. The facts of that situation were significantly different. Kentucky had used some HAVA funds, approximately 300 or \$400 per unit, to upgrade some old direct record electronic voting equipment. And when I say "old," they were purchased on the order of about 20 to 25 years ago. And the State of Kentucky certified, as a part of their request, that they were unable to maintain that equipment because of the fact that the vendor no longer supported it and it was difficult to find replacement parts for that equipment. As a result, the staff rendered an opinion saying, that the use of those -- the use of HAVA funds to replace that equipment was reasonable, despite the fact that they had used, like

I said, three to \$400 per unit a couple of years back to upgrade that equipment.

So does that answer your question? No?

CHAIR RODRIGUEZ:

I only sent the GAO your Florida letter.

COUNSEL HODGKINS:

Okay.

CHAIR RODRIGUEZ:

So...

COUNSEL HODGKINS:

I guess the answer is, that we have applied the reasonableness test to two different results. It has not been a carte blanche decision that it is unreasonable in any circumstance to ever use HAVA funds to replace voting equipment that was purchased with HAVA funds. We have come to two different results which are demonstrated.

COMMISSIONER HILLMAN:

Well, maybe...

CHAIR RODRIGUEZ:

Even -- I'm sorry, even though an upgrade is not the same as -- an upgrade to old equipment is not the same as buying a brand new system.

COUNSEL HODGKINS:

Correct.

CHAIR RODRIGUEZ:

Commissioner Hunter?

VICE-CHAIR HUNTER:

Maybe a compromise might be just to put one line from the quote of the Florida letter in the footnote and that quote might be, "While it is reasonable to fund the purchase of reimbursement of HAVA-compliant voting system one time, the EAC has determined that it is not reasonable to fund that expense twice." And that's from the letter that was sent to the State of Florida.

CHAIR RODRIGUEZ:

And GAO quoted it, too.

VICE-CHAIR HUNTER:

And the GAO quoted it, too, I'm told. So maybe -- I mean that's a factual statement right from a letter and maybe that is a reasonable compromise.

COMMISSIONER HILLMAN:

In lieu of what's there now? Because I'm still concerned that we've made a blanket statement in footnote one that's not accurate.

VICE-CHAIR HUNTER:

I would be willing to say "in lieu of."

CHAIR RODRIGUEZ:

GAO quoted it on page four of their letter. Let's see, the last sentence of the paragraph at the top of the page.

VICE-CHAIR HUNTER:

Uh-huh, that's the same...

CHAIR RODRIGUEZ:

It's the same language. Commissioner Hillman, does that clarify our action, the EAC's action? It would read, probably, "The EAC had previously determined, that while it is reasonable to fund the

purchase of HAVA-compliant voting equipment one time, it was not reasonable to fund that expense twice."

COMMISSIONER HILLMAN:

If that's the direct language from the GAO.

CHAIR RODRIGUEZ:

And our letter to Florida.

VICE-CHAIR HUNTER:

The Florida letter.

COMMISSIONER HILLMAN:

Right. Whatever is the exact language is fine.

CHAIR RODRIGUEZ:

Okay. Commissioner Davidson?

COMMISSIONER DAVIDSON:

That's fine with me.

CHAIR RODRIGUEZ:

Okay. Further?

COMMISSIONER HILLMAN:

Yes, I have two more. I scribbled out for you a sentence that I'm going to suggest be added on page three, under the conclusion. If we look at paragraph one, under the "Conclusion."

CHAIR RODRIGUEZ:

Okay.

COMMISSIONER HILLMAN:

If we look at paragraph one, under the "Conclusion," we talk about what we don't mandate, endorse or recommend and say, "It is the spirit and intent of HAVA that states make," blah, blah, blah. I am recommending we add a sentence that says, "However, EAC

expects states to be good stewards of the Federal funds that have been given to them and to make thoughtful purchases of voting equipment and other election resources with those funds," as a way to clarify what our intent is.

COMMISSIONER DAVIDSON:

I personally have no problem with that statement.

COUNSEL HODGKINS:

Commissioner Hillman would you be willing to repeat that? I'm just trying to make sure that we write it...

COMMISSIONER HILLMAN:

Sure.

VICE-CHAIR HUNTER:

The only -- may I?

CHAIR RODRIGUEZ:

Commissioner Hunter?

VICE-CHAIR HUNTER:

The only request I would make of Commissioner Hillman is, perhaps she might be willing to strike the word "however" and leave the rest of it as it is written, because I think the "however" is not necessary and it may...

COMMISSIONER HILLMAN:

That's fine.

VICE-CHAIR HUNTER:

Okay.

COMMISSIONER HILLMAN:

Strike "however."

CHAIR RODRIGUEZ:

Okay. So in the “Conclusion” of the policy we will add a paragraph that...

COMMISSIONER HILLMAN:

It doesn’t have to be a paragraph. Just the last sentence of paragraph one.

CHAIR RODRIGUEZ:

Paragraph one.

COMMISSIONER HILLMAN:

Add it as the last sentence of paragraph one.

CHAIR RODRIGUEZ:

Okay, I’m sorry. The last sentence of paragraph one reads, “EAC expects states to be good stewards of the Federal funds that have been given to them and to make thoughtful purchases of voting equipment and other election resources with those funds.” That’s fine with me.

COMMISSIONER HILLMAN:

And then my last point is, and I’ll just go back to say that, at the beginning of this proposed policy the suggested first sentence was that the policy clarifies the allowable uses. And so looking at the first sentence of paragraph two, under “Conclusion” I would like to recommend that we strike the words in the first line of paragraph two, “reverses the staff guidance and asserts that if,” so that that first sentence in paragraph two under “Conclusion” would be, “By adopting this revised policy, the Commission determines that it is reasonable.” Because going back to footnote one, as well, there was more than one staff guidance or advisory, if you will. And unless we’re going to specify that we were talking about Florida and

not Kentucky, just to make it simple we're just clarifying the policy in that we've determined that it is reasonable.

CHAIR RODRIGUEZ:

Okay. Commissioner Hunter?

VICE-CHAIR HUNTER:

But maybe the word "clarify" is not the right word, I don't know. I guess it doesn't matter.

COMMISSIONER HILLMAN:

No, I'm just saying determines. Well, clarify was in the beginning of the policy...

VICE-CHAIR HUNTER:

Okay.

COMMISSIONER HILLMAN:

...and I'm just saying, under the spirit of clarifying, that rather than having to specify, what is this policy is reversing, that we simply drop that language and say, "By adopting this revised policy the Commission determines that it is."

CHAIR RODRIGUEZ:

Commissioner Hunter are you suggesting a change to the first sentence of the policy, "clarifies"?

VICE-CHAIR HUNTER:

I don't think it's necessary to change it.

CHAIR RODRIGUEZ:

Okay.

VICE-CHAIR HUNTER:

I was thinking about that, but I don't think it's a necessary change.

CHAIR RODRIGUEZ:

Okay. And I'm going to ask our General Counsel for a quick -- is there anything we're writing right now that causes you any kind of concern at all? It seems to be reasonable to me. No pun intended.

COUNSEL HODGKINS:

No. And to be quite honest, you know, I would be -- I don't know that I want to give you an opinion as to whether or not it changes my opinion on how I would interpret this document right now without having the opportunity to sit here and think about what these changes do, but I don't see anything that is inconsistent with HAVA or anything like that that you've done.

CHAIR RODRIGUEZ:

So, as the maker of the motion, I would accept all of the suggestions by Commissioner Hillman. We've heard from a number of people on this policy and I'm going to ask that all of their letters, correspondence, email be incorporated into the record of today's meeting. Members of the U.S. Senate, Secretaries of State, obviously today the Governor of the State of Colorado, states all over the country are grappling with decisions, important decisions. And it's in our name, we're supposed to be here to assist people, and so hopefully we will. Are we ready to vote? Is there any further discussion, comments?

Okay, because I have been speaking quietly, I'm going to ask the General Counsel to do a roll call on this to make sure that my vote is properly recorded.

COUNSEL HODGKINS:

Certainly, Madam Chair. Members, if you will please respond with yea or nay. I will try to restate the motion so that you'll understand what your yea or nay is doing.

The motion would approve the proposed policy with the amendments offered and accepted -- offered by Commissioner Hillman and accepted by the mover, Chair Rodriguez. So if you will respond when I call your name by saying yea or nay.

Chairwoman Rodriguez.

CHAIR RODRIGUEZ:

Yea.

COUNSEL HODGKINS:

Vice-Chair Hunter?

VICE-CHAIR HUNTER:

Yes.

COUNSEL HODGKINS:

Commissioner Hillman?

COMMISSIONER HILLMAN:

Yes.

COUNSEL HODGKINS:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

Yes.

[The motion carried unanimously.]

COUNSEL HODGKINS:

Madam Chair, there are four votes in favor and the motion carries.

CHAIR RODRIGUEZ:

Thank you.

COMMISSIONER HILLMAN:

Madam Chair, before we go, let me just say thank you to you and to my colleagues for accepting the amendments I proposed.

CHAIR RODRIGUEZ:

Sure. Next on our agenda are -- we saved all the heavy lifting for last -- the Consideration on Changes to State-Specific Instructions on the National Voter Registration Form. Progress as promised.

Commissioner Hillman?

COMMISSIONER HILLMAN:

Okay, give me just ten seconds to switch to that bundle of paper.

CHAIR RODRIGUEZ:

Okay, so we're working -- just for clarification, we're working with two documents. One dated November 15, 2007, and one dated March 19, 2008.

Commissioner Hillman?

COMMISSIONER HILLMAN:

Yes, thank you very much. My reason for requesting that we bring this item back up on the agenda is because I am very cognizant that there is a backlog of requests from states to update the state-specific -- their state-specific instructions on the National Mail Voter Registration Form.

And let me just quickly begin by saying that we all received a letter from Secretary Brewer who was commenting on the discussions that EAC Commissioners had with members of the House Administration Committee's Election Subcommittee and I want to say that I applaud her continued diligence on the issue and expect that she would continue to make her points as vigorously as

she did. I do, however, want to say that she has misrepresented and in fact, is erroneous in the places where she has described things that I said. What I said at the Subcommittee hearing last week is, that the EAC has still not adopted policies and procedures under which we would consider requests for states to update the state-specific instructions. I did not say that we lacked the regulatory power. I had never said we lacked the regulatory power in doing that. In that regard I am disappointed that we are here in March and still haven't been able to adopt policies and procedures. And while it was not my intention to have the Commission ad hoc voting on requests from states one by one, I think we've come to a point where we have to.

And so, as I look at the regulations that are in the process of being transferred to us from FEC, but are stuck because of the FEC's inability to conduct business due to a lack of quorum, I am comfortable that the requests from states -- from several states fall under things that are already in those regulations, and were we not stuck with an FEC without a quorum we probably would have those regulations in-house. And so, it is in that regard that I would want to have us consider, one by one, state by state, those requests that are pending before us. And I think we now all have the paperwork and staff recommendations, and I believe that there were three pending and we've received an additional four.

VICE-CHAIR HUNTER:

Four pending.

COMMISSIONER HILLMAN:

There were -- maybe there were four or five pending. We received an additional two. At any rate, there are seven that we had not taken previous action on. In December, I know that they were brought before the Commission and at that time I was hopeful we would have policies and procedures, and I took the position that we should not be doing it without policies and procedures. I won't say I've given up on that. I don't give up on things that easily, but it's quite clear we're not going to have policies and procedures any time soon. So I would like to see us move to consider the state requests at this meeting.

CHAIR RODRIGUEZ:

Before we have discussion should we put something on the floor?

VICE-CHAIR HUNTER:

I just have a point of clarification.

CHAIR RODRIGUEZ:

Okay.

VICE-CHAIR HUNTER:

Point of clarification. I believe that there are eight state requests pending. Mr. Cortes is in the audience, but I believe that...

COMMISSIONER HILLMAN:

There are eight. We have already taken previous action on Arizona. The other seven we have not taken any action on. That's the reason I said seven. There are -- if you consider Arizona still pending, there are eight yes.

VICE-CHAIR HUNTER:

Okay, thank you.

COMMISSIONER HILLMAN:

So...

CHAIR RODRIGUEZ:

In which order? Do you want to start with...

COMMISSIONER HILLMAN:

...should I move them?

CHAIR RODRIGUEZ:

...November 15th?

COMMISSIONER HILLMAN:

I will. I will just start -- and this is in no particular order. I'm just going to go the order that they were presented in the memorandums that were given to us by staff. Is that agreeable?

CHAIR RODRIGUEZ:

Yes.

COMMISSIONER HILLMAN:

Okay. So number one -- it's appropriate that number one should be Colorado. And so, I move that EAC approve Colorado's request to update the current state instructions regarding its mailing address. It has a new mailing address. And so, the motion would be to approve Colorado's request to update the form to reflect its new mailing address: "Secretary of State, Care of Elections, 1560 Broadway, Suite 200, Denver, Colorado 80202."

CHAIR RODRIGUEZ:

That's the current. That's the current.

COMMISSIONER HILLMAN:

I am sorry. Well, there you go. How about "Colorado Secretary of State, 1700 Broadway, Suite 270, Denver, Colorado 80290"?

CHAIR RODRIGUEZ:

Is there a second?

COMMISSIONER DAVIDSON:

I second it.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt a change submitted by the State of Colorado correcting its mailing address. Apparently they've moved. Is there any discussion on this motion?

COMMISSIONER DAVIDSON:

Call for the question.

CHAIR RODRIGUEZ:

As Chair, I didn't get to say what I was going to say. I, too, lament - - I believe we unanimously lament the lack of an over-arching policy by which we can make changes to the state instructions on the form. This change, because it's a change to existing information, simply an update of existing information on the form, even in the absence of a policy, I will support.

Okay, all those in favor of making the requested change by the State of Colorado indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

We are unanimous in making the Colorado change.

Commissioner Hillman?

COMMISSIONER HILLMAN:

I will continue but, I will say to my colleagues if anyone of them wants to jump in and read any one of these, please feel free.

Number two is New Jersey. New Jersey has submitted a change to its voter registration procedures, moving the voter

registration deadline from 29 days before an election to 21 days before an election. So I move that EAC approve the request from New Jersey to update the state-specific instructions reflecting that the “Registration Deadline is 21 days before the election.”

COMMISSIONER DAVIDSON:

I'll second it.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt a change submitted by the State of New Jersey. Is there discussion on the motion?

I'll just invoke my previous statement, I won't repeat it. Any further discussion? All those in favor of making the New Jersey submitted change indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Okay, New Jersey is done. Rhode Island?

COMMISSIONER HILLMAN:

Rhode Island's request is for the state instructions to be updated concerning voter eligibility requirements listed under item number nine, and the change would read as follows and it is my motion to – for EAC to approve the request to update Rhode Island's state-specific instruction nine -- number nine which is under “Signature.”

And it would read, “To register in Rhode Island you must: be a citizen of the United States, be a resident of Rhode Island for 30 days preceding the next election, be 18 years old by election day, not be currently incarcerated in a correctional facility due to a felony conviction, not have been lawfully judged to be mentally incompetent.”

COMMISSIONER DAVIDSON:

I'll second it.

COMMISSIONER HILLMAN:

I didn't explain what the change was. Prior to that you were not eligible if you were on probation or parole.

CHAIR RODRIGUEZ:

Okay, it's been moved and seconded to adopt the change submitted by the State of Rhode Island to the state-specific instructions on the form. Is there any discussion? I'll reference my earlier statement. Are we ready to vote? All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Also Commissioner Hillman referenced a letter from Secretary of State Brewer that we'll include in the record of this meeting. I have copies.

Commissioner Hillman?

COMMISSIONER HILLMAN:

Delaware. Delaware has submitted a request concerning its voter registration deadline. I move approval of the request to upgrade Delaware's state-specific instructions concerning registration deadline. The registration deadline is now "The 4th Saturday before a primary or general election, and 10 days before a special election."

COMMISSIONER DAVIDSON:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt this change submitted by the State of Delaware to the state-specific instructions. Is there any discussion on the motion? I reference my earlier statement. All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

COMMISSIONER HILLMAN:

Iowa. Request from Iowa to update the state-specific instructions concerning registration deadline. I move that EAC approve an update to Iowa's state-specific instructions to reflect its new "Registration Deadline" which is "must be delivered by 5 p.m. 10 days before the election, if it is a state primary or general election..."

CHAIR RODRIGUEZ:

That should be -- that's a typo.

COMMISSIONER HILLMAN:

State primary or general election? I would just ask Edgardo Cortes, because I wasn't sure if that meant state primary during the general election. Is that "of" or "or"?

MR CORTES:

It's "or."

COMMISSIONER HILLMAN:

"Or"? Okay. All right, I will just read that again. "Registration Deadline - must be delivered by 5 p.m. 10 days before the election, if it is a state primary or general election; 11 days before all others. Registration forms which are postmarked 15 or more days before an election are considered on time even if received after the deadline." And there's a footnote as a part of the instructions. "If you fail to meet the voter registration deadlines above you can

register and vote by following the guidelines for election day registration. You can find these on the Iowa Secretary of State's website," and then it quotes the website address.

CHAIR RODRIGUEZ:

Are we sure that is correct, Mr. Cortes?

MR. CORTES:

It is.

CHAIR RODRIGUEZ:

That website. I just want to make sure there's no typos in that.

MR. CORTES:

Well, I copied it straight from the information that they provided.

We can -- I can contact Iowa to...

CHAIR RODRIGUEZ:

We'll proofread everything.

MR. CORTES:

But it's copied directly from the information provided to us.

COMMISSIONER DAVIDSON:

I second the motion.

CHAIR RODRIGUEZ:

It's been moved and seconded to accept the change to the state-specific instructions from the State of Iowa. I'll reference my earlier statement. Is there any further discussion? All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

We are unanimous.

COMMISSIONER HILLMAN:

Utah. Request from Utah to update its state-specific instructions concerning voter registration deadline. I move that the request be approved and the instructions updated. The “Registration Deadline - 30 days before the election for mail-in applications; 15 days before the election for walk-in registration at the county clerk’s office.”

COMMISSIONER DAVIDSON:

Second the motion.

CHAIR RODRIGUEZ:

It's been moved and seconded to accept the change from the State of Utah to its state-specific instructions. Is there discussion on the motion? I reference my earlier statement. All those in favor of adopting Utah please indicate by saying aye. Any opposed?

[The motion carried unanimously.]

COUNSEL HODGKINS:

Madam Chair, if I might, I just wanted to note for the record Mr. Cortes informed me that Utah did make a request to change their address on the form as well, but the change was to the same address that is already on the form. So there was effectively no change. In other words, they sent in a request to update their address, but it was the same address that was already on the form, so that's why we did not propose that change for your consideration.

COMMISSIONER HILLMAN:

There was no change required.

COUNSEL HODGKINS:

Right. Thank you for stating that much better than I did.

COMMISSIONER HILLMAN:

Okay. Next is Georgia. The request is to update the state-specific instructions regarding item “#6. ID Number.” And I move that the request be approved and the information updated as follows: “#6. ID Number. Federal law requires you to provide your full Georgia Drivers License number or Georgia State issued ID number. If you do not have a Georgia Drivers License or Georgia ID you must provide the last 4 digits of your Social Security number. Providing your full Social Security number is optional. Your Social Security number will be kept confidential and may be used for comparison with other state agency databases for voter registration identification purposes. If you do not possess a Georgia Drivers License or Social Security number, a unique identifier will be provided for you.”

COMMISSIONER DAVIDSON:

Second the motion.

COMMISSIONER HILLMAN:

And just to clarify, that prior to this updating, Georgia was requesting the full Social Security number. And this would bring it into compliance with HAVA.

CHAIR RODRIGUEZ:

Very good. Okay, it's been moved and seconded to accept the Georgia submitted revision to its state-specific instructions. Is there discussion on the motion? I'll reference my earlier statement. All those in favor of adopting the Georgia change indicate by saying aye. Any opposed?

[The motion carried unanimously.]

COMMISSIONER HILLMAN:

Madam Chairman, those are the seven pending requests to update the state-specific instructions that EAC had not previously considered.

CHAIR RODRIGUEZ:

Thank you. Commissioner Hunter?

VICE-CHAIR HUNTER:

Madam Chair, I'd like to bring up another pending request from the State of Arizona to amend their state instructions to properly reflect their state law. I don't have the full language with me. It's rather lengthy. In any case, but I move to adopt the language as submitted to the EAC by the State of Arizona. Thank you.

COMMISSIONER DAVIDSON:

I second that motion.

CHAIR RODRIGUEZ:

It's been moved and seconded to accept the language to Arizona's state-specific instructions as previously...

VICE-CHAIR HUNTER:

As submitted.

CHAIR RODRIGUEZ:

...and frequently -- as submitted...

COMMISSIONER HILLMAN:

Frequently too, yes.

CHAIR RODRIGUEZ:

...as previously submitted by the State of Arizona. Is there discussion on the motion?

COMMISSIONER HILLMAN:

Madam Chair, I just want to say that this Commission has considered that request on several occasions and I would just state for the record that my position remains the same. I do not think that EAC ought to take action while the issue is currently being litigated.

COMMISSIONER DAVIDSON:

Madam Chair?

CHAIR RODRIGUEZ:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

My feeling, is once a state has requested change to their -- to the form, the National Voter Registration Form, that we need to act with the states having that ability to change their instructions. And because of my concern, going even further, that we could possibly be disenfranchising as elections get closer to the time, making sure we don't disenfranchise voters, I definitely support this change on the instructions.

CHAIR RODRIGUEZ:

Thank you. Commissioner Hunter?

VICE-CHAIR HUNTER:

Madam Chair, Mr. Cortes just helpfully told me that the date of the last memo that includes the proper language for the Arizona form was a memo that Edgardo Cortes wrote on December 14, 2007.

Thank you, Mr. Cortes. And I've spoken on this matter numerous times and put out several statements, so I won't belabor the fact, due to our restrictions of time, but I continue to believe that the EAC has no discretion to not approve a proper state request to amend

the state form instructions. And, further, that the law is a good law unless and until it's overturned by the courts.

Thank you very much.

CHAIR RODRIGUEZ:

Thank you, Commissioner Hunter. I'm in the process of drafting a statement that will fully articulate my position and reasoning for not voting to adopt the Arizona change. Is there further discussion?

All of those in favor of the change submitted by the State of Arizona indicate by saying aye. Opposed?

[Commissioner Gracia Hillman and Chair Rodriguez voted in opposition to the motion. The motion was defeated on a tie vote.]

CHAIR RODRIGUEZ:

Okay, the last time item on our, again muscular agenda, is a discussion with NASED, which is, representatives of the National Association of State Election Directors. I really very much appreciate you joining us. Please -- we have name plates for you. We have water. We have microphones.

And because I didn't receive little bios, bits from everyone, I am going to ask you to introduce yourselves, your jurisdiction and your roles within the organization. I hate to burden you, but just to get something from everybody.

How do you want to start Ms. Nighswonger?

MS. NIGHSWONGER:

If I could just start, Madam Chair...

CHAIR RODRIGUEZ:

Sure.

MS. NIGHSWONGER:

...and members of the Commission. I'm Peggy Nighswonger. I'm from the State of Wyoming, but I'm actually here representing NASED. And I just wanted to take this opportunity to thank the Commission for allowing us this discussion at the table with you today. And on behalf of John Lindaback, who is the president of NASED and the whole association, I just really appreciate it. We are going to go ahead, the members of the group here, Chris Thomas, the Election Director from the State Michigan, will begin and then I'm going to allow Pat Arp, the Deputy Secretary of State from Wyoming to be second, and then Chris Reynolds from California. And I will just remove myself from the table. But thank you so much for allowing us this opportunity.

CHAIR RODRIGUEZ:

Okay, stay close.

MR. THOMAS:

Good afternoon. It's a pleasure to be here today. I think my team might have won. When I left they were well ahead.

COMMISSIONER HILLMAN:

Well, Mr. Thomas, I called you several times this morning and you did not answer "present" so I was wondering.

MR. THOMAS:

I have a proxy. I'm not sure where my proxy was.

So I appreciate the opportunity to come and talk with you today on behalf of NASED. We're here to have a discussion. We're not seeking answers to issues we're raising. We'd really like to bring these issues before you and continue this discussion in the weeks and months ahead. We are also not here complaining about

auditors or staff in that regard. The audit teams that have come out to our states are very professional, good people, easy to get along with. They've been responsive back at the EAC to us. So I want to say from the outset we are leveling no complaints in that area.

I've been asked to do just a real quick summary of some of the issues and then I was going to spend most of my time on maintenance of effort. What we got from members, both through a discussion at NASED in February and through Internet responses were issues really dealing with requests for a little more advanced knowledge and notice in terms of what we're required to do under many of the Circulars, in terms of being prepared for an audit. And this would deal with things, for example tagging the equipment. Nobody has a problem doing that, but many states indicated some advanced knowledge of that would have been helpful. Inventory logs in terms of how they should appear and how you want those headed, I think states would comply with that and it would really resolve any of the back and forth issues that go on with auditors to make that much smoother. There are a number of survey questions that got into issues dealing with the manner in which equipment is stored, who has keys, their names, their descriptions of their jobs and what not. We'd like to see a little of that more clearly refined. So the information that we would look for really would deal with getting information out to the states so that in advance we'd be better prepared for the audit and I think that would make it easier and better for all involved.

Other issues that have come up are the allocation in terms of using the funds and allocating between state and Federal, and I

know Pat is going to focus on that. In addition, we've had indications that there is an issue with your SF-269 form with cumulative interest being reported. And while the form continues to be on your website the fault was that these were new -- the cumulative was a new request and really the cover letter that came along with the form really didn't indicate, "Hey, there's new things here that one needs to provide." And again there's no issue with providing this information. People just don't want to get dinged by it when they're in an audit. And then there are obviously some issues about interest accrued on HAVA dollars when the HAVA dollars have been given to local jurisdictions and there's been some delay in spending that money in terms of, then how does that get tracked and whether it needs to or not.

I'm going to focus now, really on your policy which is your EAC Advisory 7-3 – 003-A on maintenance of effort. I think you've all taken the most onerous interpretation possible in terms of reading this section of law, and frankly I do think it's a solution in search of a problem. I just really don't believe that this is a major issue. And I will grant you this section of law 254(a)(7) is not well written. I mean this could have been written much better. It is not. But nonetheless I think the interpretation that's been given has really I think grossly expanded this provision of law in two areas. The first would be in expenditures by the state by including county in that. And the second would be expanding the coverage of an MOE to include the improving the conduct of Federal elections. And I'll take each of those separately.

As stated in your policy, your general purpose is to make sure states and counties and other localities do not replace or supplant prior levels of funding with Federal dollars. And I think everybody would agree with that. I don't think that's an issue that anybody is arguing that ought to be allowed or that ought to be done. But when I look at this interpretation of the language of expenditures of the state I think it means what it says, and it says "expenditures of the state." I cannot find any interpretation that gets me to the point to say that's counties, cities, townships which we deal with in Michigan. That is such an expansion which came, you know, quite late in the game, well after we'd all computed our MEO for state plans. Now Congress knows how to refer to local government when necessary. If you look at 254(a)(8) the next section after MOE, they very clearly lay it out. This talks about performance goals and measures for local units of government, so they know how to say that. 254(a)(2) is how states monitor funding to local units of government. Again, they know how to delineate local units of government when they want to say that. And finally 254(c)(1) protects states and other jurisdictions from certain lawsuits. So the Congress knew full well how to articulate any type of action that they want to direct local units of government, and I just don't think this is one of them. And as your advisory points out on the second page, there is no legislative history on this. So I would urge you not to make it, just leave it as it is. Michigan, for example, we give no HAVA dollars to local units of government. I don't send dollars to anybody. I send them equipment. I send them software. But I am not providing money because of the

problems. We're the ones that are on the hook for the way that those funds would be managed and what not, and we chose in our state just not to do that. So an MOE really makes little or no sense at all in terms of the way this policy is written for a state that's in Michigan's situation. It would take me hundreds of hours to gather the maintenance of effort from 1,600 jurisdictions. Frankly I would be surprised whether a large number of them could even articulate a 1999 or a 2000 election number. I just -- I would be very surprised.

I think the states should be left to handle their local jurisdictions. I can't think of any state that would want to reduce or denigrate the effect of the new money of HAVA by just giving it to local units so that they could reduce their local budget from what it was before. I just -- I really cannot accept that that would happen anywhere. And I can guarantee you that there is no local unit of government in my state who, one, does not receive a dime from us who would say that their costs have gone down since HAVA passed. I mean their costs have gone up and they've gone up dramatically. They have not gone down. And I don't know what one would do other than ceasing to perform various functions that they're required by law to actually reduce their costs. Many jurisdictions in some states, they only have a five-year retention requirement for financials, so there's no way that they're going back to that period of time and finding those numbers.

Counties will continue, and municipalities, to have peaks and valleys in their spending. If you're going to say that the entire elections budget of a township, city or county has to be totaled

each year along with the state has to be above some maintenance of effort, that probably won't happen because in the odd numbered years they're not spending money that they spend in an election year. They're not opening polling places, printing ballots, hiring precinct inspectors. So I think that it really sets us up for just a lot of problems that really don't need to be addressed in this area. I think the policy is just wrong and I would, you know, really urge you in that regard to step back from it.

The expansion in terms of improving the conduct of Federal elections, again on page two, this was listed as one of the categories. Now this is really great news in the sense of changing the framework. When everybody sat down after HAVA passed and came -- decided, okay, what is our maintenance of effort, we were looking at the various requirements in HAVA; voter registration systems, provisional ballots, ID and all of those things and making a judgment based on what happened in 2000, which was my fiscal year. And in Michigan we said, "Well, we got 1.5 maintenance of effort." That's what our statewide voter registration system was operating at at that time. But there is no way that I would have looked and said, "Well, what were we doing in that year to improve the conduct of Federal elections?" Absolutely about everything we do somehow or another tangentially is connected to improving the conduct of Federal elections. So I think that that is an inappropriate item that you've listed in terms of even calculating what maintenance of effort is all about.

Kentucky, I know from reading their audit report, you know, they looked at this section and they said -- they talk about -- it says

how a state using requirements payment will maintain a maintenance of effort of the state. Well, their opinion is, is their system was compliant. They aren't spending any requirements payment for their voter registration system. So reading that section, they're saying there is no maintenance of effort. So I find this a difficult section and I think a lot of people do and I know your legal staff struggles with this, but I would urge you not to take the most onerous path that you can because that is going to really bite us in terms of going back with any disputes over really what is -- what was your maintenance of effort in 2000? And did you do anything to improve the conduct of Federal elections?

I think there's also two standards in your advisory and I think the first standard is the one I've just spoken of, which is, you go and look at your requirements under Title III to see how that impacted what you were doing in 2000. And that's what we did. Now as we start to look at the counties they're basically saying, "Well, just look at their entire elections budget and give us that. Don't try to go in and sort out what's Title III requirements and what's not." Well, I can guarantee you that because of the peaks and valleys, as I've indicated, that is not going to be a real productive exercise and to go through 1,600 units and have them try to figure out, you know, what was of 1999 most of theirs was -- fiscal years ended June 30th of 2000 -- what their Title III expenditures were is going to be mind boggling. I don't really even know how to go about that.

So I really would urge you to take a second look at this policy. I don't think it's going to serve us well. I don't think there is a problem. I think the audits you've seen already do not reflect any

attempts by local units of government to defray previous funding and supplant that with HAVA money. In fact, one state I just recently talked to, they give quite a bit of money out to the locals and -- but they monitor it all. And when they're doing voter education programs they look at it and they say, "If that's the same voter education program you've been doing then, no, you can't use it. If you're going to expand and do an additional voter education program fine, you know, then there's room under HAVA to do it." The states take this very serious. We are not in any way just letting the money go to be used as sort of a local slush fund.

I have been going through your FAQs on the use of HAVA money and I do have a number of concerns of them, and my greatest concern is the allocation requirement in there. I don't think that allocation requirement is accurate. I think the allocation has already been made through MOE and through our match. Now while our match is very generous on behalf of the Federal Government and as their representatives, we thank you for that, it is nonetheless what the Federal Government said the states need to put in. So every expenditure we make in Michigan we do a 95-5 expenditure. We don't hold back our contribution. Every expenditure is mixed. That's the allocation. Because when we move away from the requirements, once every one certifies they have met the requirements and then we're in to the area of improving the conduct of Federal elections, everything you do in that regard -- that we do in that regard is going to be a mix of state and Federal. There's nothing that is a hundred percent unique Federal that we would be doing. And I think this becomes a

backdoor effort to basically force us to increase our match by using an allocation formula on that material as we all start to move into that arena by requiring us to allocate more and more to our match -- to our -- to the state side of any improvement we want to make to Federal elections.

So I understand that you did have a discussion on state plans. I won't go into that other than, I know you don't approve state plans and that I have some questions there which I will pursue later.

My recommendation is, again, that you revisit your MOE and really try to have it conform more closely to HAVA, that you put policy advisories out for public comment in advance so people can comment on them before you vote on them. I've been working with Commissioner Hillman and I very much appreciate the efforts to involve the board of advisors more in a number of processes within the Commission, and our board looks forward to that. And then last, I would just indicate that you might want to consider just sort of standing down on your audits for a short period to get some information out to the states. Frankly, I think it will make your audits go a lot easier down the road particularly with information on the Circulars with regard to what the states really must have and have in what kind of shape before your auditors arrive.

I thank you very much for your invitation today. And it's certainly my pleasure to see you all again.

CHAIR RODRIGUEZ:

Thank you. I think we'll have questions, but I think we ought to hear you first to make sure we get your comments on the record.

MS. ARP:

Madam Chair and members of the Commission, I'm Pat Arp and I'm the Deputy Secretary of State in Wyoming and mostly I'm here today to represent the minimally funded states. My intent really is to speak to you about two particular issues about the HAVA audits. And keeping in mind that you are the Election Assistance Commission, my goal really is to provide information to you with the hope then that you will be better able to assist the states in future audits.

And I do need to say up front that it's my understanding that this is not the time or place to discuss Wyoming's audit specifically, there is another arena to do that, and so unless the Commission would choose to ask us questions about that, I will only use our audit really to give a couple of examples of the things I'm talking about. I also want to say right up front that I'm not here to whine about audits. We had heard discussion earlier about stewardship and reasonableness and really I firmly believe, as does all the people at NASED and I've heard their discussions, we firmly believe in fiscal accountability. There's no question about that. And we know you have an obligation under the law to make sure that states are accountable. And lastly, I would say as a preface, that I come with no sour grapes. As a matter of fact, Wyoming's audit is about to wrap up and we did quite well. We had one NFR in the list of finding and recommendation. And along with what Chris said, we had an excellent experience with the people who came and we have also had an excellent experience with your staff, and honestly Chris Crider has been just great to work with through

this whole process. So my focus really is to talk to you about the process itself and then the Commissioner's role in it. And what I'm really hoping to do is impress upon you some of the dynamics and the difficulties that states have so that you can be proactive for those states who've yet to be audited, and then selfishly all of us will probably be audited again and so what changes there can be will be good for us.

My two points are this. I would like the Commission to take into consideration the effect of history on the audit process. And then my second point will be about the role of the Commissioners, yourselves, especially with a focus on what you can do from here.

You know if we really think about elections, most Americans are kind of focused on the issue of the day, you know. If we watch the evening news or the happenings in Washington, you know that especially in elections that which is important and that which is the focus changes minute by minute or day by day. And that's not a good way to conduct an audit. Audits should not be about the hot topic. Rather, I believe audits should really take into full account the circumstances and the environment at the time decisions were made and expenditures were made. And if auditors are not knowledgeable about the environment in which those decisions were made, then my premise is that the audits themselves will not be fair and they will not be a true reflection of whether states acted honorably or not. I don't fault the auditors because honestly if you looked around this room today I would guess that there are probably really not many of us here that actually were in an election -- position of conducting elections at the time HAVA passed. And

although it seems like HAVA was not that long ago, we're now looking retrospectively at some things. And Chris gave a perfect example with his maintenance of effort issue. That's a difficult one to look backwards at and try to calculate years later with hindsight.

The other historical fact that I think is problematic and is now showing its effect is that there was no EAC when HAVA passed. So states made decisions, we expended money, we hurried frantically to meet deadlines and honestly we tried to guess at what future interpretations of the law would be. And that was the best we could. And honestly, I think states did a heck of a job in a short time with zero direction. So now those decisions and expenditures and interpretations are being judged with what I call a hindsight perspective. HAVA audits are black and white evaluations of something that took place at a time that was gray, at best. Audits should be black and white, but it doesn't really fit an unusual HAVA law and it doesn't really fit that hurried implementation and the different environments. So I would ask you to think about taking the reality of history into effect because, otherwise you will have unintended but serious unfairness through the audits.

I'd like to use one example from Wyoming and this does have to do with the cost allocation that Chris mentioned. And here was our situation. We have a county, Niobrara County, and it's our least populated county in the state. And I know -- I grew up East of the Mississippi and if you live there you can't even fathom that we have a county that has only 2,400 people in it and it's larger than the State of Delaware. So given that scenario, that little county processes an average of three or four voter registration applications

a month, and they told me that was a high side guess. Now they have three-and-a-half employees in the county clerk's office, so if we did cost allocation for them when we gave them a computer and equipment for voter registration what percentage of that county's task do you think three voter registration applications a month would be? Probably a fraction of one percent of what they would do. So with such small numbers in minimally funded states, cost allocations reach the 99 or 100 percent payment with county or state funds. And so my point is that with small population counties and few employees it's very difficult to give them the base equipment that they need and still do a sensible cost allocation. And we found that the uncompromising worrying and enforcement of the guidelines around de minimis use of equipment and cost allocation was adverse to us and very problematic in our audit. And it's interesting to me though that when the EAC and HAVA chose to give money to minimally funded states they realized then that statistical distributions didn't work very well. That's how you came up with the minimal funding. And if you then apply statistically cost allocation in a strict sense, you really get unrealistic results at the extreme of the population. And so I use Niobrara County as an example of that.

To me that is the push and pull and tug you get into between the application of -- strict application of the Federal rules versus what was the reasonableness of the action at the time because we only had three choices when we made that decision and they were either, one, provide the needed equipment and now have an audit exception, which we do or, two, don't provide the equipment and

clearly be out of compliance with HAVA because we wouldn't have that county on our statewide system, or cost allocate. But if you cost allocated with a small population county like that, HAVA would have paid about one percent of the cost and the county would have paid about 99 percent, or you put a computer out there and said, "For heaven sakes, don't touch that thing except for putting in three or four voter registrations on it a month." Those were the choices open to us. So we chose to buy the equipment as I said, and under our finding -- or under the audit finding I have to ask myself, "Well, what will the Wyoming public think about this when we say that these computers need to sit on those desks for the sole purpose of putting those three or four voter applications in there? And will they think that's a reasonableness standard?" And I will say, "No, I don't think they're going to think that's reasonable at all." Who would? But if you think from the other alternative about our decision if we had not provided the HAVA equipment to the counties, I had to ask myself and our staff, "Do you think we would have been held one percent out of compliance?" I just doubt that. We would have been held out of compliance with HAVA and we chose not to do that. So my point is that someone now can come in after the fact and say, "Should we have done this differently? Or should we have put the computers out there and said only use them in accordance with OMB Circular something or other?" And in retrospect, yes, we probably should have done that. I think sometimes when auditors come out they can, and if they're not familiar with the beginnings of HAVA, I believe that they can't even fathom that we would not have known about OMB Circulars. And I think they'd ask, you know, who

would handle Federal money like that? Well, probably most of the states who didn't receive Federal money ever before. And we were scrambling to do other things. You might ask why didn't you hire someone to do that for you, or whatever, but many times we're just desperately trying to find a vendor that would think Wyoming was big enough to come out and sell us voting equipment. We were struggling to get someone to show up because in minimally funded states you don't have a lot of money to put on the table and vendors aren't very excited about getting our contracts because there were bigger fish in the pond to look at. And so those were some of the things that were -- we were dealing with at the time.

Audit questions asked with no sense of history cause problems. You need to know the history and if you're going to have a fairness perspective you have to know what was taking place at the time. I mean when you think hard, think of the other questions that could be asked. Why was there no EAC when the law passed? Why once appointed, did the EAC not have telephones? Why would HAVA reports be required to be in accordance with EAC when the EAC rules -- when there were no EAC rules? Actually there wasn't any EAC. And why did the first round of EAC advice come too late to be meaningful? Well, for the same reason there was no intent to have problems. It was simply because that's how HAVA was. And I think that needs to be taken into consideration as now the audits are taking place. I don't think you would want your feet held to the fire about anything the EAC did or didn't do in those early days, and we just don't think it's good policy to hold our feet to the fire either about things that at the time were

impossible. I'll go to my second point, but first I would say that states really do need the Commission's assistance in taking history and circumstances of expenditures into consideration if you really want fair audits.

So my second and last point is simply about the role of the EAC Commissioners in the audit process and especially a focus on what the Commissioners can do from here. We were told throughout our whole audit process that the Commissioners needed to be kept separate from anything to do with audits for the integrity of the audit process itself, and I believe it is true that the final review board, which are you as Commissioners, should not get involved in specific details of any state's audit because having a separation really is proper audit procedure. However, I think you can hardly operate as an Assistance Commission unless you have some involvement. And we do as states really need your help in this regard. The involvement should be appropriate. You should not be ex parte about a specific state's audit, but where appropriate I believe that, and we're asking for you to get involved, and that is at the level where policy decisions should be made. And those decisions should be about what should be audited, how to conduct audits consistently across the states, and then I would ask that you take the reality of history into account. Only then, I think you can be sure that you're having both a fair and a reasonableness assessment of what took place.

So in conclusion I will just say I believe there are four things that the EAC can do to assist the HAVA audit process. One is to get informed about the actual audit process itself which you gave

us time on your agenda today, and that's a great first step and I appreciate that. The second is to determine the greatest difficulties for the states. Where are we struggling in the audit review process? And then three, take history into consideration. There were not guidelines, there was not an EAC Commission, there were not many things when we were struggling to decide what to do at first and that should be taken into consideration. And then I would suggest that you assign someone or hire someone if necessary who was around when HAVA first began and someone who was in the trenches to help assess the reasonableness of a state's actions.

As I mentioned at the beginning, we're wrapping up our audit and I'm very proud of our Election Director, Peggy, and our staff. It took almost everyone in our little office to handle the audit because we're so few in number and these audits are very thorough, very detailed regardless of the size of the state. So it was quite a process for us and it has been very labor intensive year. But we did well. And so, I feel like I could come to the table and offer you some thoughts freely with not an ax to grind about the audit in our state itself. And so I hope you will take my comments in the proper spirit representing some of the other states, which is, I firmly believe states should be held accountable, there's no doubt about that, but it needs to happen in a very fair and a reasonable way with the look of hindsight in history. And so those would be my comments to you.

Thank you.

CHAIR RODRIGUEZ:

Thank you. Mr. Reynolds?

MR. REYNOLDS:

Madam Chair and Commissioners, thank you for your time today.

My name is Chris Reynolds and I'm the California Deputy Secretary of State for HAVA activities. I came with some prepared remarks and they're going to tread over some territory that you've already discussed yourselves today and has been discussed by my colleagues here, but I'm sticking to the script.

So by way of a background, I've been involved in elections policy since 1999 when I joined the Secretary of State's Office, but I came back to the Secretary of State's Office on May 1st of 2005 in the aftermath of the resignation of the Secretary of State appointment and the confirmation of a gubernatorial appointee. So at the time we had about nine months to comply with HAVA and not much had been done. And we were also the first state to have the dubious distinction of being audited by the Federal Government in the aftermath of that resignation amid questions in part about HAVA expenditures, so I guess some of the audit responsibility or the issues that we're dealing with today fall to California.

I'll try to be brief, but I want to be thorough as well. So I think, first of all, everyone involved with implementing HAVA has a great deal of respect and awareness of the challenges faced by the EAC. You didn't create HAVA. You're in the same position as the states are in many respects because you have to interpret the Act after the fact. However, I want to share with you the concern in California, and apparently many other states, that EAC interpretations of HAVA appear to be narrowly drawn and may

actually be contrary to and inadvertently undermine HAVA. The hope is that the EAC will consider or reconsider these interpretations in ways that everyone agrees are consistent with and supported by HAVA to assist the states with HAVA implementation. I've provided a list of materials as requested for the Commissioners today to consult that I hope you will -- that I hope will facilitate my presentation today.

The issues that I want to bring to your attention fall into three categories; allowable costs, maintenance of effort and state plans. Before I get to those specifics, though, I wanted to note that the general framework that was established for HAVA seems to recognize in a very practical and sensible manner the way elections are conducted. That is, first, Federal law sets broad policy like the Voting Rights Act or the National Voter Registration Act of 1993 just to name two examples. And, second, state law administered by a state chief election official creates unique circumstances in each of the states. And finally elections are conducted by local jurisdictions. In the case of California, by counties. The framework of HAVA recognizes the autonomy of states in conducting elections and it attempts to strike a balance between setting forth the goals and the mandates while allowing the states the discretion to implement HAVA in ways that best meet the unique circumstances I mentioned that exist in each state.

This brings me to the first of three categories that I want to discuss, allowable costs. I want to talk about two issues in particular, voter education and pollworker training. Both of these activities I believe are vitally important to delivering the full benefits

of HAVA to the voters. But the EAC's interpretation of whether expenditures for these activities are allowable seems contrary to the successful implementation of HAVA and even to HAVA itself. I've asked that the Commissioners be provided a copy of frequently asked questions about HAVA funding that can be found on the EAC website. Specifically questions 23 and 25. In short, the EAC interpretation embodied in those FAQs suggests that funding for both voter education and pollworker training activities is restricted and limited to either Section 101 funding or a minimum requirements payment, which is about \$11.6 million statewide. But HAVA itself suggests otherwise. Voter information and voter education are explicitly provided for in two sections of HAVA, and I asked that these sections of HAVA be provided to the Commissioners. First HAVA Section 301A-1(b)(i) allows states that use paper ballots to conduct voter education programs to meet the overvote protection requirement for voting systems. Next, HAVA Section 302 requires voters to be provided with information at the polling place sample ballots, the date of the election, polling place hours, instructions on how to vote including provisional voting rights, instructions for first-time voters who register by mail, voting rights information and the prohibition on acts of fraud or misrepresentation. The EAC interpretation seems to suggest that the cost of providing information at the polling place and only that cost is allowable, but not providing this information to the voters before they arrive at the polling place, is both a disservice to the voters and a guarantee of confusion at the polls on election day. Furthermore, in California there are an increasing number of vote

by mail or absentee voters who never go to the polls. On the February 5, 2008, Presidential primary election almost 42 percent of our voters cast a vote by mail ballot. A voter education program is necessary to reach those voters so that they also receive the benefits of HAVA. Finally, it seems clear from HAVA Section 304 that the requirement to provide information to voters by posting it at the polling place is a minimum requirement and that states using their discretion allowed under HAVA should be able to use HAVA money to go beyond that floor in order to fulfill the broader mandate of HAVA, which is to ensure that voters are fully informed of voting practices, procedures and rights. The “floor” providing posting of information at polling places shouldn’t be a ceiling because, as I mentioned, voters who know how to vote and understand their rights before they arrive at the polling place helps election officials administer HAVA, it helps the voters and it helps the voters, including the millions in California who cast vote by mail ballots, understand HAVA’s provisions.

The same concern applies to the EAC interpretation of pollworker training costs. HAVA Sections 254(a)(3) and 254(a)(6) requires states to explain in their state plans how they will conduct pollworker training and voter education programs, but the EAC interpretations seem to ignore the fact that these activities are a part of HAVA. Practically speaking, states ignore the need for pollworker training at their peril. The purpose of HAVA is to ensure uniform, nondiscriminatory processes for elections and the role of the pollworker under HAVA is critical. Pollworkers set up the voting equipment, including voting equipment accessible to voters with

disabilities, they post the voter information at the polling place, they provide assistance to voters on voting systems, the instructions on the use of the voting system and overvote protection, they ensure provisional voting rights are upheld including notification of the available free access system that voters use to check the status of their provisional ballots, they ensure appropriate application of voter identification requirements, which in California apply only to first-time voters who register by mail and are not assigned -- do not provide their drivers license number or partial Social Security number that is then verified, and those pollworkers need to be an integral part of protecting voter rights. I've included in the materials for Commissioners a few articles about the need for pollworker training and I've underlined the relevant sections of those articles to make them easier reading. Further, HAVA itself does not seem to overlook the role of pollworkers under the Title III requirements. HAVA's voting system definition Section 301(b)(2)(e) includes, "Practices to make available any materials to the voter, such as notices, instructions, forms or paper ballots." And as I've mentioned, HAVA Section 301(a)(1)(b)(i) allows states to conduct voter education programs to provide overvote protection under the voting system standards when paper ballots are used. Pollworkers are the ones who perform the "practices" necessary to fulfill these requirements.

So to conclude on this item, voter education and pollworker training are two examples where I believe the EAC guidance on allowable costs, guidance that restricts the state's ability to spend HAVA funds for these necessary programs is not necessarily

consistent with HAVA or the realities of implementing HAVA reforms and why it is California's hope that the EAC's interpretations will be reconsidered.

The next major issue that I hope the EAC will reconsider is the guidance provided on the maintenance of effort, or MOE, a requirement under HAVA. I've provided to the EAC a copy of the letter sent by California to the EAC seeking clarification on this requirement, but I just want to emphasize a couple of points. California is doing its best to comply with the EAC guidance, but that guidance was issued, as was mentioned, in 2007. Nearly two years after the January 1, 2006, deadline to comply with all of HAVA's provisions. The EAC is therefore requesting cost data from a base year that is eight years past. This raises two problems. Accounting standards in California call for fiscal records to be maintained for five years. Therefore, the most precise cost data is no longer available, and according to a majority of California's 58 counties the cost data was never broken down or accounted for in the manner that EAC now would like to see it reported. Furthermore, a strict reading of HAVA also raises the question about what cost data to include in an MOE and whether the EAC is asking for too much.

Chris Thomas mentioned the fact that the section I'm about to read prominently features reference to the state, but I'd like to focus on another part of HAVA which he did touch upon and that is how the state in using the requirements payment will maintain the expenditures of the state for activities funded by the payment at a level that is not less than the level of such expenditures by the state

for the fiscal year prior to November 2000. HAVA Title II funding has provided for a specific type of voting system. The EAC is now asking for expenditure data for voting equipment that could not be expected to meet HAVA requirements because it was purchased before HAVA was enacted. It seems counterintuitive to include any voting system equipment purchased in the base year when HAVA voting standards in Section 301 did not exist during the base year. In other words, it isn't clear that buying a voting system that doesn't meet HAVA standards and requirements is an activity funded by the payment. Furthermore, EAC guidance requires counties to include a one-time capital expenditure on a voting system as an expenditure that must be maintained by states. That doesn't appear to be wise from a policy or a fiscal standpoint because it suggests that a multi-billion dollar one-time expenditure needs to be made every year to replace voting systems to maintain the required level of funding when that expenditure is clearly unnecessary.

Similarly, HAVA Title II funding has provided for developing and operating a statewide voter registration database. The EAC requires states to report past expenditures to maintain the voter roles at their local level. It is unclear, why or how, what states spent to maintain voter roles on a system that didn't meet nonexistent HAVA requirements such as the requirement to verify drivers license numbers or partial Social Security numbers is relevant to the costs states now incur to comply with HAVA's database requirements. These requirements did not exist before HAVA. So is the cost of maintaining voter roles at the local level under significantly different business processes that existed before

HAVA an activity funded by the payment? Also, is it reasonable to include expenditures that must be maintained by states and counties costs that are no longer applicable because, as I mentioned, the business processes have changed because of HAVA requirements? In particular when a state consolidates voter registration activities under a single statewide database, the cost for maintenance activities may go down because economies of scale are realized and because the activities are performed now by the state instead of being performed, in California's case, by 58 counties. It should be recognized that this will result in some savings and that costs cannot and should not be expected to be maintained. There are other points and questions raised in California's letter to the EAC on the MOE requirement that I'm not going to address here, but I hope you have a chance to review that letter.

The last issue that I wanted to address is the confusion that seems to exist among the states about the nature of the state plan. Specifically, whether the state plans are approved by the EAC or whether -- and also whether the state plans are guiding documents from which states' activities can diverge as long as the spending itself complies with HAVA. In its instructions for applying for fiscal year 2008 requirements payment, the EAC states, "Should the Commission have any concern that a particular state which has submitted a certification statement to the EAC has not met one of the required conditions, the EAC will immediately contact that particular state and/or communicate its concern in writing." This statement, although related to the certification submitted by the

state after the state plan has been published, leaves the impression that the EAC is reviewing and approving state plans because development and submission of the state plan is the major required condition on the certification. Furthermore, the introduction to the EAC's FAQs at page two, paragraph three, last sentence includes the following: "Any material change in the use of 251 funds and Section 101 funds as specified above from the approved state plan will require the state to revise its plans and submit for revisions to the EAC for publication and approval." There is nothing in HAVA requiring state plans to be approved by the EAC, a fact that's acknowledged by the EAC staff. The state plan is a planning tool for states and many states, including California, have found that plans, budgets in particular, which were characterized as state's best estimates which, by the way is the specific language in HAVA the state's best estimates, could not be followed precisely as laid out. However, despite the fact that the state plan is a planning tool that is not approved by the EAC, EAC staff made it clear in 2007 that auditors will use the state plan as a touchstone document in conducting an audit. EAC's reporting and managing HAVA funds overview found on its website states at slide 16 there are "state plan restrictions on the use of Section 251 funds," the Title II funds used to meet Title III requirements. And at slide number 18 the states should "only use HAVA funds to pay costs that comply with the state plan." And finally, at slide number 26, that states should not "use HAVA funds in a manner not anticipated by the state plan submitted to the EAC." This raises the question of how and why the EAC now appears to be considering the state plan a controlling

document that states cannot diverge from without pre-approval from the EAC. This approach by the EAC appears to be contrary to HAVA Section 254(c) which provides “no action may be brought under this Act against a state or other jurisdiction on the basis of any information contained in the state plan filed under this part.” There is an exception to this general protection that’s provided in the case of criminal acts or omissions committed by a state or local jurisdiction, but that very broad language does exist in HAVA. Therefore, it would be helpful for the EAC to clarify and for the states to understand, one; that the EAC does not approve state plans. Two; what the EAC intends when it says in its guidance to states on applying for new HAVA funding that the EAC will review the state certification and what concerns might be raised by the EAC because this will presumably delay the allocation of funding. Three; are there circumstances where states that diverge from a state plan but are still in compliance with HAVA will be at risk somehow? And in particular, what would the EAC do in a case where for example the state plan proposes to spend funding but the MOE guidance issued suggests that the funding in that area or the allocability standard should be restricted so that a state would be forced to forego achieving HAVA compliance because it did not have the state or local resources to meet the MOE?

With that, thank you very much for allowing me to make this presentation today. And I’m available for any questions.

CHAIR RODRIGUEZ:

Thank you very much. Gosh, you gave us a lot to chew on.

Commissioner Davidson I think had a question early on. Are you ready now or should I go to the others?

COMMISSIONER DAVIDSON:

No, I think I'm ready and I'll see if I can form this in a question that makes sense and if I'm not please, you know, tell me.

In cases -- this is really with -- part of it in the MOE, the maintenance of effort area, but if you as a state used your county or municipalities as part of your five percent grant match up front, do you think that ties you in any different way with how we should be considering the maintenance of effort?

MR. REYNOLDS:

California didn't do that, so I'm going to defer.

COMMISSIONER DAVIDSON:

Well maybe none of you did it, but I just wondered if you could think about -- there's a lot of states that did use money from their counties, whether it's a county or municipality, their local election officials. Does that affect it in any way? And it may -- I just was wondering how you would view that.

MR. REYNOLDS:

Based on the EAC guidance that's been provided, there would absolutely be an impact. The suggestion from the EAC guidance that I've seen thus far suggests that, and if Counsel or the Executive Director would like to answer if I misspeak somehow, but what it suggests to me is the five percent and the MOE need to be considered mutually exclusively. So, therefore, you would need to make sure that any money that you counted as your match the

counties would have to make some additional expenditure to maintain that MOE.

COMMISSIONER DAVIDSON:

I understand that's what we have said. I just wanted to know how you felt about in reading HAVA and reading -- and putting your presentation together if you conclude the same thing or do you have a different opinion than what we have? I mean we've been hearing difference of opinions, so I was just throwing this one out.

MR. REYNOLDS:

Well when it comes to the MOE, again as Chris mentioned and maybe he'll reiterate this point, there's a reference to expenditures by the state. So that may be one way that the two items are not -- should not be connected because the guidance that we've been given so far suggests that we need to go down to the county level. And Chris mentioned that in Michigan he would probably spend hundreds of hours trying to contact his -- I have 58 counties that I need to speak with and I am spending hundreds of hours trying to gather the data. So I'll bear that part out.

COMMISSIONER DAVIDSON:

But I guess Chris, and your answering it also, is -- I think that if the state -- some states did involve their counties, then do we need to worry about that involvement with their local entity?

MR. THOMAS:

I wouldn't think so. I mean it seems to me that if they contributed to the state's match, you know, that's fine. The state reached its match minimum and qualify. I wouldn't see that adding to any MOE because MOE had to curve back in 2000. So we didn't do that.

We didn't ask the locals for any money. So I wouldn't see that as --
I see both of those as...

COMMISSIONER DAVIDSON:

Separate items?

MR. THOMAS:

Yes, they seem separate to me. It strikes me as that that's how the states -- and that comes back to allocation. In other words, there's MOE and there's match. And there's a lot of Federal programs where the match is 20 percent, you know. Just not here and that's just what I think everybody ought to live with.

MR. REYNOLDS:

There is one other inherent difficulty in applying the MOE requirement down to the county level, at least in California. The reference to the state expenditures makes sense from a state perspective because we budget and we can work with the state legislature and so on and so forth, but our 58 counties are autonomous. We have no ability to control their budget and I suppose we could say, "Well, you know, you're particularly falling on hard times and, you know, you can't do that with your elections budget because." I don't know how far that would go.

CHAIR RODRIGUEZ:

Thank you. Commissioner Hunter?

VICE-CHAIR HUNTER:

Thank you very much to all four of you for joining us and I think we all agree this was a very, very useful forum and I hope we can do it again.

But just a couple of specific comments. One on the allocable issue. I've spent the past, you know, month or two studying all of this OMB Circular stuff and I have to say I'd never even hear of an OMB Circular until I came to the good old EAC, but now I've had my fair share of reading different OMB documents, GAO documents, talking to OMB's Associate General Counsel ad nauseam on this and I've learned a lot, and I think the main thing I just want to point out is a little quote from the statement that I put out today. "While Circular A-87 provides uniformity among Federal agencies, agencies may provide 'agency specific additions, exceptions or clarifications.'" And I think I've just sort of finally figured out that although the Circular is clear that if something is not for a Federal purpose that states need to allocate back that non-Federal purpose, the OMB Circular does say that. But that doesn't mean that that's the end of the story. The EAC is not authorized to change the Circular. We're not -- we don't have that discretion. However, we can provide this, you know, what I just read, "additions, exceptions or clarifications." And in English I call that sort of our gloss on the Circular. And I think that we need to be much more diligent in doing that, going back and looking at the statutory framework of HAVA. And that's what the GAO letter instructed us to do, that's what all of my research has instructed us to do, and I think it would be helpful to all of us if we said, "Look at this from what did Congress mean? Did Congress really mean to say that if you go out and buy a piece of voting equipment and use it partially for a state race or exclusively for a local race does that mean you have to pay the feds back?" And I can't find anyone that

would say "yes." And I think that's equally applicable to a situation where HAVA required a state to purchase machines in order to comply with specific requirements of HAVA. So to me it's perfectly reasonable that a state would use that equipment to do not only non-Federal purposes but non-election related purposes.

I have to admit I hadn't thought about the improvement of elections aspect of it and I'm glad you brought that up and I want to think more about it because I think that does open up a huge can of worms and I'm not -- I'm not prepared to opine on that. But I think that it's a very good point and I'm glad you brought it up.

Regarding the maintenance of effort issue, we did vote on that Circular in a public meeting and I have to tell you I regret voting for it. And I was not aware of any of these issues until Chris Thomas mentioned them at a NASS meeting in February. So I appreciate hearing about the concern and I appreciate that the language of HAVA specifically says "state." And so I don't think the EAC has the authority to add in the county whether the EAC thinks it makes policy sense or not, and so I plan to move to amend the Circular in the near future. Thank you.

CHAIR RODRIGUEZ:

Thank you Commissioner Hunter. Commissioner Hillman?

COMMISSIONER HILLMAN:

I just want to say thank you to the panelists. I mean you've given us a lot to think about and hopefully as we move down the road to revisit and formulate our policies we'll be able to have discussions in which there's some actual document on the table that we can respond to. Thank you.

COMMISSIONER DAVIDSON:

And I would be remiss if I didn't say thank you for coming and bringing these things to our attention. You know, in open communication, and we all, whether it's our locals or states or Federal level, we're all in the same game with HAVA and have to make sure that it works. So we do appreciate you being here and bringing these issues to the forefront.

CHAIR RODRIGUEZ:

Ditto for me. Thank you very much. Mr. Reynolds, do you have a handout for us?

COMMISSIONER DAVIDSON:

I think it's in our -- isn't it in our book? It's in our book.

EXECUTIVE DIRECTOR WILKEY:

Yes, that's all in your book.

COMMISSIONER DAVIDSON:

It's in our briefing book.

MR. REYNOLDS:

What I didn't do though, is, I didn't provide you with a copy of the testimony because I was still writing it at the last minute. So -- and I even made some amendments to it as I was waiting here today. So, if you'd like, what I could do is, go back to the office, make those little edits and then get it on to you because all you have from me is a bunch of citations either to HAVA or back to the EAC guidance that has been issued and is available on your website. And I've also provided you a copy of our letter on the maintenance of effort, so that may be helpful to you, and then the list of articles

about pollworker training and how important that is. Some of it's kind of colorful reading, so it might be fun to look at that.

COMMISSIONER HILLMAN:

Well in particular you referred to some possible contradictions in our frequently asked questions and what you said HAVA is providing for. And so if your testimony specifies that, it would be very helpful to be able to trace that.

MR. REYNOLDS:

Yes. And certainly that's my perspective or the perspective of the State of California and I think some other states, but -- so thank you.

CHAIR RODRIGUEZ:

I guess I would invite everybody to submit any supplemental, including Ms. Nighswonger, submit anything additional. Commissioner Hunter and then Mr. Thomas.

VICE-CHAIR HUNTER:

I'd like to propose to the Chair that we might convene some kind of public open conversation on the specific topic of state plans, because I think Chris brings up a really good -- Mr. Reynolds brings up a really good point that there's a lot of confusion out there and the EAC, we haven't submitted much of any guidance with respect to state plans, and I think it would be very useful if we could have a conversation about state plans in particular.

CHAIR RODRIGUEZ:

Mr. Thomas?

COMMISSIONER HILLMAN:

I will just say for the record, that from the beginning when we talked about, what is EAC's authority, if you will, and responsibility with respect to state plans, when you look at HAVA, it says state plans must say this, this and this and it refers to specific sections of HAVA and specific laws, and we accepted our responsibility to make sure that the state plan did in fact do that. Not how it said it was going to do it, but in fact the state plan addressed all the sections of HAVA that were required to be addressed and have a budget as it was supposed to and had been posted for 30 days and that kind of thing. So far that is all that EAC had adopted as a matter of policy and procedures that we were going to do with respect to state plans.

CHAIR RODRIGUEZ:

Mr. Thomas?

MR. THOMAS:

Yes, and I appreciate your advisory that came out on MOE in terms of something that you all were voting on. And I'm assuming that your FAQs really are just responses by staff more or less to questions and they do not necessarily reflect the opinion of the Commission. And I guess what we will raise is probably the request that you look at some of those in regard to formulating either policy or advisories, whatever your mechanism is for doing that.

CHAIR RODRIGUEZ:

Very good. Anything else? Ms. Arp you said that you hoped that the states aren't viewed through the lens of what they should have been doing in 2000 post-HAVA, and we had an oversight hearing a

few weeks ago where we were viewed through that lens at the meeting as an organization.

COMMISSIONER HILLMAN:

I was going to say you're being very generous and kind about not being held to the 2000 or prior.

CHAIR RODRIGUEZ:

Thank you again. And I just want to say thank you to Denver. I think they treated us pretty well out here and it was a good rest especially from our last oversight hearing. So, thank you Denver.

Mr. Wilkey, do you need to add anything?

EXECUTIVE DIRECTOR WILKEY:

Just let me thank my former colleagues for being here. I appreciated the dialogue and I think that not just the Commissioners appreciated the dialogue but we did also. And we need to keep this. We certainly realize that issues will come up that we need to relook at and we need your input because you're out there and no one understands that more than I, that we need to continue to look at that. So we appreciate you being here and we'll see you all later.

CHAIR RODRIGUEZ:

Commissioner Hunter?

VICE-CHAIR HUNTER:

One last thing. I have to say thank you to Chair Rodriguez. I am very impressed. She had the Governor, the Mayor...

EXECUTIVE DIRECTOR WILKEY:

Yes.

VICE-CHAIR HUNTER:

...and the Secretary of State. God knows who else she had at her reception. I'm very impressed and thank you for your hospitality.

CHAIR RODRIGUEZ:

Sure. Madam General Counsel do you have anything to add?

COUNSEL HODGKINS:

No, ma'am.

CHAIR RODRIGUEZ:

Curtis you're raising your hand.

MR. CRIDER:

I just want to make sure that representatives of NASED understand something that I said. EAC Commissioners do not control the audit resources. Under the Inspector General Act of 1978, I am the one that controls the audit resources. I determine who's to be audited. What level all efforts are being expended. But we want to work with you in terms of improvements we can make to the audit process. If we need to do more education and training, we're more than willing to do that. But, like I said, I'm the one that controls the audit resources.

And if you have audit issues or audit questions, they should come to me. We appreciate the input from the Commissioners and we talk to them about audit issues and stuff. Like I said, we want to work with you in terms of improving this process and making it work better for all of us.

CHAIR RODRIGUEZ:

Very good. Thank you. We are adjourned.

COMMISSIONER HILLMAN:

So moved and seconded.

CHAIR RODRIGUEZ:

Oh, yes, that was unilateral wasn't it?

COMMISSIONER HILLMAN:

It sure was.

[Whereupon, the meeting of the EAC concluded at 2:06 p.m.]