

Minutes of the Public Meeting

United States Election Assistance Commission

Millennium Hotel Minneapolis
Horizons, 14th Floor
1313 Nicollet Mall

Minneapolis, MN 55403-2697

Held on Wednesday, April 16, 2008

VERBATIM TRANSCRIPT

The following is the Verbatim Transcript of the Public Meeting of the United States Election Assistance Commission (“EAC”) held on Wednesday, April 16, 2008. The meeting convened at 1:00 p.m., CDT. The meeting was adjourned at 5:29 p.m., CDT.

PUBLIC MEETING

CHAIR RODRIGUEZ:

Welcome to the April 16, 2008, meeting of the United States Election Assistance Commission. We’re delighted to be in Minneapolis today. Today also is the first time that the EAC will be webcast. Until we properly put it in our budget, it will be delayed by two days, but hopefully next year it will be in real time and we’re quite pleased about that today.

Please join me in the Pledge of Allegiance.

[Whereupon, Chairwoman Rosemary Rodriguez led all present in the recitation of the Pledge of Allegiance.]

CHAIR RODRIGUEZ:

Thank you. I expect Secretary Mark Ritchie, the Secretary of State here in Minnesota to join us, and at whatever point he walks in the door we’re going to allow him to address the Commission.

Roll call, Madam General Counsel.

COUNSEL HODGKINS:

Thank you, Madam Chair. Members if you will 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:

Donetta Davidson, Commissioner.

COMMISSIONER DAVIDSON:

Here.

COUNSEL HODGKINS:

Gracia Hillman, Commissioner.

COMMISSIONER HILLMAN:

Here.

COUNSEL HODGKINS:

Madam Chair, there are four members present and a quorum.

CHAIR RODRIGUEZ:

Thank you very much. Before we adopt the agenda I want to inform you that all of the presentations that we expect to receive today are already posted on the eac.gov website, and again in the

future you'll be able to follow along. May I have a motion to adopt the agenda?

VICE-CHAIR HUNTER:

So moved. But I'd like to request, without objection, a change to the agenda Madam Chair.

CHAIR RODRIGUEZ:

Is there a second? How do you want to change it?

VICE-CHAIR HUNTER:

I would like to reverse the order on Old Business, reverse the order of the vote on the maintenance of effort issue with the vote on the policy regarding HAVA funds, please.

CHAIR RODRIGUEZ:

Are there any objections? Is there a second to the motion to adopt the agenda as amended?

COMMISSIONER DAVIDSON:

I second it.

CHAIR RODRIGUEZ:

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

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Okay. All right, then I will turn now to the correction and approval of minutes from the March 20th meeting. Is there a motion to approve the minutes?

VICE-CHAIR HUNTER:

So moved.

COMMISSIONER DAVIDSON:

I second it.

CHAIR RODRIGUEZ:

It's been moved and seconded to approve the minutes of March 20th. And I do want to say that they were quite in really good shape when we got the first draft, so I appreciate that. All those in favor of approving the minutes indicate...

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Okay. Mr. Wilkey, may we have the Executive Director's report?

EXECUTIVE DIRECTOR WILKEY:

Thank you, Madam Chair. We want to extend a welcome to everyone who is attending today. This is already becoming a very busy election year, and let me share some of our activities as we -- since we last met in March.

In preparing for the November election, we are rolling out several resources for election officials and voter advocates in preparation for the election. This month we published two new Quick Start Management guides, "Developing an Audit Trail" and "Serving Uniformed and Overseas Voters." This summer we'll issue nine chapters in our Election Management Guidelines series

on topics from ballot building and contingency planning to developing an audit trail and serving uniformed and overseas voters.

Most public meetings leading up to Election Day will include some workshops featuring experts on key election topics similar to what we are doing today. All will be webcast and available on our website for anyone to view.

In May we will release five Asian language election technology glossaries and we'll unveil Asian language content for voters on our website.

Under EAC grants we are now accepting applications for our election data collection grants. We have received nine intentions to apply thus far for the five \$2 million grants that will be issued to five States. The deadline to apply is April 28th. We are still accepting applications for our college poll worker and mock election grants, and that deadline was extended to April 21st. We hope that anyone that's interested will see our website for information and application instructions for all of these grants.

Under research, our UOCAVA survey and State-case studies are now posted on website. Our voter hotline study is being edited by GPO and will be posted on our site by the end of April. An unedited draft of the free or reduced postage for the return of voted absentee ballot study is available on our website. Visit our

“Research in Progress” page at www.eac.gov to learn of additional activities on our research.

EAC’s 2008 Election Day survey comment period ends May 19th and we urge those who are interested in that project to visit our website to comment on that document.

Under Voting System Testing and Certification, we’ve been holding a very successful series of roundtables this spring, to solicit feedback from various stakeholder groups on the TGDC recommended guidelines. We recently held a usability and accessibility roundtable discussion on March 27th and next week we will hold a roundtable for voter advocates and election officials on April 24th and 25th respectively. The comment period for the TGDC has been extended to May 5th to ensure all stakeholders have time to contribute, and we hope that anyone in the audience will avail themselves of the opportunity to do so.

Website events and updates. We have posted Ohio’s EVEREST report, a review of Ohio’s Voting System Commission by Secretary of State Jennifer Brunner.

Two new certification test plans prepared by Sys Test were posted on our website. New test plans are added regularly, so check back for updates on a weekly basis.

A virtual meeting of the Standards Board and Board of Advisors to comment on draft Election Management Guideline chapters will be held from April 21st to April 25th.

All of these documents and all kinds of information are available on our website eac.gov, and we again, urge anyone who is interested, listening in or in the audience to view our website as frequently as they can.

Madam Chair, that is my report for the month of April.

CHAIR RODRIGUEZ:

Thank you Mr. Wilkey. Are there any questions for Mr. Wilkey?

COMMISSIONER HILLMAN:

I do. I have two questions.

CHAIR RODRIGUEZ:

Commissioner Hillman.

COMMISSIONER HILLMAN:

On the grants for the Election Day Survey data...

EXECUTIVE DIRECTOR WILKEY:

Uh-huh.

COMMISSIONER HILLMAN:

...of the five States, what kind, if any, feedback, are we getting as to why more States aren't considering applying. I mean, even if this number went up to 15, that would still be a relatively low number considering there were 50 available -- or 55.

EXECUTIVE DIRECTOR WILKEY:

I know that we've been tracking the questions that have been asked of us which would give us an indication,...

COMMISSIONER HILLMAN:

Uh-huh.

EXECUTIVE DIRECTOR WILKEY:

...and I can ask Karen Lynn-Dyson, our Research Director, she's been viewing those, if she's getting any kind of feedback that would lead to...

MS. LYNN-DYSON:

To explain the why, I believe Commissioner Hillman, it would be fair to say that people think it's just a tremendous effort, it will entail a tremendous effort within a very short timeframe. The questions that we are getting are primarily of a technical nature for those folks who are applying. It would be fair to characterize many of those questions relating to how the \$2 million might be spent and timeframes and line item costs associated with that. But the whys and wherefores of why we haven't had 25 or 30 apply, if I had to guess, I would say it's just a very, very short timeframe.

EXECUTIVE DIRECTOR WILKEY:

And to add, Commissioner, I know previously, when we introduced the grant program, I had a conversation with a couple of smaller States who indicated that, you know, they would have applied or

would be thinking of applying, but they probably wouldn't need anywhere near the full \$2 million to do what they wanted to do, but because of the way the statute was written, there was no way to determine what would happen if they didn't use all that money, and we would hate for that to happen also. But those are the only comments that I've received with the States that I've talked with.

COMMISSIONER HILLMAN:

Well, I think it's worth noting for the record that the Election Assistance Commission didn't have any opportunity to change any of the guidelines. The guidelines were imposed in the appropriation, that it was a \$10 million pilot program, \$2 million grants, that means five States. So, if a State thought I could do a bang-up job with 750,000, but I don't want to commit myself to 2 million, we have no authority to be able to change that in any way, which is too bad. But...

EXECUTIVE DIRECTOR WILKEY:

Yes, that was the point that they were trying to make.

COMMISSIONER DAVIDSON:

Can I ask a follow-up on that?

CHAIR RODRIGUEZ:

I'd like to add something to that, and I think Commissioner Hillman had two questions. But, I understand that a couple of States have asked if they could apply for the funds together in some sort of

collaboration, and my understanding is that the contractor thought that that would be acceptable. So there are -- they're getting creative out there.

COMMISSIONER HILLMAN:

Is that -- no?

MS. LYNN-DYSON:

No, that's not my understanding of it but...

CHAIR RODRIGUEZ:

Okay. I don't want to give out false information, but...

MS. LYNN-DYSON:

It's my understanding that the way the statute is written, the expectation is that States will apply. There was -- and I was under the impression that that interest may have related to some of the interoperability issues. Also, some States have asked some questions about whether or not an entire State would be required to participate in the grant program, and it's my understanding and my reading of the Act that that would not necessarily be required. That is, a State would have to apply for the grant, but they could elect to only have certain municipalities, certain jurisdictions participate in the grant program and that that would be permissible.

CHAIR RODRIGUEZ:

But we are contemplating, probably going to, today, call for a special meeting in two weeks, Maybe we could have a point in time report.

MS. LYNN-DYSON:

Surely, absolutely.

CHAIR RODRIGUEZ:

That would be great. Commissioner?

COMMISSIONER HILLMAN:

Well, and I also think it would be good to correct whether or not it is permissible for two States to apply for one grant.

CHAIR RODRIGUEZ:

Yes.

COMMISSIONER HILLMAN:

I mean it doesn't -- my reading of the statute would say, no, that the statute did not envision that and we wouldn't want to give out, you're right,...

CHAIR RODRIGUEZ:

Bad information.

COMMISSIONER HILLMAN:

...misinformation, one way or the other.

MS. LYNN-DYSON:

Uh-huh.

COMMISSIONER HILLMAN:

So it might be worth clarifying that, even if we have to post

MS. LYNN-DYSON:

Yes. Yes.

COMMISSIONER HILLMAN:

...that on our website so people will know.

MS. LYNN-DYSON:

Yes. And just so the public knows and to reiterate, we are posting the questions to the grantees who are asking a very good variety of questions. They are posted on our website and on lcg.net's website, who is our grants administrator.

CHAIR RODRIGUEZ:

Okay. Commissioner Davidson has a follow-up and then I think you have a second question.

COMMISSIONER HILLMAN:

Correct.

COMMISSIONER DAVIDSON:

My follow-up is, that maybe at that time you can also address it, but I think the States need to know right away, with the small States thinking that they have to spend \$2 million, I don't see that there's anything in there that they have to spend that much. They are paid...

MS. LYNN-DYSON:

That's correct.

COMMISSIONER DAVIDSON:

...as they go through that process and, you know, we don't give them the full amount up front.

MS. LYNN-DYSON:

Absolutely, right.

COMMISSIONER DAVIDSON:

So, I would think that that would not be a requirement, but would you also look at that and put that out on the web right away?

MS. LYNN-DYSON:

No, that is -- and that's been along the lines, Commissioner Davidson, of the inquiries that we have gotten in terms of expenditures in 2008 only for the \$2 million? The answer to that is no, the entire \$2 million does not have to be spent within fiscal year 2008. However, because of our requirements by law we must report to Congress by June 2009, the results of the grant program and the efforts undertaken by the States to collect the 2008 Election Day survey data. So, that while the entire amount would not have to be spent, States will be required to report on the data, really no later than the 1st of March of 2009.

COMMISSIONER HILLMAN:

Well, and I have a follow-up question. Do States have to apply for the 2 million? Or can they apply for an amount less than 2 million?

MS. LYNN-DYSON:

I would defer to Counsel on that. My understanding of it would be that they do have to apply for \$2 million.

COUNSEL HODGKINS:

Madam Commissioner, I don't have the statute in front of me but my recollection of that statute is that it provides for five grants of \$2 million each...

COMMISSIONER HILLMAN:

\$2 million each, that's what I thought. Right, so even if they...

COUNSEL HODGKINS:

...which would limit the amount of the grant.

COMMISSIONER HILLMAN:

Even if they didn't have to spend it, they have to apply for it. So, okay.

MS. LYNN-DYSON:

Thank you.

CHAIR RODRIGUEZ:

Commissioner Hillman you had a second question?

COMMISSIONER HILLMAN:

I did. Going to the issue of the voter hotline study, it's my understanding that when that is final edited it's going to be brought back to the Commissioners for a final vote. Or is that a misunderstanding?

MS. LYNN-DYSON:

The understanding was that it would -- it was not going to be brought back, but certainly if you would like it to be brought back, because, what is taking place right now is merely a line edit of the document. It is just merely being edited to GPO style, grammar, syntax, punctuation. And that's all that's being -- the substance of the document is not being changed in any way. If you would like me to bring...

COMMISSIONER HILLMAN:

No, I'll just -- no, I'm not asking for it to come back.

MS. LYNN-DYSON:

Okay.

COMMISSIONER HILLMAN:

I'm just...

MS. LYNN-DYSON:

Clarifying.

COMMISSIONER HILLMAN:

It was my recollection...

MS. LYNN-DYSON:

Uh-huh.

COMMISSIONER HILLMAN:

...that we took action on the draft and that once it was finalized it was going to be adopted, but I'll defer right now until we can check the record.

MS. LYNN-DYSON:

Okay. Okay.

CHAIR RODRIGUEZ:

Any more questions for Mr. Wilkey? Thank you then. Going back to the Old Business agenda items, we will consider first the vote -- or the policy regarding the use of HAVA funds.

COMMISSIONER HILLMAN:

Madam Chair, I'm sorry, I just found it in the minutes here. We accepted the report. And so, what does that mean versus our voting to adopt the report?

CHAIR RODRIGUEZ:

Madam General Counsel.

COUNSEL HODGKINS:

My understanding of what the motion was at the last meeting, was that you were accepting the product of the contractor as complete.

COMMISSIONER HILLMAN:

Okay.

COUNSEL HODGKINS:

If you intend to issue the report as your report, well then, I believe that would be a different action on the part of the Commission which certainly the Commission can take.

COMMISSIONER HILLMAN:

All right. And unfortunately, what it says in the minutes further, is that the recommendation, “she”, meaning Ms. Lynn-Dyson, would come before the Commission at its April meeting with a recommendation that the finally developed edited report be adopted. So, we do have a second action to take on that report before it’s released. And that’s on the minutes on page six and seven. The bottom of six,, the top of page seven.

CHAIR RODRIGUEZ:

But it’s not ready yet?

MS. LYNN-DYSON:

No. GPO has indicated to us that the document will be ready on or about April 24th.

CHAIR RODRIGUEZ:

So we’ll put it on the agenda...

EXECUTIVE DIRECTOR WILKEY:

For the next meeting.

CHAIR RODRIGUEZ:

... for May.

COMMISSIONER HILLMAN:

Thank you.

CHAIR RODRIGUEZ:

Thank you. Okay, now Commissioner Hunter, to the Policy Regarding the Use of HAVA Funds.

VICE-CHAIR HUNTER:

Thank you, Madam Chair. Would it be appropriate to move for adoption at this time?

CHAIR RODRIGUEZ:

And then we can discuss it.

VICE-CHAIR HUNTER:

Okay, then I move to adopt the policy that I've proposed regarding the use of HAVA funds. Versions of the policy are out at the front desk here and it has been posted on the EAC website since March 20th and then it's been reposted again, soliciting comments last week.

CHAIR RODRIGUEZ:

Is there a second?

COMMISSIONER DAVIDSON:

I second it.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt the policy proposed by Vice-Chair Hunter regarding the use of HAVA funds.
Commissioner Hunter.

VICE-CHAIR HUNTER:

Thank you, Chair Rodriguez. As most of you know, most of the EAC actions are voluntary. The VVSG is the Voluntary Voting System Guidelines. The EAC can issue interpretation of the Help

America Vote Act, but that interpretation is also voluntary on the States. And as we also know, we have no regulatory authority, except in one narrow circumstance related to the Federal postcard application form for -- under the National Voter Registration Act. So most of what we do is voluntary. However, our decisions regarding the use of HAVA funding are not voluntary and States are essentially required to abide by them. So in my mind they're as important or more important with respect to the responsibilities of the States than any other decision the EAC makes, any other report we adopt, any other VVSG we adopt, or any of that because it is essentially required on the part of the States to follow it. Therefore, it's important to me, and I think to the rest of the Commissioners, to have a process in which the public has an opportunity to participate in the drafting of the guidance that's sent to the States and that the Commissioners are involved in this important decision-making process. I notice in the audience today we have several State election directors and I thank you for your interest and in coming to the meeting and many of you have submitted comments to this policy, that as I mentioned was posted originally on March 20th and then again last week for further solicitation of comments.

Specifically, there were nine comments from various States in support of this policy -- or I should say eight comments in support of this policy and one State commented that they liked the concept

of it and they would leave the details up to the EAC. And one group of, I think it's properly called, election advocates, did say that they weren't sure that it was the best way of proceeding and they had some questions.

But the proposal that I put forward today to my fellow Commissioners, is my try at trying to further involve Commissioners in these important decision-making processes and involving the public. And the procedure is modeled in large part by FEC regulations and FEC practice. I thought that was a relevant place to look for this sort of policy because, obviously, they are a Commission, they deal with questions from the public and other interested parties and so I thought that was the appropriate place to look.

The policy has been revised somewhat after we've received public comments and I'll just highlight a few of those for those of you who may not have the marked up version. But this version, the red-line version, is the one that we will be voting on today.

One thing is, I tried to make it clearer that, let's see, upon a division of the EAC -- upon their determination that a request is valid, which shall be made within ten calendar days of receiving the request. So once a State or a county or a government official or anybody else authorized to ask a question of the EAC submits their proposal, the EAC has to make a decision within ten days as to

whether or not that question is an appropriate question. And then they'll have until the following business day to post that question on the EAC website. Then that question will be out there for public comment for ten calendar days. It is possible to extend the ten calendar day comment at the discretion of an EAC staffer or upon request, even without a request -- excuse me -- upon a vote of the Commissioners the comment period may also be extended.

One other point of clarification is to make it clear that on the part of a Federal or a State government official, the only people who are able to ask a request are those who are asking about their specific State. So for example, a State representative from Tennessee could not ask a question about what the State of Minnesota is doing. And then also, it makes it clear that the EAC's Inspector General may request an advisory opinion if he or she chooses to do so. In the original version of this, the Inspector General was required to go through this process, and then as a result of comments from the Inspector General and the EAC Counsel's office I removed that requirement.

And I believe that's -- one last thing is, that when a request qualifies for expedited review, the timeline was changed from 20 to 30 days to give the EAC a little bit more time. And we do have an email address established that, it is my understanding, is working at

this moment, so that people can either mail in their questions to the EAC or they can email them.

So that's the policy in summary, and I'm happy to take any questions, Madam Chair. Thank you.

CHAIR RODRIGUEZ:

Thank you, Vice-Chair Hunter. Further discussion on the motion and the draft policy? Commissioner Davidson.

COMMISSIONER DAVIDSON:

I have one question that I would like to ask Commissioner Hunter. Knowing that there's a lot of policies and really, questions that has been, frequently asked questions and that we already have out there, in reviewing that, how can we move that with what you've got here, expeditiously and get it really -- because obviously, we don't want to hold things up for States, and in reviewing what has been done by staff, how can you move that, pretty well, through the process?

VICE-CHAIR HUNTER:

This policy only addresses decisions that are made subsequent to the adoption of this policy. So, anything that's already out there from the EAC, whether it's a frequently asked question or an advisory opinion or something along those lines, stands unless it's overturned. But right now the policy only -- is only directed to decisions that are made after the adoption of the policy.

COMMISSIONER DAVIDSON:

Okay.

VICE-CHAIR HUNTER:

With respect to your point, you didn't specifically ask this, but I'll elaborate a little bit, with respect to your point about manuals and frequently asked questions, the purpose of this is really to allow States to ask questions and others, but to the extent that the EAC comes out with a new manual or frequently, a new body of frequently asked questions, those same kinds of documents must be run through this very policy and the EAC can extend the comment period for that, you know. If it's a substantial amount of information in there, we can extend the comment period if we'd like and receive comments from other people. And we do have 60 days to make a determination. So I think that's enough time to deal with those types of issues.

COMMISSIONER DAVIDSON:

Okay, thank you.

CHAIR RODRIGUEZ:

Commissioner Hillman?

COMMISSIONER HILLMAN:

Thank you. Thank you Commissioner Hunter for getting us thinking about this.

I have a couple of questions. And one is, the extent that we know how a State feels about our inviting a local jurisdiction to seek an advisory on funds that were dispersed to it by the State. That is, we don't disperse funds directly to a State and so, sometimes we're clear that our assistance with respect to HAVA funds is to the States, but in this policy it invites local jurisdictions to seek an advisory directly. And the thought that pops into my head is that, it may be contrary to some guidance the State has given it for internal reasons to that State that we can't know. So, I'm a little concerned about that and I'm wondering what we know about, if in any of the comments you received how States would feel about our giving an advisory directly to a local that could in fact run counter to what the State is trying to achieve.

VICE-CHAIR HUNTER:

I think that's a really good question and I did talk to a number of election officials about this matter, and surprisingly the State officials wanted to keep it to the State and some of the locals wanted to include the local jurisdictions. So, what I ended up doing is, including the local election officials, but it is clear in here that it's only if that local jurisdiction received or anticipates receiving HAVA funds. So...

COMMISSIONER HILLMAN:

Right, that's my point...

VICE-CHAIR HUNTER:

Right.

COMMISSIONER HILLMAN:

...but they would get the HAVA funds from the State.

VICE-CHAIR HUNTER:

Right. Yes, they would. Yes, they would get the HAVA funds from the State. And it also -- this does not answer your question, but let me just make one more point -- it also requires the EAC to notify the State election official if a county does submit a question. The purpose behind it is, in the event that the State is perhaps misreading some kind of Federal guidance, whether it's Help America Vote Act or an OMB Circular, and a county is concerned about the State's use of HAVA funds, in my view they should be able to ask a question. And the Election Assistance Commission, of course, is only able to rule on anything to the extent that it's relevant to Federal law or circulars or regs or anything like that. So our decisions will only be based on anything that is pursuant to Federal law, and to the extent that's contrary to what a State is doing, that could be problematic for the State. But I thought it was important that the counties have an opportunity to say, "Hey wait a minute. The State is not doing something appropriately or they're giving us guidance and they're blaming the Feds on it, but I don't think that's really the case." So I thought it gave the locals more

opportunity to be involved, because it is true in some States, as you know, that the States do pass the funds on to the locals and then they're responsible for spending those funds pursuant to the requirements of the Help America Vote Act.

COMMISSIONER HILLMAN:

And it would seem to me then, in that case, we certainly require audits of the State HAVA funds to go down to the local jurisdiction. If we're giving advice to a local jurisdiction about the appropriate expenditure under Federal law, then the only way we can know if they're doing that, is if the auditors "follow" the money to the local level.

VICE-CHAIR HUNTER:

This policy does not in any way get into the auditing process.

COMMISSIONER HILLMAN:

No I understand, I know it doesn't.

VICE-CHAIR HUNTER:

Right. And I'm not...

COMMISSIONER HILLMAN:

But I'm saying, if we're giving them advice, then it has to follow through because, how would we know if they're adhering?

VICE-CHAIR HUNTER:

I'm not willing to go -- this policy does not address that, so I don't think -- I'm not willing to agree to that general statement at this

point because I think we'll talk about the maintenance of effort issue in a minute, and my opinion is, that does not follow down to the counties. But anyway, I think your point is broader and it may be true that the auditors have some authority to look at the county expenditures, but this policy does not get into that.

COMMISSIONER HILLMAN:

I think my point, Madam Chair, is that there's a lot that we don't know. And it's a pretty comprehensive policy and it's one that has been sort of like a ball in a Ping-Pong machine, I think that's the correct name of the machine where you pull the lever back and hit the ball, because a number of people have had in the past two weeks to respond to it. And my concern is that this policy out of context with the broader set of policies that we have committed ourselves to undertake, may have unintended consequences where we would have to further go back and forth. And by that I mean, as we all know, we are in the process of issuing a request for quotes so that we can get additional assistance to help us work through a volume of policies, and for me this one sits somewhere in that scheme. And while I like where this is going, I have a number of questions. For example, if a State doesn't like the decision the Commission made, what is it's recourse? If it can't appeal to the Commission, because the Commission made the decision, then my question would be, what is it's recourse? And I don't know, I guess

I would ask the General Counsel, can a State -- what would the State do then, come back to the Commission and ask the Commission to reconsider its decision? Would that be the recourse? I don't know, I guess I'm asking, because I don't know what the recourse would be.

COUNSEL HODGKINS:

Well, it seems to me that potentially the State would have two different options of recourse. One would be, to essentially challenge the decision in court. Because the decision is being made by the Commission, there's no administrative appeal process by which there would be some means to challenge it prior to going to a issue of litigation. The other issue is that perhaps they could come back and ask the Commission to reconsider a new question that the State is proposing under this same policy.

COMMISSIONER HILLMAN:

And I guess my final wrap-up point would be -- well, two. One is that, I would hope the Commission would maintain its commitment to the process that we've started, with respect to how we're going to go about establishing a number of policies and procedures. And while I like where this one is going, my concern is that there are a lot of things that we have to take into consideration. And before I was in Federal government, I used to be intrigued by how long it took a Federal agency to issue policy. I now understand why. The

process we have to go through is very different than any other entity has to go through, because we really are setting a policy for the whole, and that is, we have to think through the implications throughout the 55 States and their many, many local jurisdictions. And then we have to think through the implications with respect to the interim procedures.

This is a little awkward because I'm talking to you, my Commissioners, but unfortunately I can't see you unless I turn sideways. And while I love the fact that the public is interested in our meeting, my comments really are to the Commission. I would encourage us to take more time on this, to follow it through, because I have, you know -- the questions that I have, cause me to hesitate on adopting this policy today, because I think there are some things we don't know the answers to and I don't think we should come back, you know, in a couple of months when we pass a policy and say, "Gee this doesn't work. Let's try again," particularly since the policy is so specific to execution. So, if we find out ten days isn't enough time for us to change it to 12 or 15, means the policy has to come back to the Commission for reconsideration, go through the public comment period. And I would also think that a longer public comment period is warranted, because I appreciate, Commissioner Hunter, that you've talked to a lot of election officials but I would wonder if those election officials

represented more than half the States. I really don't know, you know, what the majority of the State responses would be to the notion that we are, in this instance, signaling that we will give advisories directly to locals.

VICE-CHAIR HUNTER:

Can I?

CHAIR RODRIGUEZ:

Commissioner Hunter.

VICE-CHAIR HUNTER:

Thank you for your comments, Commissioner Hillman. Just a couple of responses. One of which is, to my knowledge, we don't have any policy right now on how to disperse HAVA funds and so to the extent that this is narrow, regarding the use of HAVA funds, that's why I started off my explanation saying that this is the one area where we do require States to act in a certain manner. And so, for me it's pretty much the most important area that we have to deal with. And also, in my view there's been substantial confusion regarding some very serious issues that have come before the Commission, have been decided at a staff level, the State did not choose to appeal that decision because, as I said, there's no formal process. So, we're just sort of grasping here, at straws. But in the event the State could have appealed, then maybe that would have brought it to the Commission at that point. But as it turned out, on

one of the important funding issues, Chair Rodriguez brought up a motion in the last meeting in Denver and it passed unanimously by the Commission, even though it was contrary to advice that the EAC staff put out. So that's just a perfect example, a very recent perfect example, of why I think it's important to have the public involved in this process and to have the Commissioners involved.

One last comment I wanted to make was regarding -- I lost my own train of thought...

COMMISSIONER HILLMAN:

While you're getting your train of thought, maybe I could ask another question, and that is, do you intend under this policy that the Commission should also be involved in decisions when it's clear there's already an existing policy that determines what the answer should be?

VICE-CHAIR HUNTER:

Yes.

COMMISSIONER HILLMAN:

And my other question would then go to the -- well, as an alternative, while we are giving this further review, what I would think we could do, is a recommendation I had made before, which is to use a two Commissioner subcommittee to handle the requests on a case-by-case basis. Even one of our most vocal State election directors had suggested he couldn't imagine that there

would be a lot of such questions coming to us, so that the burden on such a subcommittee wouldn't be overwhelming, while we just give this considered additional thought and the subcommittee could help inform what some of the pitfalls are in the existing policy, so that when we embrace it we've got all the input and we've got the kind of support for this that we will need.

VICE-CHAIR HUNTER:

I'll just make one last comment, which is, I'm always in favor of subcommittees as you know, but in this case I think it's high time that we move forward on a policy and I think it hopefully will fit in nicely with whatever broad policies the staff come up with, that we have been talking about doing at the EAC for a number of months. So I do hope that happens in the near future. And while I don't ever propose something that I think will be amended frequently, I hope all of us are open to amending a policy that's adopted when we find new and better ways of doing something. And I certainly would never oppose that kind of a motion.

CHAIR RODRIGUEZ:

Commissioner Hunter I have a question. Commissioner Hillman pointed out that the only recourse for someone who was unhappy with guidance or a policy, would be the courts. Is that the case at the FEC? Is there any appeal within the FEC to FEC decisions?

VICE-CHAIR HUNTER:

I'm not aware of any appeal within the FEC to FEC decisions, but I can't say that with -- I'm not a hundred percent certain of that, but I believe that to be the case.

One other point is, on regarding whether or not a State could appeal, I'm a little confused about that argument because I don't understand why you wouldn't want the first body -- you wouldn't want the first decision to involve the people who are the appeal. I mean, I don't know why you would want a State to have to go through various levels before they get to the Commission, when you could just give them a relatively definitive answer on the front end. So I'm not really sure I follow that line of reasoning.

COMMISSIONER HILLMAN:

Well, in the real world I don't think that everybody makes the right decision every time, so sooner or later we're going to make a decision and one of our State colleagues is not going to be happy with our decision.

VICE-CHAIR HUNTER:

And I agree with that. And to the extent that happens, a State can always resubmit a question and say, "There are additional facts that you perhaps didn't consider, there's a law that came up" or whatever. I mean that is absolutely true. There's going to be a time where we make a bad decision, and in my view we've done so recently, so we probably will need to revisit some things.

COMMISSIONER HILLMAN:

Does this policy say what that is? Does this policy say that that's what the recourse is that the EAC would make available?

VICE-CHAIR HUNTER:

It doesn't -- my opinion is, it doesn't need to. A State would just submit a question and say, you know, "The facts are such that you didn't properly consider it," or "Here's an additional fact you may not have known," or "The law in," whatever regard, "has changed," or "An OMB Circular was misinterpreted." I mean, I don't think we necessarily need to provide for that outcome.

COMMISSIONER HILLMAN:

I'm sorry Madam Chair, I landed in the middle of your question and I didn't mean to. Sorry.

CHAIR RODRIGUEZ:

A couple of things. I want to talk about what I like about this policy at the outset. One, we would know what's going on. One of the -- it's like having your slip showing. When you go out, you learn about something, you learn that some State has made an inquiry, and as a member of the Commission there's an expectation that you know what's going on. And I really, really have to confess that it's a very embarrassing moment when I go some place and I don't know what's going on. So what I like about this is the Commission

are being informed of the questions at the outset. I really appreciate that consideration from Commissioner Hunter.

The one question, and I have not asked her to amend this, but page three, the first full paragraph, second sentence reads, "Additionally, any Commissioner may write an advisory opinion" and that's what I had -- I did last month. And I did it because I didn't think I could go to the EAC staff and say, you know, "I'm thinking along these lines. Can we work on this together"? I think that's how the EAC should work. But I haven't yet figured out, and I've been here a year and you'd think I would have figured this out by now, but I haven't yet figured out how to work a process like that and that's why I really like the fact that Commissioner Hunter has proposed a process, so that we'll talk about things at the outset, or at the beginning I guess is the right word, the beginning. We'll -- there's an opportunity to work together, Commissioners and what I call the central staff, I don't know if that's the right word. I don't even know if I'm using the right vernacular, but I really like the idea of an opportunity for Commissioners and the broad staff to work together. And again, the fact that we're involved from the very beginning to me is a tremendous strength. So at first I was going to ask her to take that out, that sentence out, but I think that's an impetus for Commissioners and staff to work together, and so I have not asked her to remove that sentence.

There's a number of things I like. Most of them have been articulated by Commissioner Hunter.

We -- now the posting of this. Commissioner Hunter actually posted this on March 19th, the day before the meeting in Denver, and -- but we don't have a process by which we announce to you that something is posted and that we want comments. And we need to establish that, because right now we do these things ad hoc and so what I'm committed to personally work on, hopefully with the EAC staff, is a proposal for a policy, by which the Commission considers things. But in the absence of the policy, Commissioner Hunter posted it on March 19th. She announced her intention, it's reflected in the minutes, to put it before this body at this meeting. I asked her to repost it last week and solicit comments, which she did, and I also appreciate that. I do think that we need the -- and somebody said there's an RFQ out for somebody to help us with our policy work. As Chair I've not seen it, so I don't know if another Commissioner has seen it. Has an RFQ gone out?

EXECUTIVE DIRECTOR WILKEY:

There is draft that's been prepared and we were going to circulate it to you when you returned from this meeting.

CHAIR RODRIGUEZ:

Okay. All right, so that's good to know because I didn't know anything about it. However, I am amenable to reconsidering this, if it's adopted today in the full policy manual, or whatever it's called, that whoever gets this RFQ will -- or the award, contract award, prepares. But if we haven't put out an RFQ yet, that means we're a ways away from even selecting the group to help us with this work. We need to get started. There is an urgency in our Inspector General's report. There's an urgency from this Commission. There's an urgency from the people we serve, and that's election administrators and voters and States and members of Congress. And so I'm prepared to vote for the policy today. Thank you.

Any further comments? Mr. Wilkey, would you want to offer anything?

EXECUTIVE DIRECTOR WILKEY:

No. I certainly appreciate the work that Commissioner Hunter has put into this and I'm hopeful that whatever happens with the vote on this today, that we will also take a look at it in the context of the existing policy that we have on our audit process, because I think the two really dovetail. Many of the questions that we get come directly out of our audit process, and that is one of the areas where we do have a set of written procedures in which there is an appeal process. So I would hope that whatever happens with this policy, that we will be able to work through that in either merging these two

or finding a way to make them work together, because I think that's very important because the majority of many of the questions that we get derive in the process of doing some of these audits. So I hope that we'll have time to do that.

VICE-CHAIR HUNTER:

Sorry, I just have to respond to that.

CHAIR RODRIGUEZ:

Commissioner Hunter.

VICE-CHAIR HUNTER:

Mr. Wilkey I think this does, and I worked on trying to make sure that it does dovetail with those policies. That's why originally I had the Inspector General in this policy, because I realize a lot of the issues come through that direction...

EXECUTIVE DIRECTOR WILKEY:

Right.

VICE-CHAIR HUNTER:

...but because then, the Inspector General wouldn't be able to come up with an interpretation of HAVA funds that wasn't, you know, worked through the Commission. But I ended up, as I said earlier, taking it out because of the Counsel's Office and the Inspector General's concerns that it may violate the Inspector General's Act and it may compromise his independence. He has told me that he's not bound by this policy obviously, but he will try

to bring questions through this policy. He made no promises, but he said he would consider doing so.

And also, you'll note that in the first paragraph of the policy says, "All opinions, determinations, decisions and clarifications by the Election Assistance Commission, regarding the use of HAVA funds, including the," blah, blah, blah. It's as broad as it could possibly be, that anything the EAC does in this regard must go through this process. So I did consider all that and I hope it does dovetail into that process.

EXECUTIVE DIRECTOR WILKEY:

Okay, thank you very much. That's all the comment I have.

CHAIR RODRIGUEZ:

Madam General Counsel would you...

COUNSEL HODGKINS:

Thank you, Madam Chair. I did have two implementation questions on behalf of the staff that I'd like to ask Commissioner Hunter and any of the other Commissioners, if you have opinions on what these things mean, so that we understand what it is and how it is that we're supposed to implement this policy.

Specifically with regard to, and I'll refer to it as paragraph two of the indented material, the second and third sentences. The first sentence says that, "Within ten calendar days we would determine whether or not an opinion is incomplete or not qualified

under the policy.” The second sentence then says that, “We will make a determination if the request is valid within ten days.” And my question is this. If within the first -- it appears that the language here runs concurrent and if within the first ten days we determine that a request is incomplete, how do you intend for us to handle that? Do you intend for us to determine then that it is invalid because it is incomplete? That’s -- or is there some additional ten-day period or some other time period that we would have to be able to obtain additional information to make for a complete request?

VICE-CHAIR HUNTER:

I think that the reason that the notice to the requestor, in giving that person the ten day is because of some requirements of the Administrative Procedures Act, and so the purpose of that is, so that a requestor’s request is not just sitting in limbo forever and they don’t know the end result. But to answer your question, to the extent that a request is incomplete or invalid the requestor is notified of such and, in my view of this, his request dies and he can resubmit it if he so chooses.

CHAIR RODRIGUEZ:

Do you want to clarify it, Madam Vice-Chair?

VICE-CHAIR HUNTER:

I don't know that -- if you think it needs to be clarified, I'm open to suggestions. I think it's -- in my mind it's clear, but I'm open to suggestions on any language.

COUNSEL HODGKINS:

Perhaps in the second sentence you could just say that, "Upon the EAC's determination the request is valid or complete."

VICE-CHAIR HUNTER:

Valid...

COUNSEL HODGKINS:

"Valid and complete" perhaps. I don't know, that's just a suggestion.

VICE-CHAIR HUNTER:

Okay, that's fine with me. "Valid and complete," that's fine.

COUNSEL HODGKINS:

The second question that I had with regard to implementation of this, is the footnote that -- the second footnote which was added and describes third parties. I was hoping perhaps you could give an example of that so we could understand what a permissible third party is.

VICE-CHAIR HUNTER:

Uh-huh. The purpose of the third party restriction is so that -- I tried to explain this earlier but probably wasn't very clear -- is that for example a State election official -- or a State government official

from Tennessee couldn't make a request pursuant to something Minnesota is doing. So in that scenario the State person from Tennessee is considered a third party, so that person is not eligible to submit a request. But to the extent that the official from Tennessee is asking a question of Tennessee's use of funds, then it is permissible. And it's made clear here that the Inspector General is not considered a third party. The purpose of this, is to make sure that people who have no interest, are just kind of snooping around what other States are doing and putting in requests that they're not a party to.

COUNSEL HODGKINS:

Okay, so let me see if I can rephrase this and make sure that I understand it. So a third party is someone who is not related or not involved with a State that is at issue in the question?

VICE-CHAIR HUNTER:

Right.

CHAIR RODRIGUEZ:

Madam General Counsel, do you think that could be made more clear through language?

COUNSEL HODGKINS:

Possibly, but I don't have any to offer at the current moment.

CHAIR RODRIGUEZ:

Well, in the general overall manual, if we need to clarify it. So the draft policy has been amended in the second indented paragraph on page two, the fourth line after the words "the request is valid" insert "and complete." Are we ready to vote?

COMMISSIONER HILLMAN:

Madam Chair, just one last comment I wish to make. I understand the anxiety on the part of Commissioners that we need to hurry up and pass policies and get moving for the sake of clarity and for the sake of, I wouldn't say transparency as much, but I would certainly say for the sake of clarity within the organization and more involvement on the part of Commissioners. And I embrace that wholeheartedly. However, I do not think we are ready at this time for this policy. I think we're taking on a huge step right now without having fully vented, even internally, the implications of this. And I am concerned about that.

CHAIR RODRIGUEZ:

Thank you, Commissioner Hillman. Any other comments? Why don't we do a roll call, Madam General Counsel.

COUNSEL HODGKINS:

Thank you, Madam Chair. Members if you will respond yea or nay. The question that is posed is to adopt -- is whether to adopt the proposed policy with regard to the use of HAVA funds as amended and proposed by Commissioner Hunter.

So a vote of yea would vote to adopt it, a vote of nay would vote not to adopt it. Beginning with Madam Chair.

CHAIR RODRIGUEZ:

Yea.

COUNSEL HODGKINS:

Madam Vice-Chair.

VICE-CHAIR HUNTER:

Yea.

COUNSEL HODGKINS:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

Yea.

COUNSEL HODGKINS:

And Commissioner Hillman?

COMMISSIONER HILLMAN:

No.

COUNSEL HODGKINS:

Madam Chair there are three votes in the affirmative and the motion passes.

[The motion carried. Commissioner Gracia Hillman voted in opposition to the motion.]

CHAIR RODRIGUEZ:

Thank you Madam General Counsel. The next item under Old Business, the maintenance of Effort Policy. Commissioner Hunter.

VICE-CHAIR HUNTER:

Thank you, Madam Chair. The next policy is regarding the maintenance of effort requirement of Section 254(a)(7) of the Help America Vote Act. And I will, at this time -- again the policy is available at the desk out front and was posted for comments last week. I did announce at the last public meeting my intention to do this, I just didn't have the language written up. So, I have been clear about my intention to do this, but it was submitted out for public comments last week.

I would like to read the relevant portion of HAVA, please. The relevant portion of HAVA requires the States to include in their State plan "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 maintained by the State for the fiscal year ending prior to 2000." This provision mentions the word "State" three different times within the provision. And I think what the EAC has done in the last advisory opinion that was issued on this issue -- and I realize that I did vote for it, I regret that vote but I did vote for it and I take full responsibility for that -- but I think what the EAC did in that EAC Advisory 07-003-A, was to read the State to mean local

and county government, and I believe that the reason why that was done is because it was the opinion of the EAC, maybe, that it was permissible to read the word "State" in that manner because perhaps that's what Congress intended, because, yes, it is true that elections are run not only the State but in many instances by the counties. And that is absolutely true. But I do not believe that Congress gave us the authority to read the word "State" to mean anything other than State, and I think to me, the language is very clear in the statute that it means State. There are two other places within this same Section 254, and specifically 254(a)(2) and (8), where unit of local government is specifically mentioned. So it seems to me, that if Congress wanted to include units of local government or county governments, they knew how to include those words and they would have done so. So for me it's just a pure matter of statutory interpretation that we should not read State to mean anything other than State.

Now with respect to the policy aspect of it, I do not -- I am told by State election officials, and I can't find anything to contradict this, that there was no advice given at the outset. And as Commissioner Hillman reminds us, the EAC wasn't even in existence at the outset when the funds were originally dispersed, but even after that the States were never given any kind of guidance that this requirement would include the counties.

Perhaps the first time that that came up was an advisory that was issued in May, but my opinion of that one is, it was not clear even at that point. I think the advisory that was issued on September 6th made it a little bit more clear that that was the intention of the EAC. So my proposal removes the requirement on the part of the State to include any -- let me just read it because this has gone back and forth with different wording of this, but specifically, "EAC Advisory 07-003-A dated September 6, 2007, shall be amended to make it clear that HAVA does not require a State to include local and county government expenditures when determining the maintenance of effort baseline as required by HAVA 254(a)(7). This modification of the advisory does not preclude States from including county and/or local government expenditures when determining the maintenance of effort baseline. This inclusion will be at the State's discretion and not because it is a requirement of Federal law."

And the one thing I added,, just recently, was a memo issued to us by the Office of General Counsel raised concerns regarding OMB Circular A102. And I happen to disagree with their concerns, but to the extent that this issue may need to be more fully discussed and vetted with various entities, including perhaps OMB and we may need to do some research on that issue, I'm willing to state specifically that this modification does not address specifically

the extent to which that Circular A102 is relevant to this maintenance of effort issue. So that's the crux of the proposal before us today and I'm happy to take any questions.

I move to adopt the motion I just discussed -- the proposal I just discussed.

COMMISSIONER DAVIDSON:

I'll second the motion.

CHAIR RODRIGUEZ:

It's been moved and seconded to adopt the proposal as outlined by Commissioner -- proposed and outlined by Vice-Chair Hunter. I've asked Vice-Chair Hunter to -- we can discuss it at length today or not -- I've asked her to consider tabling this motion until a special meeting that I intend to call at the end of the month, because there have been some issues raised about the length of time that it's been available for comment. And although this one has generated a number of comments already, I do think there are a lot of people who would be interested in weighing in on this proposal. And I believe that would be acceptable to Vice-Chair Hunter, if we stipulated that in the -- in between now and when we vote on the proposal that the maintenance of effort advisory not be, what is the right word, implemented?

VICE-CHAIR HUNTER:

Enforced.

CHAIR RODRIGUEZ:

Enforced.

VICE-CHAIR HUNTER:

To the extent that it involves counties and/or local governments.

CHAIR RODRIGUEZ:

And that -- I would be amenable to that.

COMMISSIONER HILLMAN:

Could you say that again please?

CHAIR RODRIGUEZ:

That the maintenance of effort advisory would not be enforced during the time between today and when we consider it -- place it on for final consideration -- or vote.

COMMISSIONER DAVIDSON:

Excuse me, are you talking about the existing maintenance of effort of September that we passed?

VICE-CHAIR HUNTER:

Yes.

COMMISSIONER DAVIDSON:

Just to clarify. I wanted to make sure that I understood it correctly.

CHAIR RODRIGUEZ:

Yes, and I think that's implied. When something is on the table that might affect it, I think it's implied that it wouldn't take effect, but Commissioner Hunter asked me to be explicit.

COMMISSIONER HILLMAN:

It's my understanding, and maybe Mr. Wilkey or Ms. Hodgkins, if you know, or perhaps other staff who were here, that right now there is one State audit actively underway. Do we know if there are more? I know that there were a couple being wrapped up, but in terms of the beginning stage of the State audit how many are under way right now? Do we know?

EXECUTIVE DIRECTOR WILKEY:

I only know of one that's actively under review, right now.

That doesn't mean that there are other planned down the road.

COMMISSIONER HILLMAN:

No I understand that there will be other audits, but I'm talking about what's going on right now.

EXECUTIVE DIRECTOR WILKEY:

No, I know of one that's being in process now.

CHAIR RODRIGUEZ:

Okay. Is there further discussion on the motion?

COMMISSIONER HILLMAN:

A motion to what?

CHAIR RODRIGUEZ:

Adopt the policy which has been tabled, but we can still discuss.

COMMISSIONER HILLMAN:

Don't we have to have a motion to table? It hasn't been tabled yet,
right?

COUNSEL HODGKINS:

Right.

COMMISSIONER HILLMAN:

Okay.

COMMISSIONER DAVIDSON:

My understanding is there has to be an acceptance to change the
motion.

COUNSEL HODGKINS:

There has to be a motion to table and a second and then you would
have to vote on that motion...

CHAIR RODRIGUEZ:

Okay.

COUNSEL HODGKINS:

...to table, to set it aside. Now if you want to continue...

CHAIR RODRIGUEZ:

Discussing.

COUNSEL HODGKINS:

...to discuss that, then I suppose -- I don't know that anyone has
actually made a motion to table at this point.

CHAIR RODRIGUEZ:

Not yet.

COUNSEL HODGKINS:

Okay. No, so we're still in the discussion point of this issue.

CHAIR RODRIGUEZ:

Discussion of the motion.

COUNSEL HODGKINS:

And if I might take a moment just to say that my concern about the issue -- or the condition of tabling, is that you would be attempting to apply that condition on the Inspector General and I'm not sure whether or not he would have the obligation to abide by that. So just so that you are aware of that because of the Inspector General's Act and his independence and ability to audit.

CHAIR RODRIGUEZ:

So we can't bind the Inspector General, but we can let him know...

COUNSEL HODGKINS:

Correct.

CHAIR RODRIGUEZ:

...that we discussed this.

VICE-CHAIR HUNTER:

To the extent -- point of -- I agree with that. However to the extent that the Inspector General is relying on EAC guidance, I think he would find it appropriate to suspend to the extent he's relying on that.

CHAIR RODRIGUEZ:

Okay. Is there further discussion on the motion to adopt the maintenance of effort policy as proposed by Commissioner Hunter? Commissioner Davidson.

COMMISSIONER DAVIDSON:

I think I would rather, instead of, really discussing it today wait until we -- we're going to table it, so I'd like to make a motion that we table it. And within that motion I would like to also state that we do not move forward with, what was the proper term, I'm sorry.

VICE-CHAIR HUNTER:

Point of clarification. Is this the proper place to put the suspension of the AO, in the motion to table?

COMMISSIONER HILLMAN:

No, I don't think so.

VICE-CHAIR HUNTER:

Okay, so we should table...

COMMISSIONER DAVIDSON:

Okay, then I just will move to table -- let me reword it then. I move that we table the motion until the special meeting at the end of the month that's going to be set by the Chair.

COMMISSIONER HILLMAN:

I'll second that motion, because I appreciate the fact that we won't be taking action on it today.

CHAIR RODRIGUEZ:

Okay, all those in favor of tabling? Discussion on the motion.

VICE-CHAIR HUNTER:

A question for Commissioner Davidson. You said table until the special meeting. I'm wondering if you would be amenable to saying, table until the EAC meets to discuss this issue again, just in the off chance that we don't meet on April 30th.

COMMISSIONER DAVIDSON:

I'll accept that as a friendly amendment.

VICE-CHAIR HUNTER:

Okay, thank you.

COMMISSIONER HILLMAN:

Sure.

CHAIR RODRIGUEZ:

Okay, so the motion is now to table it until we put it on the agenda for consideration?

VICE-CHAIR HUNTER:

Yes.

CHAIR RODRIGUEZ:

Okay. Discussion on the motion to table? All those in favor indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Okay, we will then consider this when we put it on the agenda.

Thank you Commissioner Hunter.

VICE-CHAIR HUNTER:

I'd like to make a motion -- or do you want to do that?

COMMISSIONER DAVIDSON:

Go right ahead, you can.

VICE-CHAIR HUNTER:

I'd like to make a motion that the EAC refrain from enforcing EAC Advisory 07-003-8, to the extent that it requires a State to include local and county government expenditures when determining the maintenance of effort baseline, as required by HAVA Section 254(a)(7), until the EAC votes to adopt a policy on this issue.

COMMISSIONER DAVIDSON:

I'll second the motion.

CHAIR RODRIGUEZ:

Ms. General Counsel will you restate the motion, please?

VICE-CHAIR HUNTER:

And I'm happy -- I'm willing to take any word -- I wasn't prepared for this motion, so any...

COUNSEL HODGKINS:

Okay I will do my best to restate, and if we need to perhaps we can have it read back to us. The motion is, for the EAC to refrain from

enforcing Advisory 07-003-A, until such time that the EAC votes to adopt a policy on this issue, I think is the exact wording.

VICE-CHAIR HUNTER:

Policy on the maintenance of effort requirements of HAVA.

COMMISSIONER DAVIDSON:

I seconded it already. If I didn't, second.

CHAIR RODRIGUEZ:

Discussion on the motion.

VICE-CHAIR HUNTER:

Madam Chair, I forgot to mention one thing that I think is relevant also to this motion, which is, that we did receive nine comments from State election directors and/or Secretaries of State, in favor of this modification and we did receive one comment from various groups, voter advocate groups, who were not in favor of it. I just wanted to make it part of the record, that we did receive support from the elections community in general.

CHAIR RODRIGUEZ:

Thank you. And those letters will be posted as part of the record.
Further discussion on the motion? Are we ready to vote?
Commissioner Hillman.

COMMISSIONER HILLMAN:

I want to support this in the spirit, because I appreciate
Commissioner Hunter's willingness to have her proposal tabled. I

am concerned about two things. One is, I don't know all of what's in, off the top of my head certainly, the policy that we're moving to suspend. I know the concern is to not enforce the section that deals with the documentation by local units of government, with respect to maintenance of effort, but I don't know all of what else we're suspending. Secondly, is that the reality is that at least 23 States have said in their State plans that the expenditures of the local jurisdictions are a part of their maintenance of effort. And so those two things together, I don't know what it is we are suspending between now and the time that we fully consider the proposal that's on the table.

So I'm wondering if General Counsel can say what other things are in that policy.

COUNSEL HODGKINS:

Commissioner Hillman the Advisory EAC 07-003-A, entitled "Maintenance of Effort Funding", poses seven questions, and responses are made to seven questions. What I will do, is just summarize the questions that are asked, rather than going through all the responses, but if you want me to go through those too, I can do that.

COMMISSIONER HILLMAN:

No, because I just need the gist of what we're suspending.

COUNSEL HODGKINS:

Okay. So the first question that it answers is, "What is maintenance of effort?" The second question that it answers is, "How does maintenance of effort relate to the State's matching fund requirement?" The third question is, "What is the impact of the maintenance of effort requirement?" Fourth question is, "How should States document that they have maintained their effort?" The fifth question is, "To what years does the maintenance of effort requirement apply?" The sixth question is, "Which "fiscal year" must the State use to demonstrate that it has met the maintenance of effort requirement? And the seventh question is, "Are counties responsible for proving their own compliance?"

COMMISSIONER HILLMAN:

I'm a little concerned that we're suspending the whole maintenance of effort. I mean, I don't think that's our intention. I think our intention is number seven, but we are just more or less saying to States, you know, stop.

VICE-CHAIR HUNTER:

Well, the law will stand. The Help America Vote Act will stand.

COMMISSIONER HILLMAN:

But the answers to some of these questions may be instructive to States, with respect to whatever paperwork, record keeping, bookkeeping, whatever they're doing now, and so, I'm just concerned that we're suspending the whole policy. I just wonder

why we're suspending the whole policy and not just the section that we're concerned about.

CHAIR RODRIGUEZ:

Vice-Chair Hunter would it be amenable to you, to simply suspend the county level maintenance of effort point?

VICE-CHAIR HUNTER:

That's fine. And I was just told yesterday that it's not just question seven where this requirement arises, so that's why I'm not willing to just say question seven, because there's another section in there that speaks directly to the counties apparently. But -- and actually that is -- anyway, perhaps we could word it to say, that it shall be suspended to the extent that it requires local and county governments to do anything. I don't know.

COMMISSIONER HILLMAN:

Well, I mean, 23 States include expenditures of local units of government in their maintenance of effort.

VICE-CHAIR HUNTER:

That, by definition, doesn't mean that they did so because they thought it was a Federal requirement. They may have done so because they wanted to.

COMMISSIONER HILLMAN:

Or they may have done so, like in the State of Texas. Texas State funds are not used for general election activities. Only the local

units of government pay for that. I believe HAVA intended that EAC look at maintenance of effort within a State, irrespective of where it came from. So if a State is not spending its funds on a general election and locals are, I think that is the maintenance of effort we look at. So I want to support this in the spirit, but I don't want to suspend whatever activity States are engaged in right now. I mean I don't want to suspend what States are engaged in. I don't want to send a signal to locals, "You don't have to do this with your State anymore because EAC hasn't passed a final policy." So, I don't know what to say. I'm afraid that we're suspending too much to try to achieve, that is that, you know -- if this were tied to the State plans, if it were more clear, and the policy is not clear that this is tied to a State plan, if it were more clear with respect to those States that don't and haven't yet included. But to suspend it across the board I'm concerned about. But I'm not going to belabor the point. I've made my point.

CHAIR RODRIGUEZ:

Commissioner Hunter?

VICE-CHAIR HUNTER:

I think we're good to go.

CHAIR RODRIGUEZ:

Okay. So I'm sorry, I'm going to have to ask for it again, one more time. Would you restate the motion Madam General Counsel?

COUNSEL HODGKINS:

The motion is for EAC to refrain from enforcing the maintenance of effort advisory, that is, Advisory 07-003-A, until the EAC votes to adopt a policy on the maintenance of effort requirement of HAVA.

VICE-CHAIR HUNTER:

We weren't going to narrow it to...

COUNSEL HODGKINS:

That's the motion that's on the floor.

VICE-CHAIR HUNTER:

Okay. Perhaps we could move on and then come back to this vote, after we get a chance to wordsmith it a little bit.

CHAIR RODRIGUEZ:

Okay, so we're -- do we need a motion to table this? We need a motion to table this motion.

VICE-CHAIR HUNTER:

Or you know what, let's -- could you read that again? And I'll just add something into there.

COUNSEL HODGKINS:

The current motion that is on the floor, is for the EAC to refrain from enforcing the maintenance of effort advisory, which is 07-003-A, until such time that the EAC votes to adopt a policy on the maintenance of effort requirement of HAVA.

VICE-CHAIR HUNTER:

Okay, can we add in, after you say, the first part of what you said, the maintenance -- the advisory, blah, blah, blah, to the extent it requires a State to include local and/or county government expenditures...

COUNSEL HODGKINS:

Hold on. A State to include...

VICE-CHAIR HUNTER:

Local and/or county government expenditures.

COUNSEL HODGKINS:

Okay.

VICE-CHAIR HUNTER:

...when determining the maintenance of effort baseline, as required by HAVA Section 254(a)(7).

CHAIR RODRIGUEZ:

That's good. Okay? Commissioner Hillman seconded. Did you?

COMMISSIONER HILLMAN:

Did I second the...

COMMISSIONER DAVIDSON:

No, I think I did.

CHAIR RODRIGUEZ:

Okay.

COMMISSIONER DAVIDSON:

So I will accept that change to the motion.

CHAIR RODRIGUEZ:

Okay then.

COUNSEL HODGKINS:

So do you want me to restate the motion again?

CHAIR RODRIGUEZ:

No, I think we have -- are we clear on the motion?

COMMISSIONER HILLMAN:

The reference was to 254 what?

COUNSEL HODGKINS:

(a)(7).

COMMISSIONER HILLMAN:

Which is?

VICE-CHAIR HUNTER:

The relevant section of HAVA.

CHAIR RODRIGUEZ:

Okay, are we ready to vote? All those in favor of the motion indicate by saying aye. Those opposed indicate by saying nay.

[The motion carried. Commissioner Gracia Hillman voted in opposition to the motion.]

CHAIR RODRIGUEZ:

Thank you. All right, then, we're going to take a five, six-minute max break and give everybody who's working a chance to stretch.

And then we'll be back with new business and Ms. Lynn-Dyson, our Research Director. Five minutes.

[Whereupon, the Commission recessed at 2:20 p.m. and returned to open session at 2:31 p.m.]

CHAIR RODRIGUEZ:

Thank you very much for taking a timely break. And now we'll go to New Business. I will introduce Karen Lynn-Dyson, who is the Director of our Research Division at the EAC and ask her to introduce her panelists. And the subject, First Time Voter Study.

MS. LYNN-DYSON:

Thank you. Commissioners, Mr. Wilkey and General Counsel Hodgkins, I come before the Commission today, to introduce Meredith Imwalle, President of Winner's Circle Communications, who will describe the findings from her 12-month inquiry into first time voters who registered to vote by mail.

For its contract with the U.S. Election Assistance Commission, Winner's Circle was charged with creating a series of case studies highlighting the impact on States of HAVA's ID requirements on first time voters who registered by mail and for conducting several focus groups assessing the impact on voters directly. Section 244 of HAVA requires the EAC to conduct a study

of the impact of Section 303(b) on voters who register by mail. Specific areas of the study must include, one, an examination of the impact of Section 303(b) on first time mail registrant voters who vote in person, including the impact of the section on voter registration; two, an examination of the impact of Section 303(b) on the accuracy of voter rolls, including preventing ineligible names from being placed on voter rolls and ensuring that all eligible names are placed on voter rolls; and lastly, in performing an analysis of the impact of Section 303(b) on existing State practices such as the use of signature verification or attestation procedures to verify the identity of voters in elections for Federal office, along with an analysis of other changes that may be made in order, to improve the voter registration process, such as verification or additional information on the registration card.

In developing a request for proposal for a contractor to conduct this study, EAC was mindful of the potential difficulties in collecting data regarding first time voters who register by mail. With the enactment of HAVA, States were, for the first time, now required to implement a series of identification requirements that previously had not been made mandatory. In order to gain a clearer picture of the impact of implementing Section 303(b), EAC staff thought it important from a methodological standpoint to select a variety of States with diverse populations, that is by age, income,

race, national origin, geographic location and population density. Further criteria used for selecting States to research included choosing those States that have chosen to adopt the requirement as either a floor or a ceiling, that is, as a minimum or a maximum requirement. Finally, to reliably understand and measure the impact of the Section, that is 303(b), only those States that were found to have a top-down voter registration database system in place were selected for study.

The contractor, Winner's Circle Communications, is to be commended for its successful efforts to collect these data. It gathered background information through the U.S. Census Bureau's American Community Survey and all of the States' elections codes prior to its conducting preliminary interviews with the States to determine each State's experience with implementation of the requirement. The contractor's research verified what EAC knew entering into this study, that is, many States do not collect data specifically about first time voters who register by mail.

The research criteria I just described that were necessary to make this study methodologically sound, made the universe of possible States to include in the study and voters to interview for the focus groups small. I'm confident that Winner's Circle employed sound principles in its effort to assist EAC with complying

with the requirements set forth in HAVA Section 244. In a moment Ms. Imwalle will elaborate on these requirements as they affected her research, along with the important and valuable findings that were discovered about these voters and States' administration of this requirement.

In closing, I believe that the work that was accomplished through this contract is quite good. The research methodologies employed were sound and that the findings from the case studies and the focus groups will be helpful to the elections field, as we seek to find better ways to serve this category of voters and to implement the HAVA requirement. I recommend that after the EAC Commissioners have an opportunity to ask Ms. Imwalle questions about her study and its findings, that you consider adopting a final version of her study and her report at our next public meeting.

Thank you.

CHAIR RODRIGUEZ:

Thank you. Ms. Imwalle.

MS. IMWALLE:

Chair Rodriguez, Vice-Chair Hunter and Commissioners Hillman and Davidson, thank you for having me here today to present an overview of the reports that my small firm, Winner's Circle Communications, prepared for the Commission regarding first time voters who register by mail.

The purpose of our study was to examine the impact that Section 303(b) of the Help America Vote Act has had on first time voters who registered by mail and on election administration in the States. We've presented our findings in two reports. The first includes the results of six State case studies, and the second summarizes what we learned from first time voters during focus group sessions. States were chosen to participate in the study, as Karen mentioned, based on a number of criteria, including varying demographics, geography and relevant election laws. The six States that were ultimately selected Massachusetts, Montana, New Jersey, North Carolina and Pennsylvania, are a diverse sample that best met the requirements of the Statement of Work. Localities in three States were then selected as focus group locations and those included Hendricks County, Indiana, Northampton County, North Carolina, and Allegheny County, Pennsylvania.

Before I present our findings, I'd like to talk for a moment about the availability of data. Unfortunately, the kind of metrics that would have led to a more conclusive report on whether Section 303(b) accomplished what it was intended to, were not available. A telephone survey of the States that implemented top-down voter registration databases, produced none equipped with systems that could generate detailed reports of first time voters' registration and voting behaviors. While many States flagged the individual records

of first time by mail registrants who must provide ID, the State systems are not capable of producing comprehensive Statewide reports of the number of first time voters who registered by mail and showed a driver's license at the polls for example. The States were kind enough to provide us with estimates that are highlighted as such, in our report. The States also don't keep records that might have enabled us to better gauge whether Section 303(b) helped increase the accuracy of voter rolls. For example, State systems can't produce reports that highlight the number of ineligible voters who were prevented from casting ballots. And when the States were asked to provide us with lists of only first time voters who registered by mail and voted for the first time in 2006, they could not. For example, some provided us with lists that included voters who registered in person at an election office, and those people were not qualified to participate in our focus group sessions.

I think it is important to point out that while these expanded search capabilities are helpful, if not necessary for good research, the States said that they really weren't necessary in terms of day-to-day election administration, which is why they don't have them.

We were able to determine from data available, that the States have implemented Section 303(b) in very different ways and that the law has had diverse affects on State election administration and on first time voters. Three of the States expanded on the law's

ID requirement and now require more than just first time by mail registrants to provide ID. Each State introduced its own unique training programs for election officials and poll workers. Some included the use of DVDs, while others worked with colleges and universities to improve their programs. The States approached voter education in equally creative and different ways. Several States aired voter education videos and issued election guides for first time voters.

While election officials process voter registration applications differently from State to State, every State studied does notify registrants when their applications are either rejected or incomplete. Before HAVA passed, it was common for different jurisdictions within the same State to use different systems and different procedures to process registration applications. Every State we studied now uses uniform procedures and uniform systems. Every State we studied uses a password protected voter registration database. Several of them are even capable of tracking user activity. Three States saw an increase in the percentage of applications submitted by mail in 2004 and according to State estimates, the majority of first time by mail registrants in every State included a driver's license number or the last four digits of their Social Security number with their registration. Most voters who neglected to provide this information with their registration

provided it at the polling place, usually in the form of a driver's license.

As expected, each State reported spending a different amount to implement the law, but unfortunately it's difficult to determine the exact cost of Section 303(b). Many States' expenditures went to pay for equipment and training that was necessary to comply with more than just this one aspect of the law.

Almost every State, though, reported that it takes election officials more time to process voter registration applications than it did before the ID requirements took effect. New Jersey was impacted the most. Several counties reported that it takes them an extra three-and-a-half minutes per application, which considering the volume of applications they process, can certainly add up. A number of State programs and resources proved to be particularly effective, according to the States, and some were more distinctive than others. As part of their efforts to educate voters, the Indiana Secretary of State's Office worked with community organizations and other State agencies to reach out to groups of prospective voters, including first time voters, who were deemed the least likely to understand and comply with the ID requirement. Indiana also gained free publicity for the new requirements through media outreach. The State conducted background sessions for media in order to explain the new ID requirements and other election reforms

to reporters, producers and editors. Montana employed a grassroots approach to educating voters that included face-to-face meetings at Native American powwows. Massachusetts sent a voting guide that explained requirements for first time voters to every household in the State. In order to train local election officials, Montana established a foster program in which county officials who were members of the State's Election Reform Task Force each adopted several counties and advised them on how to comply with the new ID procedures. Election officials in North Carolina added a live help feature to their website. Local officials who log into the system can receive assistance from an IT professional live on the system itself.

While the States reported success with these recommended practices, the focus group portion of our study did expose two areas in which the States could improve, voter education and poll worker training. When tested on their knowledge of ID requirements for first time voters, focus group participants exhibited a poor understanding. The average test score was a failing grade of 39.4 percent. Fewer than half of the participants said they knew before they voted, that they would be required to show ID at the polls, and even those voters could not identify all of the different types of ID that were acceptable. Certain racial, ethnic and age sub-groups exhibited a lower level of understanding than others.

African-Americans and 18 to 24 year olds had slightly lower than average quiz scores. Middle aged whites had the highest scores.

Participants in all three States agreed that their State could have done a better job communicating ID requirements. The most popular suggestion from voter outreach was media coverage. Participants said they're much more likely to listen to informative media reports, than they are to listen to paid advertisements or read a mailing. According to participants, poll workers in all three States demonstrated what appears to be a lack of understanding of their State's voter ID requirements. Seven voters in North Carolina and Pennsylvania reported being asked by poll workers for photo identification, despite the fact that neither State requires voters to show a photo ID. Five of those voters said the poll workers specifically asked them for a driver's license. Nine Indiana voters reported that they too were asked specifically for a driver's license, which is not required by State law.

Based on what we heard from our focus group participants, we'd like to recommend that State and local election officials focus on obtaining what's often referred to as earned media coverage. While it's not always easy to get reporters to cover election administration issues, we learned that one newspaper article could do more than a very expensive mailing. We'd also recommend that election officials work to ensure that first time voter ID requirements

are explained clearly to poll workers during training sessions and that poll workers apply the requirements correctly and uniformly. It might be advisable to provide poll workers with a checklist or script that includes a list of acceptable forms of ID.

Thank you again for having me here today and I'd be happy to answer any questions that you have.

CHAIR RODRIGUEZ:

Thank you very much. Are there questions for Ms., Imwalle?

MS. IMWALLE:

Imwalle.

CHAIR RODRIGUEZ:

Imwalle. I apologize, Imwalle. Any questions or comments?

COMMISSIONER HILLMAN:

Do you want to go first or -- go ahead, you go first.

CHAIR RODRIGUEZ:

Commissioner Davidson.

COMMISSIONER DAVIDSON:

Well, I have a few questions. One of your statements, at the very beginning you made the comment, and I think you just misspoke, from what I read in your testimony that was provided for us, that the first time voters sometimes were not able to cast a ballot at the polling place. And I -- in your statement here, where it says "cast a

provisional ballot.” And I just wanted to make sure, is it they were allowed to cast a provisional ballot?

MS. IMWALLE:

Oh, no, I was just saying that the States don't track who is and is not allowed to cast a provisional ballot.

COMMISSIONER DAVIDSON:

Okay, I just wanted to make sure that that was clarified.

MS. IMWALLE:

Sure.

COMMISSIONER DAVIDSON:

Also, as I went through your testimony, you know, change is always very hard in any State and with our poll workers, we find that with equipment and everything else. And we also find that our poll workers do better, we'll say, if they've been through an election before, then they understand it better when they go through the training the next time. Obviously, I understand the best training is very, very important. Do you think that it will be more successful in upcoming elections than what it was the first time? I mean do you think it will improve? Or did you get into that at all?

MS. IMWALLE:

Well we didn't talk to poll workers about the reasons why they made the mistakes that they did. It could have been, you know, lack of information. It could have been any number of reasons.

Certainly I would expect that it would get better if the States can outline very specific ID requirements or give the poll workers a list or a script of some kind to make it very clear. It could be that some poll workers asked voters for a driver's license because they thought that was the ID that people would have on them, without thinking that not everyone has a driver's license. They may have been trying to be helpful and not realize what they were doing. But I think with education, through poll worker training, hopefully those problems can be fixed.

COMMISSIONER DAVIDSON:

Okay. The next question I have, was there any evidence from the case study that eligible electors were able to register before the implementation of 303(b)?

MS. IMWALLE:

It's -- I just found that the States didn't have records of that information. I mean, some of these States, before HAVA, tracked voter registration on spreadsheets in each of the county offices, that they didn't share with each other. So, they just didn't have a record of that information. The most they could do was to tell us whether they had had any voter fraud complaints about someone who was ineligible, who actually cast a ballot, but then those were complaints and not necessarily true. Maybe there were other cases that weren't reported, so that really wasn't an accurate way to

determine whether ineligible voters had actually been registering and voting.

COMMISSIONER DAVIDSON:

I guess my final question then, and I do want to say how much I appreciate you being here today and also being here to present and I may have questions as others ask questions, but one of the things that we have found is a lot of our studies, maybe we, you know, implemented the study before we had as much information. Obviously we're going by the law. But do you think a follow-up study will help produce anything else in the future that will really help us with the information that is needed at hand that is really required?

MS. IMWALLE:

I'm not sure I understand the question. You mean a follow-up study looking for some of the information, maybe that we couldn't get this time?

COMMISSIONER DAVIDSON:

That's correct, you know, that we really had in our first, you know, in doing the contract -- the things that we really put in place in the contract and that you weren't able to find the answers of. Do you think a follow-up study, I don't know, two years or four years, did you get anything in your experience in doing this study that you think might help in the future?

MS. IMWALLE:

I think the only thing that would make a difference would be, if the States added some of these searchability features to their databases that -- to their voter registration databases. But that would cost them money to do. I don't know how expensive it would be. They probably, since they don't really use the feature, wouldn't be too excited about paying for that out of their HAVA budget since that feature wasn't, I think, necessarily a requirement of the law. You know, they said to me, "We'd love to help you with this information, but we'd have to go individually through every voter record to find the information, and that is just impossible to do."

COMMISSIONER DAVIDSON:

Understandable. Thank you. Thank you again for being here.

MS. IMWALLE:

Thank you.

CHAIR RODRIGUEZ:

Thank you. Commissioner Hillman.

COMMISSIONER HILLMAN:

My question is on the 70,000 mile high level, rather than into the details of how States did and didn't process. And the question is, whether you were able to ascertain in a descriptive way, what is the impact of this requirement on the voters. In the focus groups or in any of the other research that you conducted can we say whether

this impact was neutral, no impact, negative impact, positive impact, did people think this was a good idea that it gave them some sense of security? Or do you have any feedback on that?

MS. IMWALLE:

Sure. I think in our focus groups, the majority of participants were, maybe even all of them, were supportive of some sort of ID requirement. The debate was just about, what kind of ID first time voters should have to show. In States like Indiana where everyone was required to show photo ID, voters seemed to be more in favor of showing ID for voting, because that's what they've heard about and are familiar with in their State. So I would say the general impression that we got during the focus group sessions, was that some voters were unaffected, some said that members of their communities were negatively affected, because the ID requirements weren't explained clearly and were a little bit hard to understand or they might not have had the appropriate kinds of identification. So I would say it was a bit of a mix to determine whether this had a positive or a negative effect on the voters who participated in our focus groups. Does that answer your question?

COMMISSIONER HILLMAN:

It does. You have been -- prior to this contract you were working in and around the issues that the EAC deals with, is that not correct, through your other work?

MS. IMWALLE:

Yes. Yes.

COMMISSIONER HILLMAN:

Okay. So, I guess what I'm trying to ascertain is, whether first time voters who didn't have an experience having to show ID, at any point in the voting process, participated in the voting process as an observer from the outside, and was entering it for the first time, irrespective of age or location, whether their view about the identification requirement is different than the view of voters who have been participating and have not had to show.

MS. IMWALLE:

Uh-huh.

COMMISSIONER HILLMAN:

And I'm asking this not from, because I know you didn't study that, but because of what you know from your other work. And Ms. Dyson, I'd ask you to answer that if you have any insight as well.

MS. IMWALLE:

Well, I would say, that it's certainly easy for someone who doesn't have to meet a certain requirement to support it, you know. I've been voting for years, I don't have to worry about ID for a first time voter. So it sounds like a good idea to me, then it's easy for me to support it because I'm not inconvenienced in any way. I don't know, I think really I would -- I wouldn't want to speculate because I

think, probably it's sort of divided along party lines. It's a very political issue and I think it just kind of depends on your political views whether or not you think identification is a good idea in many cases. Karen would you agree?

MS. LYNN-DYSON:

I'm trying to reflect. I would agree, I don't think we have enough data. We certainly, the EAC, have not studied the issue closely enough to answer that. Anything that I would say would kind of come -- frankly, would come from other sources. And I was thinking about the studies we have done most recently, namely the free absentee postage and those kinds of things. We have not studied this directly, but I would certainly concur with Meredith, that the little bit that I've seen does kind of fall down on party lines. But we need to study it further if that's something we want to better understand.

COMMISSIONER HILLMAN:

Because as I'm thinking about this, and I have to admit that I haven't recently reread the report, I'm just wondering what, if anything, EAC is going to be able to say about this in terms of whatever report we would send to Congress. I mean, it's one thing to send a report that summarizes the study and the findings of the study. It's another thing for EAC to send its advisability about this

issue to Congress, and I'm just wondering how we wrap our arms around this.

MS. LYNN-DYSON:

Well, I think that gets at Commissioner Davidson's question, which is, what's the follow-on work that we need to do, really thinking towards some kind of report to Congress. And I do think if we want to do that, other than just reporting on the experiences of six States and voters within those States, that we would have to definitely do another piece of work, another study that would examine this much more closely, in terms of a national survey of voters, some kind of White Papers and policy work around it.

COMMISSIONER HILLMAN:

Thank you.

CHAIR RODRIGUEZ:

Thank you Commissioner Hillman. Vice-Chair Hunter, do you have any questions?

VICE-CHAIR HUNTER:

Thank you Ms. Imwalle for coming and we appreciate your study very much, as the others have said. I can't find it in here right now, but I think I read, and you also stated earlier, that many States do not flag first time voters who register by mail, so that they're then able to ask those voters for IDs -- for ID at the polls. Did you say -- did you give a number of that or did you say many?

MS. IMWALLE:

No, they are flagging them, but they flag the individual records. So what they're not able to do is to search their database to find a total number of first time voters who are required to show ID at the polling place. That was information that none of them were able to give us.

VICE-CHAIR HUNTER:

Even though they're able to -- even though the individual voter is flagged, they still can't search?

MS. IMWALLE:

Yes, it's not a searchable feature in their databases.

MS. LYNN-DYSON:

Their software programs just are not set up that way.

VICE-CHAIR HUNTER:

Okay. And did you give a number? Or did you say many or most States are able to flag those individuals?

MS. IMWALLE:

Well, if the voter has to show ID at the polling place, every State is able to indicate that on that individual's voter registration record, because that's all they need to administer elections. They just need to be able to make sure that person is asked for ID when they vote. What they can't do, is tell you that 300 people in Allegheny County will have to show ID at the polling place.

VICE-CHAIR HUNTER:

Right. But how many States actually are able to flag the individual who is required to show ID?

MS. IMWALLE:

Every State that we studied is able to...

VICE-CHAIR HUNTER:

Okay.

MS. IMWALLE:

...flag the individual record to say they need to provide ID.

VICE-CHAIR HUNTER:

Okay, thank you.

MS. IMWALLE:

Uh-huh.

CHAIR RODRIGUEZ:

Thank you. I don't have any questions. We really appreciate this work. This is an important issue and I think back to our poll books. They used to have a big red stamp in them that said, "Ask for an ID." But the searchability or the report function, you know, I'm not certain about. I'll have to call home and ask if we could even do that.

So Ms. Lynn-Dyson at this point we're not going to adopt, this is just a status report?

MS. LYNN-DYSON:

That is correct.

CHAIR RODRIGUEZ:

And at some point in the future, we'll have a recommendation from you...

MS. LYNN-DYSON:

Yes.

CHAIR RODRIGUEZ:

...about a final?

MS LYNN-DYSON:

Yes, Madam Chair, my recommendation is this. As I have stated, this is indeed a status report. We thought it important to get feedback from the Commissioners, your questions, clarifying questions, concerns that you might. Ms. Imwalle and my staff will now work to integrate whatever remaining thoughts we heard here today, and I would come to you, if not at the next public meeting, very shortly thereafter, with the final report from Winner's Circle, that I would recommend be adopted. And that report would have been fully edited and designed and ready for adoption and release by the EAC.

CHAIR RODRIGUEZ:

All right, very good. Thank you very much.

MS. IMWALLE:

Thank you very much.

CHAIR RODRIGUEZ:

Okay. Under New Business, the Voter Information Websites Report. I'll invite Mr. Cortes and Mr. Keenan to join us.

COMMISSIONER DAVIDSON:

Madam Chair, while they're coming up, could I get an opinion from the Commissioners or how they feel? Should this study that Ms. Lynn-Dyson has put out, Karen Lynn-Dyson, should that also go up on our web and our Boards and for the public to be able to review? I know we've been getting more comments from our Boards that they want to review some of these studies. So that, I think that it would help the staff to know.

COMMISSIONER HILLMAN:

Well, I just wonder, are we expected to just accept the report the consultant is giving us? Or are we looking at a report that we would adopt?

MS. LYNN-DYSON:

You would have at a future meeting, a report that you would...

CHAIR RODRIGUEZ:

I think we need you to speak into a microphone.

MS. LYNN-DYSON:

Commissioner Hillman, you would have at a future meeting a report that you would adopt.

COMMISSIONER HILLMAN:

Okay, thank you. I think the only question I would have, is since the study focused on only a few States, what the other States would have to say about a study that reports on six States. I mean I don't know that that would be helpful for us.

MS. LYNN-DYSON:

And I know, if I might interject, in previous conversations we've had, where we've had research efforts structured very similarly to this, they've been focus groups, they've been a series of case studies, you all have judged that, just as Commissioner Hillman had said it, probably, because they are of particular States, they are findings of a particular group of voters and focus groups, that isn't especially useful in terms of input. What I would suggest, however, is, I know we're moving forward in more extensive work with our Advisory Boards, and I might recommend to the Commissioners that these follow-on pieces of work, that we need to do, related to these studies, most particularly and recently, the free absentee postage study, which we know is a first step, the second step being developing a piece of work that does deal with the feasibility and advisability of free absentee postage, that would be the kind of thing that I would recommend that we do bring to our virtual meeting space in some form.

COMMISSIONER DAVIDSON:

Thank you.

CHAIR RODRIGUEZ:

Mr. Cortes.

MR. CORTES:

Thank you, Madam Chair. Good afternoon Commissioners. We're here this afternoon to present for your consideration, the Voter Information Website Study. I'm presenting Vince Keenan here, who will give his testimony in just a second, but I did want to say that we're very proud of this report that we have before you. It's been a long process to get it to this point, but I think that the report offers a lot of valuable information for election officials that will benefit voters in terms of how to implement -- or things to consider when they're implementing voter information websites. And as soon as Mr. Keenan is done his testimony, I'll provide a recommendation to the Commissioners.

CHAIR RODRIGUEZ:

Thank you.

MR. KEENAN:

Chair Rodriguez, Vice-Chair Hunter, Commissioners Davidson and Hillman, thank you very much for having me here today. I apologize in advance, because I know some of you have already heard my take on this before at various presentations. But I'm compressing 30 months worth of work into about five minutes here, so I'm just going to hit the highlights.

Most of HAVA focuses on who can get to the ballot. It focuses on who controls the ballot box and how the votes are processed. But despite being the most important participant in any election, the voters on the other side of the ballot box have comparatively few tools available to perform their function. While infrastructure changes are critical, voter information websites promote what may be the best fair election insurance of all, a more informed and engaged voter. There have been pioneers in this field of delivering election information online, but the recommendations before you today represent the first real compendium of the best practices in this field. There are some issues, to be sure, and it may be late for major changes to the 2008 election cycle, but this is an area of elections that the EAC can take into the future and this report marks the first step.

The most succinct summary of the recommendations before you I can offer is this. It's a how-to guide to offer the maximum benefit to voters, without jeopardizing personal information. The recommendations contained in this report represent an initial marker for reference, in an area of elections that's sure to grow in the future. The document before you is not based on particular technologies. The EAC will not be recommending one programming language or operating system over another. The recommendations are not dependent on screen shots or graphics

that would be dated by the time of publication. And it does not condemn or overly endorse any one of the websites we studied, because the recommendations are derived, as much from early failures, as successes.

What you're looking at, is a set of principles that will be viable long enough to help election administrators create or improve voter information websites, until they're superseded by another set of EAC recommendations, as this technology evolves. The principles were derived from studying what was already being done, cataloging and quantifying the innovations and pitfalls of the work in the field, extrapolating key considerations that were being addressed and then offering those results to our expert panel for consideration. The recommendations are strong and timely, but they're also about the next generation of voters. The EAC should advise protecting voters' information over vetting voter records. The EAC should encourage interactive sample ballots linked to information about candidates and proposals. I'm sure that some of these recommendations will serve as points of debate and discussion, but that is appropriate for an initial discovery.

The next step for future study on the use of voter information websites, should include the development of a set of standardized measurements applied over one or more peak election cycles, so that similar quantitative data can be compared. Soon, functions like

online voter registration will have the track record necessary to study and detail. Every campaign cycle brings new Internet based technologies along with continued blending of traditional and online media. There will definitely be more to come.

As one of the earliest EAC research projects, we learned how to execute the EAC research contract as that process was evolving. This project is available for your consideration today because of the guidance and navigation provided to us by Edgardo Cortes, Karen Lynn-Dyson, Tamar Nedzar and Tom Wilkey and the support from the EAC staff. We're grateful for their reasonable and thoughtful consideration.

And in closing, I'd like to thank the election officials who contributed their time in interviews and in one case, actually let us see the whole process on Election Day, for their scrutiny. I also want to thank the experts in our working group that met to help sift through our preliminary research, frame the debate and offer the insights and detailed consideration. Thank you very much for the opportunity to work on this project.

CHAIR RODRIGUEZ:

Thank you. And I believe you said 30 months?

MR. KEENAN:

Yes.

CHAIR RODRIGUEZ:

Okay. Thank you very much for your commitment to this project.

MR. KEENAN:

No problem.

CHAIR RODRIGUEZ:

Are there questions from the Commission? We did have a couple of emails today that I want to invite my Commissioners if they would like some explanation on those.

COMMISSIONER HILLMAN:

I do have a couple of questions. I'm not sure if they're questions or comments, but let me have a go at it. I think that there was some confusion over Appendix "D." And in particular, there are three columns in Appendix "D," State, jurisdiction and website. Is it meant that the website address listed here, is a website of the jurisdiction that's identified? Is it their official website or a website within that jurisdiction?

CHAIR RODRIGUEZ:

Mr. Keenan.

MR. KEENAN:

It is meant to be -- it is not an official website. If it's included in this list, it was a website that applied to the jurisdiction. It was not necessarily the official.

COMMISSIONER HILLMAN:

Okay. And I think, if that is clarified, it will remove some of the confusion, because looking at this chart I would say that that must be the Secretary of State's website. It says State, Secretary of State and then it gives a website address. And so, just looking at the appendix without any footnote or any explanation, it doesn't say that that's not the official website of the Secretary of State.

MR. KEENAN:

Well let me clarify. If it indicates that it's the Secretary of State website, then it is the Secretary of State website.

COMMISSIONER HILLMAN:

Well, then, there are apparently some errors, or at least one error in here where the address listed is not the official website.

MR. CORTES:

These are the actual websites that were reviewed over the course of the study. Now some jurisdictions may have changed their websites or websites may be different, but this has been an ongoing study and so the websites here are the ones that were actually reviewed during the study. This appendix is not meant to be a comprehensive listing of all the websites sponsored by...

COMMISSIONER HILLMAN:

No I understand that, but if a State says, "That's not our website address. You've identified that address and it's not ours," then I

think it needs a footnote or an explanation or something so people will not assume.

MR. KEENAN:

Absolutely.

COMMISSIONER HILLMAN:

Okay.

MR. KEENAN:

In fact, the other thing we can do, too, is verify any websites that might be in question. My understanding on the particular email was that it wasn't necessarily in regards to the -- it was a question about other listings, whether they were official or not official. I would use as an example, an unrelated example, the State of Washington on the second to the last listing in that appendix, "Sound Politics."

That was not by any means an official website.

COMMISSIONER HILLMAN:

Right, no, but I'm talking about an identified SOS website. And the current website address is not what's listed here and the State says that was not their website address.

MR. KEENAN:

Right.

COMMISSIONER HILLMAN:

So I'm just saying that if a footnote here says...

MR. KEENAN:

Right.

COMMISSIONER HILLMAN:

...this was the website address we visited at that time, it may have changed or something. Or if you go to that website and it belongs to somebody else now, if somebody else took it over...

MR. CORTES:

We can certainly add those footnotes in here. And we can also reformat the chart to make it clearer, as to what these sites represent and, you know, whose sites they are.

COMMISSIONER HILLMAN:

All right. And then I would just say, I think there was a suggestion that perhaps this document be shared with our Advisory Boards through the virtual meeting room. And I know that it's meant to be a useful tool for voters or for States to consider, as we get close to the elections, but since we're toward the end of the primary season now, it might be a good idea to do that, which means that then this would be available in June, for use during the summer leading up to the general elections. It's just that, if there are any things in here that give States or advocacy groups great heartburn, you know, better to hear it now than after it's finalized and put out there. But, just a suggestion.

CHAIR RODRIGUEZ:

Thank you, Commissioner Hillman. Commissioner Davidson?

COMMISSIONER DAVIDSON:

I agree with Commissioner Hillman. We did hear from our Chairs of our Committees -- or our Boards I should say, and since the study was really the biggest portion of the study where you reviewed all the websites between 2005, the fall of 2005 and through 2006, you know, there may be some things that really have changed that would help the States, you know. Some of the suggestions they make might really make our report better. So, I agree that I think that it would be helpful to put this out to our Boards, where they could review it and it would improve hopefully the report and we would find benefits for the States by doing that.

But I do really appreciate you being here today and taking your time and moving this process forward because obviously we need to get it out. Thank you.

CHAIR RODRIGUEZ:

Thank you, Commissioner Davidson. I'm hoping that we're going to somehow communicate, Mr. Wilkey, that -- some of these recommendations, because I think the voters fear of private information being available is real and these recommendations I think are very helpful.

EXECUTIVE DIRECTOR WILKEY:

Yes, I agree Madam Chair. I think one of the -- while I agree that we need to take a look at updating and making sure there's no

confusion in that appendix, I think there was a lot of care given to the recommendations that were made, particularly with the security of some information that certainly has no business being in the public domain. So I think the series of recommendations that are made in this report will be well received in the election community.

CHAIR RODRIGUEZ:

When I received this appointment, I had to demonstrate that I've been a registered voter and provide my voting record and so I requested it from the Clerk and Recorder's Office in Denver and the staff person wrote to me, one of my former folks, and said, "You really ought to remove your entire Social Security number and just put the required information there as a security procedure." So I know that there are a lot of very careful election folks out there and this is a great tool for them to demonstrate why it's important.

Thank you very much. And so Mr. Cortes now what is next?

MR. CORTES:

Well I had planned to recommend that the Commissioners adopt the report that was presented today and then direct staff to have it, you know, prepared for publication and distribution. If there's a desire to have it out to the Boards for comment, then we will work with the Commissioners to see how quickly we can get that done.

But that's something that I would need to know what...

CHAIR RODRIGUEZ:

Let me ask the liaisons to the Boards what their pleasure is.

VICE-CHAIR HUNTER:

I support that recommendation.

CHAIR RODRIGUEZ:

Thank you.

COMMISSIONER HILLMAN:

Yes, I think if the Boards request it, I certainly support it. But also and to get to a point that you made Mr. Wilkey, I wouldn't want to see items in the appendices sidetrack people from the good stuff that's in the main part of the document. So, if we can vet it and get that out of the way, then I think it will eliminate any confusion down the road.

MR. WILKEY:

Yes, because I think it's all of our experiences that even though we may footnote it and say this information was gathered during a period of time, you know, we're going to find some people that are going to say, "Oh, there's the website. I'll get on the website" and it no longer exists.

COMMISSIONER HILLMAN:

Yes, that would be the concern. And the concern would be even, we may want to think about whether we need to even put that in the report, I don't know. But if it's going to cause more confusion than

it's going to be useful by providing information, the question becomes why.

CHAIR RODRIGUEZ:

Sure.

COMMISSIONER HILLMAN:

So just something that we can think about.

CHAIR RODRIGUEZ:

So 30 months becomes 32 months.

MR. CORTES:

Could I recommend, Madam Chair, I heard earlier, there was a discussion that both Boards were going to have something on the virtual meeting room very shortly. Would it be possible to then also include...

COMMISSIONER HILLMAN:

No.

MR. CORTES:

...this document in those -- or as part of those review sessions?

COMMISSIONER HILLMAN:

I don't think we have enough time because they open on Monday and we'd have to notice that there's been an emergency change to the agenda. Normally we have to notice the agenda 15 days before the virtual meeting room opens and it opens on Monday, and so even within an emergency provision, I don't know that we'd

be able to get notice to the Federal Register before Monday
unfortunately.

CHAIR RODRIGUEZ:

Mr. Keenan?

MR. KEENAN:

I might just add to that note, and again, I don't know the procedures
and I'm not commenting anything at all about what the right steps
are at this point, but I would say that it takes time to develop these
types of tools and June, if these guidelines are adopted at that time
may be too late for 2008, although in fairness April may be too late
for 2008. So just to let you know that there's a long lead time on
this stuff.

CHAIR RODRIGUEZ:

Tick-tock. Okay, very good then. We'll proceed with posting and
proper notice and everything.

MR. CORTES:

All right. So then I'll work with the two liaisons to the Boards to set
up so, you know, as soon as possible we can set up a review of this
for the two Boards on the virtual meeting room and proceed from
there.

CHAIR RODRIGUEZ:

Yes. Thank you both very much.

MR. CORTES:

Thank you.

CHAIR RODRIGUEZ:

What we're going to do next is something that I hope we all find beneficial and that is to have a discussion about what we need to do to be ready for the election in how many weeks? 20 -- just less than 30 weeks. Preparing for Election Day 2008, we're going to discuss Ballot Design. We have to reconfigure the room a little bit, so we're going to take a 15-minute break. And I'll ask all of the speakers to then come and sit along the two sides of the table, but after you've had a few minutes to stretch and we can move the furniture around a little bit. Thank you.

[Whereupon, the Commission recessed at 3:21 p.m. and returned to open session at 3:39 p.m.]

CHAIR RODRIGUEZ:

Welcome to the third and final segment and exciting part of the program, preparing for Election Day 2008, Ballot Design. There's a lot of interest in ballot design. The EAC did its effective ballot design report last year and it's very timely. It's an important issue to the election administration world, to elected officials who want to be sure that folks can vote properly in their races and to the voter. The voter wants to be sure that they have a shot at all of the races

that they care about. So in our inaugural session preparing for Election Day 2008 we decided to talk about ballot design.

I will name each speaker in order of their presentations and then I won't say another word except to ask if there are questions, because it's you we want to hear from

Our first speaker is Mr. John Gale, the Secretary of State for the State of Nebraska. He was elected in December -- he became Secretary in December 2006 in an appointment and was elected to four-year terms in 2002 and 2006. And he's a native of Nebraska.

SECRETARY GALE:

Thank you. You're not through.

CHAIR RODRIGUEZ:

Let me go through everybody.

SECRETARY GALE:

Oh, thank you.

CHAIR RODRIGUEZ:

Lance Gough represents -- is the Executive Director of the Chicago Board of Election Commissioners and in his capacity manages the day-to-day operations of one of the largest election authorities in the United States. And he's been doing it for 20 years, and so we're not going to make any jokes about Chicago today. I hope that's okay with you.

MR. GOUGH:

That's much appreciated. Yes, thank you.

CHAIR RODRIGUEZ:

Then we'll hear from John Lindback, who is a great friend/resource, as is Mr. Gale and Mr. Gough, to the Election Assistance Commission. Mr. Lindback is the Director of Elections in the State of Oregon and will talk today about successful designs for paper ballots. And the reason for that is, all of the interest in a number of the States in paper ballots this year.

Dana Chisnell is our next speaker and she's going to talk about ballot design from an accessibility and usability perspective. What really excited me about meeting Ms. Chisnell is that she's on a Commission called the Ballot Simplification Commission in the City of San Francisco, and I hope she'll spend a few minutes telling us all about that. It's a citizen review of the ballot. I think that's so exciting.

And then Kathy Dent is here with us. She is the Supervisor of Elections in Sarasota County, Florida. And who better in the United States of America to talk to us about what -- how important ballot design is to the proper conduct of an election. She's the President of the Florida State Association of Supervisors of Elections and we called the State of Florida, because they're doing so much innovative work and allowing so many good things to happen there, we called the Secretary of State and asked him who

he recommended for this panel and he gave Ms. Dent a very strong recommendation. So I look forward to hearing from you today.

And then, finally, we'll hear from the EAC, our own Karen Lynn-Dyson, who is our Research Director and Connie Schmidt who helps us in so many ways, but who are going to talk about the resources that we provide for ballot and polling place designs.

And, I'm sorry, Ms. Dent is going to talk about the ballot design process from start to finish.

And so now we go back to Secretary Gale. Thank you.

SECRETARY GALE:

Thank you Madam Chair, members of the Commission and fellow panelists. I'm John Gale, Secretary of State for the State of Nebraska. I'm a part of your U.S. Standards Board and member of the TGDC and it's always a privilege to see you at those meetings and at our NASS meetings. And I'm honored to be here today to testify with regard to the subject of optical scan ballot design.

Early in 2006, my office was approached by Design for Democracy, a project of AIGA, the Professional Association of Design. They proposed a pilot project in Nebraska on optical scan ballot design. The project involved modifying what had become a routine ballot layout into one that would be easier to read and easier to use for voters. My office thought that the project had a great deal of merit and enthusiastically agreed to participate. The

project was conducted in two counties, a smaller one and a modest size one, Cedar and Colfax Counties, for the 2006 general election. The cost of the project was largely paid by Design for Democracy and the cost to my office and the two counties was mainly just staff time. Nebraska was a logical place to conduct such a project. Nebraska counties have used optical scan equipment to count ballots since the early 1980s. The last punch card county system was replaced in 1992. Prior to the enactment of the Help America Act, about half of Nebraska counties, representing approximately 85 percent of the ballots cast used optical scan systems with the remainder hand counting. The long experience with optical scan played a role in Nebraska State planned Commission's recommendations to continue utilizing that technology under HAVA. In addition, Nebraska adopted the AutoMARK, a disability accessible marking device for optical scan systems for all polling sites. All Nebraska counties used an optical scan system exclusively for the 2006 election cycle.

I will not go into great detail in the Design for Democracy pilot project for the simple reason that there is an excellent summary of it in your June 2007 report entitled "Effective Designs for the Administration of Federal Elections." However, there are a few points that are worthy of comment and I hope my comments will provide some insight into State and local election

administrator's thinking on optical scan ballot design and the suggested best practices.

I would say as an aside, as a State chief election officer, that really usability and accessibility, to a large degree for me for several years, really dealt with polling sites and with equipment, and it was quite eye-opening to be on the Privacy and Human Factor Subcommittee of TGDC and realize how dramatically significant the issues are for ballot design. In Nebraska, pretty much like many States and counties, we had ballots that were pretty vanilla, pretty generic, and the counties who paid for them pretty much attempted to maximize space use, minimize cost and keep things simple. And that isn't always compatible with usability and accessibility.

There are several comments I would like to share from the Nebraska pilot test overview. In that project, one paragraph stood out to me. "Preparing for an election can be a challenging, complicated process for election officials. Production cycles are organized around State mandated deadlines that often leave narrow windows for successful content development, certification, translations and election design activities. By keeping election schedules tightly controlled and making uniform voting technology decisions for local jurisdictions, States aspire to error-free elections. Unfortunately, current practices rarely include time or consideration

for user-centered design development to address the basic usability needs of voters.” And that paragraph particularly stood out to me as certainly one of the reasons that in Nebraska we wanted to undertake this pilot project with Design for Democracy.

The primary and general election ballots for Cedar and Colfax Counties have been distributed to you, and I’m not going to go through a comparison with each of them, but the primary ballot that you receive is a very generic, standard ballot. There’s nothing unusual about it. It all looks the same. The general election ballot was part of the pilot project ballot and the instructions are enhanced with graphics. The pages are numbered. The names of the candidates are in bold font and not just standard font with everything else. At the bottom of the page of each ballot, rather than saying in standard font “vote on both sides”, it says, “vote on other side” or “vote on successive ballots” with an arrow. And it’s surprising how eye-catching a graphic like an arrow can be to motivate the voter to turn that ballot over and vote on the other side. I heard an anecdotal story the other night in a county of a candidate who lost a close race, because the ballot in the county had not clearly designated that the ballot should be turned over to continue your voting, and so several hundred people had a blank backside on the ballot, because they weren’t aware that it was just, not voting on the front side. So those types of small graphics in the

instructions can make an enormous difference in the outcome of an election. So I've become a real fan of ballot design.

A post-election survey showed that voters did not notice a significant difference between pilot project ballots and those used in the past in the two counties. I view this finding as very positive, not a negative. I believe the redesigned ballot succeeded in doing their job, navigating voters through the task of voting in a helpful, unobtrusive and user-friendly manner. I believe the reaction of the voters would have been very different if they had been able to compare, side by side, the redesigned ballots with the traditional ballots and noticed the differences that I noticed in my comparison for this testimony. The traditional ballots were very bland while the redesigned ballots were very eye-catching.

Some of the suggested best practices might seem to be basic common sense to some people. I would caution that, just because a suggestion seems to be common sense, it doesn't mean it's easily adopted. As an example, Nebraska statute requires ballot headings identifying, "Presidential ticket," "State ticket," "county ticket," et cetera. This is an old statute that I assume was more appropriate for the hand count system, where voters would receive several pieces of paper to cast their ballots. It makes little sense to require county ticket heading, when the language immediately following says, "for county commissioner" or "for

county attorney” or “for county sheriff.” Unfortunately, because of the specificity of the statute, this is not something that can be changed administratively but instead requires legislative action, which we are looking at in Nebraska. But it’s the old question, the old adage of continuing to do things the way they’ve always been done and when you have to confront that and make a change.

Other suggestions are the product of graphic artists and usability professionals who have studied the public’s behavior. Items like font style and size, text alignment, and the use of color, shading and other graphic devices are simple to implement and are relatively costless. In Nebraska, with no specific statutory language in this area, these changes are easily addressed administratively but not necessarily in every State.

Suggestions on improving ballots can come from many sources. Shortly after becoming Secretary of State, a high school class in a very small town of Laurel, Nebraska, asked myself and my Deputy for Elections, Neil Erickson, to come and discuss a change in our ballot at that time, from “vote for three” to “vote for up to three”, to clearly indicate that the voter did not have to cast three votes or risk having their one vote or two votes not count, because of that direction on the ballot. Simple, but profound, for the voter, if they’re forced to vote for a couple candidates they don’t even know, in order to assure that their one or two votes actually get counted.

Once again, without specific statutory requirements, we made that change administratively and we're very proud of those high school students for having made that suggestion.

Many of the changes I've mentioned, cause no concern for election administrators. However, not all suggestions will find enthused officials. It's important to keep in mind the nature of optical scan ballots. They are generally column-oriented, unspecialized, meaning expensive paper stock. Accordingly, space on the printed ballot is very prized. Local officials will, whenever possible, seek to maximize the use of that space, attempting to balance items that might be helpful to the voter with a cost efficient use of the space, such as splitting a race between two columns in order to make use of every square inch of that ballot.

An example that illustrates this point is the instructional portion of the ballot. Instructions use three column inches on a traditional Nebraska ballot. The instructional portion of best practices sample in "Effective Designs for Administration of Federal Elections", is very effective but consumes much more space. The sample uses ten-column inches for the instruction and leaves the remaining column space blank, which is just anathema to a county official. As a result, an entire column, one-sixth of the available ballot space, is devoted to instructional material. A local election administrator would be very reluctant to devote so much space to

instructions, no matter how clearly they stand out, if it would force the use of a second page, which would add 25 to 27 cents per voter. The column orientation of optical scan ballots can cause other difficulties. There have been numerous examples where a race being split between two columns has caused voter confusion. Certainly election administrators recognize the problem caused by splitting a race between columns. However, sometimes, there's no alternative.

How am I doing on time, Tom? Anybody keeping track?

CHAIR RODRIGUEZ:

You're good. You're fine.

SECRETARY GALE:

I have a few minutes?

CHAIR RODRIGUEZ:

A couple minutes.

SECRETARY GALE:

As an example, prior to 2000, the Republican party in Nebraska elected nine of their national convention delegates on the primary ballot. In the 3rd Congressional District, it was not uncommon to have 40 or more candidates vying for those three spots. In that situation it was impossible to avoid splitting the race between columns. In such a circumstance clear instructions will help, but not guarantee that voters don't become confused.

I would like to offer some comments on ballot language. I believe everyone would agree that ballot language should be simple and easily understood. The more difficult challenge is getting agreement on what is simple and easily understood and yet fair and balanced. I am thankful that I do not write ballot language for Nebraska ballots. That task is performed by either the legislature or the Attorney General. I've seen language that I thought could present considerably better, written inartfully or in legalese. However, I'd probably take a different view, in that I don't expect ballot language to provide all of the answers, but instead to provide enough information that I'm able to identify the proposal from previous research that I did on the issue. Unfortunately, not all voters approach ballot resolutions in the same manner.

A corollary to ballot language is translation issues. My experience is somewhat limited, as I'm not bilingual and Nebraska only has one county with an alternative written language requirement. However, I have observed that regardless of who does the translation, there will always be someone who disagrees with the translation. In addition, the design ballot said that we should have English in the first column and the alternative language, in this case Spanish, in the second column. And yet the Department of Justice likes to have them stacked, English and Spanish side by side -- sandwiched side by side, which I find very, very

confusing. So they don't even follow what I would consider to be best ballot design. My office gained a great deal of knowledge and insight into ballot design from this project and we are incorporating changes in each election cycle. A limiting factor, however, in making design changes, is the capabilities of your ballot vendor. There are certain things their software can do, certain things it can't do.

It was an honor for Nebraska to participate in that project. We hope the project has advanced research on ballot design for the benefit of the U.S. election community. Thank you Commissioners for inviting me to address this issue and this pilot project in Nebraska. I would be happy to answer any questions if I haven't totally consumed all my time.

CHAIR RODRIGUEZ:

Thank you Secretary Gale. Mr. Gough.

MR. GOUGH:

Thank you. Thank you, Madam Chair. Thank you, Commissioners. As Madam Chair said, I've been in the business as Executive Director for 20 years, but I've been in the election business for over 30 years. As Executive Director Wilkey told me, he's been in it 40 years. As always, Tom had to get up on me, so we understand that.

But, as I mention, that the 20 years the elections have gone from just ink on paper, to then lever machines, then punch card voting, now it's gone back to paper to optical scan and now touchscreens. If you just sit back long enough, it will circle around again. And the problem is, that there are many people out there, and I do understand why there are concerns with people who champion the cause of all paper ballot elections, but the problem is that all paper ballot elections cannot solve all the problems. First of all, touchscreens is a proven system, DREs. They have empowered people with disabilities to vote on their very own. I have a friend of mine, Mr. Hanshew, who a couple of years ago sat back and came over to my office and said this was the first time in his life that he was able to vote unassisted. And he says the empowerment that he received could not -- you could not imagine. He was just the happiest person in the world.

Second of all, the touchscreen, or DREs, really lend themselves to early voting. Where else can you have all the machines, have all the different ballot styles, so you can go to any of your early voting sites? In the City of Chicago we have 51 sites. You can go in and you can vote at any one of the 51 locations. It's difficult to do that on a paper ballot, especially in the City of Chicago where we have over 1,800 different ballot styles. I'd have to have mounds of paper in every location. It's just not practical.

The other items with touchscreens, is that for language accessibility. In the City of Chicago we have under Section 203 of the Voting Rights Act, we have three languages that we have to publish in, English, Spanish and in Chinese, and the touchscreens lend themselves to having that. So you have, you know, you have accessibility. You have language accessibility. It's just a natural fit for this equipment.

But there are some problems with touchscreens which I want to bring up. I don't know if you read in the newspaper, there was a thing in the City of Chicago that invisible ink was being used. I'll tell you about invisible ink. There's been a story about the fat finger and about the angry finger. The keys to preparing the touchscreen, and I'll...

CHAIR RODRIGUEZ:

Please explain.

MR. GOUGH:

I will explain that all. I will explain it all. It's very interesting. Well, I'll go right to explain that. During the beginning of early vote, I get a phone call from a candidate. He says, "Lance," he says, "people with fat fingers are pressing two candidates at the same time." And the candidate I know very well and I said, "How is that happening?" He said, "Well people with fat fingers are pressing two candidates at the same time." And I said, "Do you know who these people

are?” And he said, “Yeah, one of them is my sister.” Okay. Right after that I received a phone call from a candidate, another candidate saying, “Lance, there’s a problem. People with angry fingers are hitting two screens at the same time.” And I said, “What do you mean, angry finger?” “Well they’re pressing the screen as fast as they can and the screens are changing without giving them enough time.” So I said, “Okay.” So I sat back and I thought, what could we do to stop the fat finger and the angry finger. Well, I was talking to a friend of mine and he says, “Well, you know, in phone operations, when we’re in telemarketing, you can always tell when you have an angry finger. Somebody presses on that button and then we get a supervisor to answer that call because that’s the one where you have the most trouble.” So, I was thinking, how can I solve these problems without changing 6,000 pieces of voting equipment that are already out on the street, that are already being voted on? We came up with a stylus, a stylus that’s recommended for touchscreen voting. They worked very well. Well, what happened was that one of our judges of election handed this stylus to a voter who was voting on an optical scan ballot. The person was trying to mark the ballot. Says, “Nothing is coming out, the pen is dry.” The judge of election, the poll worker said, “That’s invisible ink.” The person went to the counter, fed their ballot in with their invisible ink, the ballot came back and said it was a blank ballot.

The poll worker says, "Don't worry about that. Just press the button and it will override it." The person did that. Now let me just back up. The person that was voting was the wife of the poll worker that told him, "Don't worry about it." So it wasn't something that the poll worker was trying to have some vote fraud, it was that the poll worker went brain dead for a couple of minutes. We did find out about it. We were able to correct it. We did get everybody that marked with the so-called invisible ink and got them back to revote. But now we're talking about the City of Chicago, 1,400,000 registered voters, 14,000 poll workers, over 2,500 polling places. But this only happened one time. But it shows you, it only has one time for one person to go brain dead to cause a problem. So that's basically what we're talking about. So I explained the fat finger, the angry finger and the invisible ink. I did that already.

But let's go back to talking about clear design with DREs. And what the best thing is, and I agree with Mr. Secretary, is, you've got to keep the design simple. The more color, the more jumbled up you make the screen, the harder it is for the voter. The voter has to see something that are in upper/lower case, don't get fancy, don't bring a lot of colors. I mean, we've all gone to webpages where they've had six or seven different colors on text and you just skip right over it, and the voters do the same thing. What you have to do is keep it easy, keep it simple, don't be fancy.

The other item is that we believe in testing. In the City of Chicago my employees have a serious problem with me because I require a lot of testing. With 1,800 different ballot styles, I require that we test every single ballot style. We go through every machine. We test it with the languages, English, Spanish and Chinese. Then, after that, we go with the audio, English, Spanish and Chinese. Every single ballot style. And then, we document it. We document who does the testing and who checks over everything. And then, finally, it has to come to me. I do the final test. I lock myself in my office with ten machines and I go around and I test every single ballot style because once I sign my name on to it, I'm the person that takes the fall. And in the City of Chicago, trust me, I take a lot of falls. I spend more time in court than anybody else I know. In fact, my insurance company gave me a call and they said, "We're concerned about you Mr. Gough." And I said, "What are you concerned about?" "Well we ran a program and we saw that you're in court an awful lot." And I said, "Well, it's the nature of the business that I'm in." And they said, "Well, doesn't that bother you?" And I said, "Well, I haven't had a heart attack yet, thank God." But require it to make testing a priority. You test and retest. And when you do your testing, also document what type of test you go through because you'll need that in court.

We work with ballot design elements. We work with graphic designers. We had to go from -- and if you're working with graphic designers, you're going for optical scan and in the City of Chicago we use optical scan and touchscreen voting, so both units have to look alike. If a candidate sees something on this touchscreen that he doesn't see on the paper ballot, you're in trouble and I go to court again. So, what we have to do is, be consistent, and that's another thing that we have to do is, learn to be consistent.

The next item, and the final item, is planning ahead for the future. What I mean by that is, that we have focus groups prior to every election. In fact, what we found out the greatest, where I will get the most feedback, is from my senior citizens. I will go to a senior citizen's home and bring the equipment, bring lunches for everybody and have them sit down and actually vote. They will give you the best -- they are not in the election business, but they will give you the most honest answers you'll ever want. Some of them you might not even want, but you'll get the most honest answers. So I always encourage focus groups. Use young people. We use high school students, college students, and we use seniors. And they're the ones that will give you the best information, so you always have to do that.

Finally for people with disabilities, we do not have a uniform set of guiding through the touchscreen for people with disabilities,

blind voters. And we're working with the Lighthouse for the Blind and other agencies to sit down and map this out. In fact, touchscreen voting, it really was designed for people who had disabilities, that were blind. And that is something that we really concentrated on in the City of Chicago. In fact, our audio recording, we have our people that we've contracted with the Lighthouse for the Blind that do all of our audio. So they're part of the process. And as long as you keep people as part of the process, you show that you never shut them out, you'll go a long way.

And I have all my comments in writing that I've tendered to this Commission, but I just wanted to paraphrase it because I know time is of the essence. So thank you very much.

CHAIR RODRIGUEZ:

Thank you Mr. Gough. Mr. Lindback.

MR. LINDBACK:

Good afternoon and thank you very much for inviting me to participate in your discussion today about this very important topic, and as you all know one of my favorite topics.

CHAIR RODRIGUEZ:

Could you, John, with the microphone a tiny bit closer?

MR. LINDBACK:

Okay. As you all know, ballot design played a role in igniting the controversy over the 2000 general election and continues to ignite

controversies today, from time to time. And wherever election officials gather in this country, they uniformly acknowledge and understand the importance to the voter of effective ballot design. Because of my role with Design for Democracy, I have personally observed a thirst among election officials for more knowledge and know how on this subject. Wherever and whenever this subject is on the agenda at conferences, the sessions are well attended and well received. Design for Democracy sessions on this topic at conferences receive consistently high ratings from the people who attend. I congratulate the EAC for keeping this issue on the front burner after your release last year of the design study. I think that's very important.

I was asked to talk to you today about the design of paper ballots. I am presuming that whoever assigned me this topic, meant those ballots used mostly in rural parts of the country at this time, which are marked by hand and manually counted. It's probably fair to say that paper ballots receive less attention and scrutiny than any other kind of ballot we're going to be discussing today. They're used mostly, if not entirely, in rural areas where there are fewer voters. There's less media in those areas. Design flaws could occur in those areas of the county and most of us would not hear about them. But that, of course, does not diminish the

importance of good design for every kind of ballot in use today and for every voter.

Some rural jurisdictions in this country have an option of using paper ballots or ballots that are counted by a machine, depending on the election they are about to conduct. And I'll give you an example of that. One of Oregon's rural counties, Malheur County, which is on the far Eastern part of our State, owns a high speed optical scan machine ballot counter, but for small local elections, their local -- their elections official chooses to do paper ballots and count the ballots by hand. And why is that? Because it's expensive to rev up that machine. It's expensive to get it programmed for her. If it's an election with maybe six to 800 voters only, it's cheaper for her to do a paper ballot and have them manually count the votes. So, the County Clerk makes the decision based on cost and administrative convenience. Rural clerks in this country have been doing that kind of thing and making those tradeoffs for years, and yet, for all of those rural voters, the design of paper ballots has been something that has been probably not gotten a whole lot of attention. And so I'm hopeful that the attention that the EAC is bringing to this topic will filter down to even paper ballots.

For other jurisdictions, however, there may be no choice. The jurisdiction is too small to justify the purchase of ballot counting

technology, and so it's important to emphasize the principles of good ballot design are the same for paper ballots as they are for any other kind of ballot. And if you look at the literature that's been done by Design for Democracy and others on this topic, the recommendations on ballot design are consistent across the different kinds of ballots that you use.

I like to call it that election officials should follow the Ten Commandments of ballot design and I've got ten of my favorites, some have been emphasized here so far and some others have not, but I'd like to go over them briefly. One of them is, to use lower case letters, not all capital letters. That's a very basic design. Avoid centered type. Use big enough type so that your voter doesn't have to strain to read what's on the piece of paper. Pick one type style and go with it. Don't mix different kinds of type styles. That's difficult for the reader. Support process and navigation with your design, and by that, I mean don't split races between columns, such as Lance was referring to earlier, or between the front or back of the ballot. Make it very clear to the voter exactly where they're supposed to go next, and you can do that by the use of design, an effective design. Use accurate instructional illustrations, and I think you've got some examples of that on the posters in the back of the room. Use informational icons only. Use contrasts, such as shading or color functionality. but

never rely on color exclusively. And decide what's most important. Establish a hierarchy of information on your page, so that the voter gets used to being able to tell what is the most important piece of information on the page and what is the secondary piece of information. All of these principles, and those are the Ten Commandments, are based on solid research and expertise from design professionals who have been active and supportive of the work for Design for Democracy, as you know, an affiliate of the American Institute of Graphic Arts. If every elections official in this country just followed the Ten Commandments of ballot design, I'm convinced we would lower ballot marking errors by voters.

If you haven't seen it or read it yet, I strongly recommend a book on the subject by Marcia Lausen head of the design school at the University of Illinois at Chicago. "Design for Democracy: + Election Design," and I brought my copy, should be required reading in my opinion for every elections official in the country. The book is loaded with good illustrations that show the difference that following solid design can make. And it shows and illustrates well, the work done in Nebraska and Oregon and other States by Design for Democracy. Yes, I'm enthusiastic on this subject and I'm enthusiastic because I've learned so much from Marcia Lausen and others active with the organization. They are the prime example of how academia, professional designers and election officials can

work together in a positive and productive way to make our voting system better and reduce the number of errors by voters.

It's time for us, however, to move to a new phase on this subject and that's implementation. The discussions today and previously have been very helpful in educating elections officials and the public about how important a well designed ballot is for the voter, but implementing the changes is another subject and many election officials need help and advice on how to get the job done and ways to pay for it. The EAC's design study last year was a good first step. The templates that were made available for ballot design and polling place signage were terrific, exactly the kind of resource that elections officials need. Those kinds of services in combination with Marcia Lausen's book provide high quality and helpful resources for elections officials.

More steps need to be taken however. There needs to be a follow-up to make sure that elections officials are using the resources in a productive way. Implementation in most jurisdictions requires more money. Is it possible to get Federal help to support effective design changes? Also, the principles of good design -- ballot design need to be incorporated into voting systems in America. Each voting system improved in this country ought to be capable of incorporating, producing and reading ballots that are designed using effective design principles. Where appropriate,

recommendations of the EAC's design study should be incorporated into the Voluntary Voting System Guidelines. Where appropriate, recommendations of the EAC design study should be incorporated into your Management Guidelines for elections officials. Design principles need to be incorporated in every kind of ballot used in America, from the home-grown paper ballots used and read by the -- to those used and read by the most sophisticated technology. The best way to make sure that rural elections officials who use paper ballots are aware of design principles is through education, and I believe the EAC is an appropriate key player in the education process.

So thank you again for your attention to this matter. And I'm always available to talk about my favorite subject in the field of elections.

CHAIR RODRIGUEZ:

Thank you, Mr. Lindback. I said I wouldn't interrupt or say anything, but I'm going to violate my own little rule and say that I got an email during the break that said the Congressional staff, both parties, will be represented when the EAC staff presents a synopsis of today's panel. So maybe that could lead to some of those changes that you recommend.

Next Ms. Chisnell.

MS. CHISNELL:

Commissioners, and I realize just now, that I'm the only person on the panel who's not an elections official, I'm here today as a representative, mainly of the Usability Professionals' Association Usability in Civic Life Project, but also in my volunteer role on the San Francisco Ballot Simplification Committee.

Ballot design was the catalyst for voting reform that started in 2000, in the Presidential election with the butterfly ballot in Palm Beach. I don't need to belabor that, but that was the origin of the discussion. And although dozens of discussions and studies were inspired by the problems with ballot design in that election, the discussion has since then been redirected from usability of ballots to security, validity and verification of voting systems. So I'm pleased and as a representative of the Usability Professionals' Association, delighted that the EAC is refocusing attention on the key interaction of an election, and that is between voters and ballots.

It's probably true that going into that election, the Palm Beach County ballot was probably tested at some point, say, during L & A testing, or after, simply to ensure that it would work in the voting machine. As Secretary Gale pointed out, until recently, that's what a usable ballot meant, is that it could be processed. But what makes ballot design successful from the point of view of voters? Errors in voting, such as undervotes and overvotes, are an

important measure of effectiveness. Effectiveness is one of the usability measures laid out by NIST and it defines effectiveness as the accuracy and completeness with which specified voters can achieve specified goals in particular environments. This is very close to a definition that the International Standards Organization has put in place. Error rates are a tantalizing bit of evidence that something is wrong in design, but voters don't always realize that they've made errors or that the system thinks that they've made errors, as the invisible ink example points out. So voters must feel confident that they can find the races they want to vote in, understand the issues that they're voting on and cast a ballot that will be counted as they intended.

These are basic usability goals, basic accessibility goals. So how do usability and accessibility figure into ballot design? As Whitney Quesenberry, founder of the Usability Professionals' Association Usability in Civic Life Project pointed out at a recent EAC roundtable, it takes access plus usability to provide accessible usability to all. So improving the accessibility of ballots can improve their usability for everyone. For example, simplifying language for people who have limited reading skills or cognitive disabilities also makes ballots easier and quicker to navigate and use for voters without these disabilities. In her statement to the roundtable Josephine Scott, also of the UPA voting and usability project, said

the best language practice for those with a broad range of disabilities is the language that works best for all voters, that is plain language. Plain language, she said, can make a polling truly accessible for all abilities by making election communications clear, easy to use and understandable. We are pleased that Congress recently, just yesterday or the day before, passed a plain language bill that should apply to new legislation.

Clearly worded ballots and instructions optimize the opportunities to vote error free for those with cognitive disabilities, as well as all of us, for whom stress in voting has its own cognitive challenge. How well can anyone read a ballot where there are many time pressures, bad lighting, distracting environment and/or intimidating legal procedures? Likewise, improving the usability of a ballot can also improve its accessibility. A clean layout helps navigation for voters using any type of ballot. Plain language makes audio ballots easier and faster to use. Clear instructions for use reduce the number of confused voters.

So, how do you know for sure that a ballot is usable and accessible? Guidance for ballot design exists. Requirements in the VVSG for user interface design for voting systems can help ensure that voting systems are capable of supporting well designed ballots. In addition, the EAC, working with Design for Democracy, has created guidelines and templates for best practice, as we've

talked about already and Karen is going to talk about some more. However, ballots are designed locally. New ballots are designed for each election. Having good guidelines for voting systems is good. To ensure that each ballot for each election is usable and accessible, we must go further. Best practice makes an excellent point from which to begin, and there are other reviews available by experts and citizens such as the help that the San Francisco Ballot Simplification Committee offers in drafting summary digests of ballot measures for the voter information pamphlet. But true usability is invisible. If a design works well, usually nothing is said. Nobody goes to court. Nobody gets a headline in the newspaper. But if a design is not successful, voters make mistakes.

The only way to know whether a ballot design, indeed any design is usable, is to observe people who are typical users using it. The best way to detect where language and design might be misunderstood or confusing, is to observe a voter in the act of voting the information -- using the information provided. This is the essence of usability testing, and Director Gough mentioned using focus groups. We're suggesting doing individual sessions where you can observe voters in the act of voting.

Incorporating usability testing into the local ballot creation process along with best practices on ballot design and ballot language will reduce overvotes and undervotes, minimize voter and

election official errors, reduce the need for recounts and improve the voting experience overall. Including people who have disabilities as participants in these usability studies will help identify issues with accessibility as well.

Usability testing is so critical. It is the method for finding out if people are going to be able to use the ballot correctly and efficiently, and basically, what we're doing is live usability testing by putting ballots that haven't been reviewed into an election on Election Day. Usability testing is the technique for evaluating products and uncovering problems in organization design and language while there is still time to fix those problems. In usability tests, trained observers watch and listen as representative users, one at a time, try to use the draft product, such as a ballot. So usability testing is a way explore questions with measurable answers,, that is, do voters understand how many people they can vote for in a particular contest, the difference between vote for five or vote for up to five or vote for one, two, three, four or five. You can confirm or challenge assumptions. Do voters understand the instructions on a ballot? We assume that they do, but many instructions are loaded with election jargon, technical terminology that relate to the DRE or other kinds of problematic vocabulary. Through usability testing, you can also help choose between two design alternatives. For example, in which electronic ballot design

are voters more likely to vote every race, if there's one race per screen or if the races appear in a continuous flow? Many other examples that this could be applied to. Dean Logan in LA County could have done a usability test to learn whether the extra bubble for the primary was going to be a problem and how to remedy that before he went into the election.

Ballots that are not usable by voters affect the outcomes of elections. We've all seen that. Even though jurisdictions now have new voting systems as a result of HAVA, issues around ballot design still affect the outcomes of elections. The most widely reported problem was in 2006 in the mid-term election in Congressional District 13 in Sarasota County and Charlotte County, Florida. In both the 2000 election and 2006 election, well intentioned design applied to best practices in a way that created usability problems. In Palm Beach, the use of larger fonts created inconsistency between the names of the candidates and the way those names were selected. In Sarasota, the desire to reduce the number of pages in the electronic ballot, created a page in which a race appeared to have no title above it.

The purpose of usability testing is to identify usability problems, design problems. A design problem means that there's a mismatch between how the voter is thinking about how to do a task and how the system or ballot works. If even one participant in a

usability test has a problem completing a task, say voting on a race, it's likely that real voters in the real world will too. Though some in the usability community assert that large numbers of voters would be needed to identify all of the usability problems with any particular ballot, a very small scale usability test of five to ten individual 15-minute sessions with representative voters would almost certainly have revealed these glaring design problems in both elections and thus the problems could have been avoided.

Most local election officials try to incorporate best practices and now the EAC has more information available on best practice, but even the best intentions can introduce unpredictable usability problems, especially when officials also must incorporate detailed local constraints or unusual demands exist on a new ballot. So, best practice just can't cover all the situations. Every State, county and local jurisdiction introduces some particular constraint that could affect the organization's design and language on the ballot. In some cases poor design and usability practices are built into local laws, as we've talked about. For example, in Washington, State Director of Elections Nick Handy observed counties making mistakes in the design of their ballots such as misspellings, mislabelings, including races that shouldn't be included or leaving off candidates. The EAC best practice templates and the VVSG guidelines just don't cover these situations.

So local elections officials need training and tools to learn how to do usability testing because one master best practices ballot just can't cover every local need. A few jurisdictions have done usability testing of ballots, most notably in Nebraska and Illinois. Washington State has also done a few tests. But user experience, professionals or academic researchers, not local elections officials, did those tests. Some local elections officials do other types of research about how well the election system is working for voters, including surveys, mock elections and focus groups. However, surveys and focus groups deliver self-reported information and relies on the memory of the voter to tell you what they feel like telling you and at mock elections voter representatives or -- sorry -- vendor representatives or local elections officials are often present to train voters. Usability testing shows realistic individual behavior that reveals patterns in what happens when someone uses a ballot and why that happened.

So, we in the usability and voting project at the Usability Professionals' Association got together a couple of years ago and developed a thing that we call the LEO usability testing, the local elections officials. In April 2006 the Usability Professionals' Association voting and usability project organized a two-day symposium hosted by Michigan State University's usability and accessibility center. The group began to develop a usability testing

kit for local elections officials to use to evaluate the design layout and instructions on ballots before using them in elections. Over the next year the group continued to develop the materials and in May 2007 Nick Handy, the Director of Elections from Washington State, invited me to train 150 local elections officials on usability testing in the State's regularly scheduled regional training for county auditors and election workers. Nick says that the workshops were very well received and local elections officials did take them to heart and were using the methods. He said, "We really believe that an important way to improve trust and confidence in elections is to minimize these kinds of mistakes that are common in every election jurisdiction in the country." Each of these mistakes result in a headline that describes the mistake that most voters regard as another indication that elections officials are not exercising the proper level of vigilance in accounting for every voter and every ballot. So Washington State did have fewer errors in 2007 than they did in 2006 and Director Handy attributes that to more usability testing by counties and to heighten the awareness by the counties of usability issues. The current version of the kit is available on the Usability Professionals' Association website.

I want to thank the Commission for inviting me again and I'm glad to take any questions or comments.

CHAIR RODRIGUEZ:

Thank you very much. Okay, now we go to Ms. Dent.

MS. DENT:

I guess I should get my presentation out, huh?

CHAIR RODRIGUEZ:

It's been fascinating.

MS. DENT:

It has been. I've been very impressed. Thank you, Madam Chair and Commissioners for the opportunity to be here. I really am honored to have this opportunity because I am the local elections official.

Prior to 2000 -- well, I might have to preface this with the fact that I have been asked to talk about the design process from start to finish, so you're going to get a little more of the local color here, along with some of the others things that I completely agree with the other testifiers today. And as Dana said, prior to 2000, little attention was given to usability, uniformity, voter interface in the design process. And then along came the butterfly ballot in Palm Beach County.

Following that, the State of Florida, and I'll just show you the butterfly ballot here, the State of Florida following that, in 2001, passed a comprehensive election reform package and they attempted to address a lot of issues, along with ballot design which was responsible for the 537 vote difference in electing the

Presidency of the United States. And one section of that legislation created very precise specification for ballots in a charge to the Department of State to adopt rules prescribing a uniform, this is, for the first time in Florida, primary and general election ballot for each certified voting system. And the rules were also to incorporate, and mind you, this was back in 2001, even before HAVA, clear and unambiguous ballot instructions and directions, individual race layout, overall ballot layout and the graphic depiction of a sample uniform election ballot for each certified voting system. While this Florida administrative code rule became the standard for both the precinct count and the touchscreens, which, in that bill, actually became the only types of certified voting systems allowed in the State of Florida, the rule provided uniformity and ballot design using Sequoia, ES&S and Premier Voting Systems, both optical scan and touchscreen.

Before we even get to designing a ballot, there's a need to be familiar with the documentation of the specific voting system. In having personally worked with punch cards, touchscreens and now optical scan systems, it's evident to me that each system has its limitations and may not provide all of the desirable flexibility in programming a ballot. Hard coding of many facets of the system can create the need for software and firmware upgrades, simply to make minor changes in ballot design. While these changes may be

an election administrator's priority, it's not always the greatest priority for the vendor.

Evaluating the impact of the spacing, placement of ovals and arrows and timing marks is -- to the tabulation process is essential in ballot design. Determining how many folds or where to fold a paper ballot could affect the processing of paper ballots. Making a decision as to how many races to place on a page of a touchscreen may affect how an individual voter interacts with the ballot. Other programming challenges faced are the, as mentioned before, recording of the audio units, whether touchscreen or AutoMARK, in assuring the correct pronunciation of a candidate name and that there's no inflection of voice, which might affect a voter's choice. The language requirements and placement and the pronunciation of ballots must be reviewed. And in some jurisdictions in Florida, we do have English, Spanish and Creole, and there are a lot of different dialects that go with even the Spanish population in the State of Florida where there's a blended system, the realization that there's a sequential order to programming a ballot. With a touchscreen, for example, you have to first do the absentee paper ballot, then the DRE screen and finally the audio portion. And any changes to one can impact the others, which means one change means going back and redoing them all. Lance is shaking his head.

Another pre-design consideration is the selection of the printing vendor. You just can't go to Quickie Printing around the corner. You have to look at paper quality, availability of approved ballot stock, whether offset or laser printing is used, ink density, ink type must be taken into account. Sometimes, even the vendor's certified printers do not automatically meet the standards necessary to avoid scanning issues. One such vendor's certified printer that we use in Sarasota had bad timing marks in ink that ran, resulting in excessive duplication of ballots prior to tabulation. And we only used that printer once, I will say that, and it was vendor certified.

The final predesign preparation is certification by the Department of State, and the State actually gives us the candidates nominated for placement on the ballot, and we can't print anything unless they have certified it. If the certification is incorrect, and it has been, and not delivered in a timely fashion, then ballot preparation is delayed and critical time is lost in the printing of ballots. We have a small window there, to get those ballots out to the UOCAVA voters in, you know, a timely fashion and if that is delayed we do lose critical time, or if there is an error that is made. Occasionally there may be a death, resignation, withdrawal or removal of a nominee. There's a process for nominating a replacement, but in Florida if the new nominee is submitted after certification of the ballot by the Department of State, the ballot is

not changed and the former nominee's name must appear on the ballot. And this has created confusion, but that's per Florida statute.

After pre-design preparations have been made, then the actual design begins, always in accordance with statutes and rules. And in Florida, the title of the election must first be printed across the top of an optical scan ballot and on the first ballot screen of a touchscreen in all caps bold. And I'll show you the first page of our 2006 Sarasota ballot. And you can see the title and then the heading that comes next. Next, pre-prescribed ballot instructions must be printed directly under the title on the front of an optical scan ballot and for the touchscreen at any point before the listing of the candidates or prominently posted in each voting booth. And we had them posted in Sarasota County in each voting booth. Following the instructions, the uniform ballot design rule then dictates that headings be used to designate races beginning with President and Vice-President, then Congressional, as we had here in the 2006 election, State, legislative and county. Under those headings are listed the office titles and candidates. Non-partisan offices appear following partisan offices and before Constitutional amendments or other issues. And we're getting very clear specifications for the design of the ballot here. In Florida, ballot position is based on the number of votes received for Governor in

the last general election. Therefore, if Florida has a Democratic Governor, then Democratic candidates are listed first and vice-versa.

Other design requirements include headings and office titles, must be in all caps bold. Names of candidates must be in upper and lower case. Under each office title, must be printed “vote for one” or where more than one vote is permitted, “vote for no more than the number to be elected.” When required, the appropriate abbreviation of a party name or no party affiliation, must be to the right of the candidate’s name in all caps and not in parentheses. No candidate race can appear in more than one column on an optical scan ballot or on more than one screen of a touchscreen ballot. And just an example, this was our Senate race showing here and we had so many candidates in a write-in, that’s all we could fit under the Congressional heading on that particular ballot. On two-sided optical scan ballots the words “vote both sides of the ballot” must appear on the bottom of the front and the bottom of the back of the ballot in all caps bold. On touchscreen ballots, the language choice must appear prior to the first ballot screen. Font sizes are based on the number of candidates and races on the ballot, but no font or ballot image can be smaller than ten-point type. If there are more candidates than will fit in one column or on one screen, or if the party or candidate name is too long to fit on

one line in the minimum font size, then approval must be sought from the Division of Elections prior to printing the ballot. We've designed the ballot now.

Upon completion of the ballot design, which is always conducted under dual or tri-control, the layout design is approved. Sometimes as many as eight pairs of eyes review the ballot. Several staff members actually read letter by letter, the language on the ballot. If, for example, we are conducting an election for a municipality, then the proof is also sent to the city official to sign off on. The files are then shipped to the printer, who supplies proofs of ballots which are again reviewed by staff before giving the okay to print. When ballots are finally received from the printer, the next step is to proof and, as Lance does, test each ballot style. And the buck stops with me. I have tested each of the ballot styles. And finally, a public logic and accuracy test is conducted prior to early voting or the mailing of absentee ballots.

I'm going to give you the second page, which is the controversial page on the Sarasota County Congressional 13 race. One would think that all the steps taken since the 2000 election in Florida would have resolved all the issues with ballot design. We certainly have a laundry list of some that are best practices and I think a few that are not best practices. Yet in the 2006 13th Congressional District race, there were 18,000 plus undervotes.

There were even higher undervotes in the Attorney General's race in other Florida counties.

Analysis by David Dill of Stanford University, Ted Selker of MIT and others have studied the ballot design and have come to many conclusions. David Dill's report stated, "It seems likely that the ballot design contributed to higher C.D. 13 undervote rates in Sarasota, but the ballot does not explain all of the high undervotes." The Cal Tech MIT voting technology project concluded, to me, the obvious, and that's why I brought these slides to you today. Bold colored headlines above some races distract people from ones without them. And, as you can see, that State, in the middle distracted some voters from the race at the top. Races with a small field of candidates can be overlooked when next to a race with a large field. Again,,case in point. And second-chance voting can indeed reduce errors. The voting technology project also reported data which indicated that test subjects did not miss the Sarasota C.D. 13, if they had a sample ballot to follow in the voting booth. It's interesting to note that every registered voter in the Congressional District 13 race in Sarasota had received a sample ballot prior to the election and that there was indeed second-chance voting via a review screen at the end of the ballot, this is on the touchscreen, which indicated the selection made, or in the

event of an undervote, no selection made. Voters then had the opportunity to make changes prior to casting a vote.

The EAC, you all, following the November 2006 election conducted a study resulting in the “Effective Designs for the Administration of Federal Elections.” Design for Democracy provided testimony at our Florida State Association of Supervisors of Elections last November and they had worked on some rewording of our uniform ballot design rule, but to date, Florida has not amended this rule and so we’re still waiting for some further direction.

So where do we go from here? We know that it’s critical that the voter have optimum opportunity to interact with a ballot that has clarity and ease of use. Studies, such as mentioned above, your study and Design for Democracy, have certainly highlighted and set standards for the effectiveness of design, but from a local election administrator’s perspective there are additional areas to be considered and analyzed. The lack of flexibility in the vendor ballot creation software, the length of ballot. Now, in Florida, we have extremely long ballots. 23 pages was the length of this particular ballot. Had we put one race per every ballot screen, there would have been 53 ballot screens and the attrition and drop-off as the voters go through that ballot could have impacted a lot of other races further down the ballot. The costs, which has been

mentioned before, involved, the usability of printing on the front and back of one page versus a two-page ballot. Now we're not sure, and we would like to know the answer, whether doing that front and back, as I think one of the other panelists mentioned, that people just missed the complete other side of the paper ballot, would it be better to go to a two-page paper ballot instead of doing front and back? The impact of the multi-language on ballot design, and how ballot certification deadlines affect the process. Again it's interesting to note that both the butterfly ballot and our Congressional District 13 ballot were designed because of the length of the ballot. And ironically, the butterfly ballot was designed to increase the font and make the long Presidential race easier to read, and in ours, in Sarasota County, to reduce the number of screens the voter had to navigate. In reality, ballot design is not a great challenge until there's an attempt to balance readability with ballot length.

So what am I asking you all to do besides thanking you for the work that you've already done? I really appreciate it and I think keeping the ballot design in the forefront is critical, which the entire panel has indicated. I believe that election administrators across the country are now in tune to the effect that ballot design can have on minimizing voter confusion in the process. Additional change really needs to come from the top down. I would ask the EAC to

assist us, during the initial certification of voting systems, in insisting that the design standards that have been established as best practices are taken into consideration by the vendor. The people that are designing these voting systems have not, maybe, done some usability studies and they're doing it from a technical perspective, not from -- in making the ballots work, as was mentioned before, but not from a design standard. That the local users have the ability to format a ballot based on State statute, rule and variation in ballot length. That you work with the State officials in the development of uniform rules, using professional design experts for each voting system certified. And that legislators are informed as to the sometimes unintended consequences delivered to the elections administrators, particularly in ballot design. And only then, if we -- because I'm at the bottom of the totem pole and I am impacted by what they do at the State level, what the Secretary of State and the Division of Elections does, and then from the Federal level and by the vendor. And there's so many factors that the local election administrator does not have any control over. And for us at the local level, to do the job that we really need to do, we need to have some help again from the top down.

And I do thank you very much for your attention. And I probably talked -- I was trying to talk as fast as I could. Keep on working on the ballot design and it will help all of us. Thank you.

CHAIR RODRIGUEZ:

Thank you, Ms. Dent. Now Ms. Lynn-Dyson and Ms. Schmidt.

MS. LYNN-DYSON:

I will keep my remarks very short. I know that the day is long and I know certainly the Commissioners are familiar with the study and have been hearing about it for the last hour.

We have a couple of copies in the audience. If you all -- we can't -- these are very costly to reproduce. We're a poor government agency. But we would like to give you an opportunity in the audience, if you would like to flip through, you can see what we have on this CD ROM that we created as a result of the 18-month study we did. And we actually released this study last July in Charlotte and subsequent to that distributed about almost 6,000 CDs to local election officials all over the country. And so, as the Commissioners know, this is one of my all-time favorite projects because it is one that I like to talk about as being the best example of how you take research into practice.

You heard us talk -- colleagues talk about the usability test. For this particular study, Design for Democracy, for us, not only did ten research events but they did 54 usability evaluations, and as far as I'm concerned, that's pretty darned good, as good as it gets in terms of really testing the assorted templates and documents.

I'll try and keep this very short and just again, give the real high points that I would say are in the CD, are in the report, but also things that we would commend to election officials around the country as you look at designs and redesigns of your ballots. It is an iterative process and we, I think, from a research standpoint, think it's important that you set a baseline for yourselves and actually evaluate the impact, the effectiveness, in successive elections and think about continuing to make approvals and to come up with a whole approval process and a chance to really evaluate the value, the impact of the design changes. And to the extent that you can, and it's feasible, really think about the voter first. I know this is something that Design for Democracy talked a lot about and we said we, you know, we understand in a perfect world, it is the voter first. But you have vendors that you have to deal with. You have administrative constraints. But to the extent that you can, really do think about who we're really serving, all of us primarily.

Six experts, really important for local elections, State election folks to touch base with as they're designing their ballots. A simple language expert, a designer, a usability expert, a translator, a cultural expert and a policy advisor, folks who can help you navigate through the legal and public relations issues that you're

facing. But those are kind of the high points of the kinds of folks you want to make certain you involve in your design process.

Some of the critical design elements that are described in this report, you want to use one or at a maximum two languages per ballot. You want to provide summaries of long ballot measures, to the extent that you can, with your text use and the size on your text. Use a minimum of a 12 point sans-serif font with 2 point line spacing, left aligned, upper and lower case letters. The universe type font is common, it's consistent and it's readable. And only use 40 to 60 characters per line. On color, use just one color for instructions on op-scan ballots. Titles in white, against colored backgrounds, are easiest to read and use colors only to emphasize your important information. On your icons and your graphics use instructive symbols, as they can really be very helpful to literate voters, and political party icons are often very confusing to voters.

You'll want to remember, as LEOs and folks who are interested in ballot design, that HAVA mandates that there are about ten signs that have to be created and they are things like the Voter Bill of Rights, voting instructions, sample ballots, handicapped and accessible entrance signs. Once again, all laid out in our CD in a beautiful fashion, in a grid fashion, you'll see exactly what's mandated by HAVA. And you'll also see, what I think is extremely useful, is actually a scheduling, if you will,

fabrication calendar and timeline and it points out good detail about production schedules, for things like your Voter Bill of Rights, for your sample ballots, for your precinct ID and polling place information signs. And it tells you, allow yourself five days for this, it will take you two to three days for that, what you need to do immediately. Very helpful. They went so far, in this document, to say you can actually blow up the template and you can put it in your local election space and it's a very helpful calendar for local election folks to use.

Some basic design principles for the different machine types. On op-scans you're going to want to include the page number, out of the total pages in a multiple page ballot, that is, page two of five. Selections should be marked into an oval to the left of the candidate's name. Ballots, again, should have 40 to 60 characters per line and use at least your 12 point font.

Some principles for both the full faced DREs and the rolling DREs, ensure that your voters can easily review and change their votes at any point in the ballot. Use upper case and lower case sans-serif type at a minimum size of 25 points. Avoid using center alignment, all cap letters or multiple fonts. On your full faced DREs, consideration should be given to candidate name order, being rotated from precinct to precinct, so that all candidates can be listed first in roughly an equal number of precincts. I thought that was an

interesting and important point. Include instructive phrases like “vote for one pair” or “vote for up to five,” as we’ve talked about, at the top of the ballot sections. On your rolling DREs, present voters with a choice of their preferred language before they begin voting. Direct voters next, to a welcome screen, which allows them to begin voting, to learn how to use the ballot, to see a list of questions and finally how to change their screen settings. When a voter makes a choice, their choice, his or her choice, should be highlighted and a checkmark should appear. And finally, on your rolling DRE ballots, for lengthy candidate lists, a bright colored bar should appear at the bottom of the screen which reads, “Touch here to see additional candidates.” Before submitting his or her ballot, voters should be able to visit a review screen, from which he or she can print his or her selections.

And finally, in closing, of course, 6,000 LEOs we hope, we certainly think, have the CD. But also, we have on EAC’s website an abridged version of this document and that can be found, of course, at www.eac.gov. We fully anticipate that the Research Department in the next six months or so will be out in the field working with folks, like the folks on this panel, who really have done this work. And we just hope to really take advantage of that and really show the good use of government resources.

Thank you.

CHAIR RODRIGUEZ:

Let me ask Karen a real quick question. Didn't you do a usability test with the graphics behind us?

MS. LYNN-DYSON:

Yes. As a matter of fact, we, as I mentioned in my remarks, Design for Democracy actually tested in 40 different locations, and I couldn't find the number in their study, but I have to assume that Mary Quandt must have worked with hundreds of voters. But also we did some work in-house. In the early months of the Design for Democracy Project, they actually had -- they gave us templates, they brought them in-house and we had an opportunity to look at them. And actually, at a couple of public meetings, we had them up on the wall and folks had an opportunity to give us their feedback. So, I just am so -- and I said this in my testimony this summer -- I just feel so good about the fact that this was so well vetted and shared in so many different kinds of environments that I'm just so confident in what they came up with.

CHAIR RODRIGUEZ:

Thank you.

MS. SCHMIDT:

And thank you very much for the opportunity to join all of you today here with the panel discussion on ballot design and preparation. I speak, like with Kathy Dent and Lance and as a former election

official, I truly appreciate the efforts of the Commissioners and the EAC in continuing this mission to conduct research and collect guidelines and best practices. You just can't understand the availability of these resources, is just this huge, huge giant step towards improving election administration in this country and it will make a huge impact. I feel strongly about the project, particularly the Election Management Guidelines project that I've had the privilege of working on.

Recognizing the need to get information out to election officials from the lowest level, those smallest little counties, I'm from Kansas, so, we have very small counties in Western Kansas, to the larger jurisdictions as quickly as possible. The EAC released the little Quick Start Management guide on ballot preparation in September of 2006. So that was kind of our first step towards trying to get some easy-to-read information out to local election officials. And I just wanted to point out a few of the tips and suggestions that are in there, and some of them have already been covered and I think that's good because the working groups that helped us with the guidelines in the chapters, are coming from the local election officials.

We emphasize the need to understand the significance of the placement of ovals, folds, timing marks and precinct ballot style identifiers. And if the ballot is folded on an oval, it may impact the

scanner's ability to read the ballot, as we all know. To prepare the recording of audio ballots, we suggest that election officials consider asking the candidates to actually record the pronunciation of their name at the same time that they're filing for office. Now we know how to say their name for the audio ballot. Again, use vendor certified or pre-qualified printing companies. I know this first-hand so well. Remember if the ink density on the ballot is too light, the scanner will have difficulty in reading the timing marks. And if the weight of the paper stock is too heavy or too light, it will also cause the scanner to jam, immediately. And I think Lance reinforced this, as well as Kathy, conduct a logic and accuracy test when the ballots arrive from the printer. This test should be successfully completed before you mail any ballots out and before issuing any to early voters. Another really important one that we've all learned of lately through the news media, is be sure you have a plan "B" in the event ballots are not delivered from the printer on time or there's a shortage of ballots on Election Day.

And again, we have a soon-to-be released, I think, new chapter for the Management Guidelines, the bigger book, and it is devoted to ballot preparation and design. And again, I know the Commissioners and Mr. Wilkey know, that one of the goals of the Management Guidelines project, is to integrate that document with the Voluntary Voting Systems Guidelines, the VVSG, where

possible. And so, the chapter on ballot design does truly reinforce the requirements of the VVSG in many places. And I kind of wanted to go through some of those, some examples of that chapter. We state, from the VVSG, “When an instruction is based on a condition, the condition should be stated first and then the action to be performed.” And in the management guidelines, we try to give you an example of what that means. For instance, use “in order to change your vote do X” rather than saying “do X in order to change your vote.” So we’re kind of giving you an example of how to implement the VVSG. The ballot shall clearly indicate the maximum number of candidates for which one can vote for within a single contest. The relationship between the name of a candidate and the mechanism used to vote for that candidate, shall, meaning it’s mandatory, be consistent throughout the ballot. And an example that’s provided is, the response field where voters indicate their votes must not be located to the left of some candidates names and to the right of others. That’s what that standard means. The voting system should not visually present a single contest spread over two pages or two columns. However, the guidelines do note, as others have said, that if the contest has a large number of candidates it may be infeasible to observe that guideline. And the system should issue instructions on the correct way to perform actions, rather than simply telling voters what not to do. For

example, “fill in the oval for your write-in vote to count” rather than telling the voter “if the oval is not marked, your write-in vote cannot be counted.” And so, these are just a few examples that I pulled out of the chapter. And I wanted you to know there are 24 references to the VVSG in the Election Management Guidelines chapter on ballot design and preparation, so it begins to integrate those documents. The remainder of that chapter, also discusses a lot of other issues that are common to ballots, and those include such things as providing instructions in plain language and separate from the other ballot content, the use of separation and delineation marks and the print font and size. There’s a section again, on optical scan ballots and it addresses many of the issues we’ve talked about, already talking about, ink quality, bleed through, paper opaqueness. It talks about ballot on demand and the chain of custody issues, which also relate to paper ballots optical scan. The touchscreen section addresses issues like the use of color and texture, instructions for the ancillary input and feedback devices, the avoidance of three column screens and the recommendations for testing ballot style layouts on every voting machine. The audio ballot section provides guidelines for choosing synthesized or natural voices and male or female voices. Using visually impaired persons is recommended to test the ballot,, if at all

possible and maintaining uniformity of style and volume throughout the ballot.

So those are my pieces to just bring you up to date on the Management Guidelines project and what we've done so far to try to provide assistance to election officials. Thank you.

CHAIR RODRIGUEZ:

Very good, thank you. Thank you all. I think this is a case of the very real world meeting the EAC which has been directed to provide resources, and I hope we're meeting the challenge.

I wonder if any of the Commissioners have questions or statements or reactions that they would like to make at this time.

COMMISSIONER HILLMAN:

I do. I have a question and a recommendation back to us. And my question sort of goes to Secretary Gale and Ms. Dent, but it might also go to Lance Gough. And that is, for the paper ballots that are read by a scanner, to what extent does the design of the voting system restrict your ability to produce what you would consider is the best designed ballot? And I'm sort of wondering which comes first, the design of the ballot and then go to the vendor and say, "Can you help us?" Or does the vendor say, "This is what you can do. Here are your restrictions"?

MS. DENT:

Yes, it is.

COMMISSIONER HILLMAN:

Is that your experience as well, Mr. Secretary?

SECRETARY GALE

Well, in this Design for Democracy project, we, of course, experienced those very real issues working with the vendor. There are software limitations that did not give us some options that were recommended by the project. And so, there was some disappointment expressed in the report that there was not that flexibility in the software. So, I guess that the first question is, how difficult is it -- if you have a design you want to implement, how difficult is it or expensive is it, to get your vendor to change their software to implement that? Fortunately, in Nebraska, we can do things, administratively, easier than you can in Florida. Kathy from your testimony, you're really nailed down. I wasn't sure whether there was a lot of usability studies that went behind that legislation, but hopefully so. But I think it is good to have a State body of law that does allow flexibility in your chief election official to make changes administratively, because this field of knowledge, like so many, is changing rapidly. You try to write that into legislation and it's going to be outdated in a cycle or two, in terms of what the current knowledge is on design. So, I think that it's important for us, and I take that personally myself as an obligation, to not get used to plowing the same ground every election cycle, just because

it's easy to follow the old pattern. Look for new ways. I like the idea that Dana suggested of talking to voters, having some focus groups, getting some feedback from people, as to how they like the ballot for a particular year. So, a lot of good ideas I've heard today. But a lot of it comes down to, the cost of the ballot is absorbed on the county level, and money management is an enormous issue and always will be on that level.

COMMISSIONER HILLMAN:

Are the manufacturers responsive and sensitive to this dilemma?

MR. GOUGH:

Well, you know, every optical scan reader has different limitations and the problem is that you could go to your vendor and say, "We would like to make these changes." Well, the first thing he's saying is, "Well, we have to go through Federal testing labs, we have to bring it to the EAC, then you have to go back to your States and they have to certify it." So, to make a change, you're talking about almost a year's time, in just, you know, getting qualified or certified to make that change. I've been very fortunate, being from a large jurisdiction in Illinois, that we've had some antiquated laws and we've been able to go to the legislature and put pressure on them to make changes, but we still run up against, you know, what State statute, you know. You cannot change State statute overnight and

it's been an issue. So you have it from the vendor and you have it from the government also. So it's a problem.

COMMISSIONER HILLMAN:

John?

MR. LINDBACK:

I was just going to tell you that Design for Democracy has written the EAC a letter in comment -- in the commentary on the VVSG and made specific suggestions of where -- of what those pieces from their design study, which pieces those are, that they think should be incorporated into the VVSG, so that it is required that these optical scan systems and other kinds of systems are capable of producing the kinds of designs that are recommended by professional designers. And so, I hope that you folks, when you consider those comments, would consider sending those issues to the TGDC for consideration and incorporation into the new version of the VVSG, because that is the way to deal with that problem over the long term.

CHAIR RODRIGUEZ:

Kathy?

MS. DENT:

And I have experienced frustration starting out with the optical -- the touchscreens and then moving onto the optical scan, now that we changed over in November of 2007, we've done six elections and

we're getting ready to do a countywide, May the 6th. But there are so many limitations. But in all fairness to the vendors, by the time they spend the money and get something certified, then something changes legislatively and they're behind the eight ball again and have to spend more money to provide. So, you know, when we're doing these voting systems standards, you know, I think it's important that they not be upgraded, you know, every other year, because jurisdictions at the local level can't afford to keep making the changes and the vendors can't afford to keep making the changes. But we need to have a starting point of getting something that is really usable and workable, and again, it does have to come with the vendor.

COMMISSIONER HILLMAN:

Even before hearing those wonderful responses, my recommendation back to us, was that we should take this show or one similar to it and explain the wisdom to NACO, the National Association of County Officials, and the State legislators, as to why this presentation should be made at their summer conferences, so they understand the difficulties of getting these ballots designed, at the extent to which they have an impact. I mean, I'm still feeling a bit of a sense of frustration that county officials and State legislators aren't yet appreciating the complexities of HAVA or the role they play and can play in this. And I just think that this would be very

useful for the State legislators and the county officials. And I wouldn't think it's too late. It might be a little too late to get on their summer agenda, but certainly if we wait too long it will be too late. They'll say their agenda is already done.

CHAIR RODRIGUEZ:

That's something we can act on.

COMMISSIONER HILLMAN:

Yes.

CHAIR RODRIGUEZ:

Actionable. Commissioner Hunter do you want to...

VICE-CHAIR HUNTER:

No, I don't have any specific comments other than to thank everybody for their time. I think we learned a lot and I appreciate your calling this panel, Chair Rodriguez. And I do think it's a great idea that we brief the Congressional staffers. It's important that they know about this issue. They do try to work with local and State election officials, and I appreciate what Karen Lynn-Dyson said about our efforts to, sort of take our show on the road and provide this kind of training to local election officials, you know, in their own jurisdictions. So I think that's a great idea and I think John's comment about -- Mr. Lindback's comment about incorporating it into the VVSG, it's not something I really had thought about before, but I think it's a really good point because it

might be the only way to require the vendors to really focus on it.

So I really appreciate all of your comments. Thank you.

CHAIR RODRIGUEZ:

Thank you. Commissioner Davidson.

COMMISSIONER DAVIDSON:

I guess the one thing that I would, besides thanking all of you and saying that we all learn every time we get together, I think that what is a real plus in having these meetings. One of the things in combining the VVSG and some of these comments, obviously, every State law is different, as we've heard, and State laws demand what you do in your State. In our comments then, in the VVSG, knowing that we've got over 50 jurisdictions that are setting laws that could be affecting it and we want as many people as possible to utilize our VVSG, should those comments say "should"? I mean, I do understand the frustration with our vendors because they are trying to make all of our States happy and every time they have to change something within a State, they have to go back for testing. So, how do you see -- do you see that that should be "should" do something instead of a "shall"? Because that could eliminate a State from using the VVSG and doing their own testing if they -- if we tie it down so specifically. Do you have suggestions for us in that arena? John, you're shaking your head so -- or I should say Mr. Lindback, but would you...

MR. LINDBACK:

You can call me John.

COMMISSIONER DAVIDSON:

Okay.

MR. LINDBACK:

Yes, I do have suggestions. I think the important thing in the VVSG, is, not that you tell a State through the VVSG that you have to use, you know, upper and lower case letters, but that you require in the VVSG that any new voting systems be capable of doing upper and lower case letters or all caps, depending on whatever their law says. So that the VVSG needs to recognize and expand the capabilities of the design functions of these systems, so that it can incorporate good design, because we know that State law and the way it's been crafted, they've been developed towards State law. And that's not good design, it's lousy design. It's like this disease of bad design has spread from State to State because somebody thought that all caps were good. Well, they're not good. And so, I think that you can craft the VVSG so you aren't dictating that the States use certain kinds of design, but you are dictating that the voting systems be capable of incorporating good design.

COMMISSIONER DAVIDSON:

So, flexibility in designing, is what you're really talking about, so that when a State has, you know, laws that affect your design, you

can meet those without going back and changing the software to accomplish that. Am I putting it in the right terminology?

MR. LINDBACK:

That's correct. Exactly right.

COMMISSIONER DAVIDSON:

Okay. The other thing, I think, that it is important to make, and Ms. Dent you had it in your presentation, which I appreciated, is, it is very difficult with your ballot design, because of how late our State laws are certifying and late certifications make a real problem for the counties or the jurisdictions, municipalities, whatever it might be. And I think there's one other that we need to remember, is court cases. Sometimes after your ballot has been even certified to you, a court case will change that ballot, and that timeframe is very important. How do you recommend that we try to also go to our State legislators and say, "Challenging the ballot, we have to allow time to challenge a ballot before they're certified, so that we don't run into issues like that"? Do you have recommendations? Go ahead, Lance, Mr. Gough.

MR. GOUGH:

It's something that we've been fighting with. We've just, in the last couple of years, have gotten early vote. Well, we had a candidate withdraw the day before early vote starts. I mean, it's something that we've gone to the legislature several times, to try to have

timeframes extended where we would have 45 days to complete the ballot, prior to election time. It's real difficult, you know, when you talk to the legislature about getting more time. They say, "Well you've always made it before." And one of these times, we're going to have a serious meltdown where you won't make it and trying to get that across, and not because Mr. Secretary is here, because some elected officials they've always been elected this way, so why make the laws -- why change the laws? And that's something that all local election officials run up against, is a major brick wall of trying to get them to give us more time. We always need more time, especially now that a lot of us are using optical scan ballots, which take a lot more time to print and program. And some of us have optical scans and touchscreens, where we have to do dual programming. We just need more time and it's hard to get that across to the legislature.

COMMISSIONER DAVIDSON:

I think that's one thing that we need to also make Congress aware of and, you know, I think it's important that we try to make sure that they understand the timeframe is so tight that we -- they need to be aware of that.

So I appreciate everybody being here today. And thank you.

It's always as a learning event.

CHAIR RODRIGUEZ:

As a former elected official, Mr. Gough, we used to call that, shooting the horse you rode in on. There's a great reluctance to do that. You don't want to shoot that horse.

Mr. Wilkey, do you have any concluding comment?

EXECUTIVE DIRECTOR WILKEY:

Just a comment that -- and I thank everyone for being here. It was very informative. I think that everyone well knows, they've heard me on my soapbox far too often, that of the many projects that we're asked to do, or mandated, that there are three that are very, very special to me. One, the Election Management Guidelines that I've been talking about for 20 years, and our poll worker manual, which will be showcased tomorrow at the election center meeting, and certainly this one. I've long been an advocate of doing a lot better work in the area of literacy. If we look at the literacy statistics in this great nation, they are appalling and we have a lot of work to do. And I know that part of the area that I insisted upon, when we do the design project, was in this area of plain language. We have a lot to do. It is disconcerting to me, and to many others, to think about the number of people who'll go to a polling place on Election Day and simply cannot comprehend or read the ballot or don't go to the polling place at all, because they can't read the information or they can't comprehend it. We have a lot of work to do in this area.

This is a great first start and I appreciate the great amount of work that has been put into this. It is absolutely fantastic.

And I thank all of you and thank you for being here again.

And thank you, Madam Chair.

CHAIR RODRIGUEZ:

I'll chime in, too. Ms. Dent and Ms. Chisnell, we call on folks all the time and we now consider you part of the group because of your valuable input. Thank you very much. And then, gentlemen, I know you come every time we call and we really, really do appreciate it.

The fact that this was our inaugural webcast, I think, is really significant and sends the message that we're interested in getting these really good products of our research group and our election management group out and distributed as widely as possible. And I thank the staff and our consultant, almost permanent consultant, for your help.

I want to recognize Mr. Posner from the State of Minnesota. Thank you very much for coming and thank you for hosting the EAC today. We were in Denver, Colorado, last month and they're expecting the Democrats to come and nominate their candidate this summer and you're going to be host to the Republicans. And so, that was serendipity that this happened, but we're foreshadowing of things to come.

Thank you very much for your endurance today. I know it was a long meeting and if there's no objection, we'll adjourn.

COMMISSIONER HILLMAN:

So moved.

VICE-CHAIR HUNTER:

Second.

[Whereupon, the public meeting of the EAC Commission concluded at 5:29 p.m. CDT.]