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U.S. ELECTION ASSISTANCE COMMISSION

PUBLIC MEETING

DECEMBER 11, 2007

UNITED STATES ELECTION ASSISTANCE
COMMISSION PUBLIC MEETING was taken before
April C. Balcombe and Michelle Robertson,
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Downtown, 700 San Jacinto Boulevard, Austin,
Texas 78701, on December 11, 2007 commencing at
the hour of 8:30 a.m.

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2

1 PROCEEDINGS

2 >> DAVIDSON: Good morning, everybody, I
3 am going to call the meeting to order. I would
4 first like to everybody to please turn off your
5 cell phones or turn it off vibrate so it won't
6 interrupt the meeting. And I would like
7 everybody to please stand and we'll do the
8 Pledge of Allegiance.

9 >> I pledge allegiance to the flag of the
10 United States of America and to the Republic
11 for which it stands, one nation, under God,
12 indivisible, with liberty and justice for all.

13 >> DAVIDSON: Thank you. Our acting chief
14 general Council, Galvin Gilmour, would you
15 please do the role call.

16 >> GILMOUR: Certainly. Please respond
17 verbally when I call your name.

18 Chair Donetta Davidson?

19 >> DAVIDSON: Present.

20 >> GILMOUR: Vice Chair Rosemary

21 Rodriguez?
22 >> RODRIGUEZ: Here.
23 >> GILMOUR: Commissioner Gracia Hillman.
24 >> HILLMAN: Here.
25 >> GILMOUR: Commissioner Carolyn Hunter?

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3

1 >> HUNTER: Here.
2 >> GILMOUR: All of the Commissioners are
3 present.
4 >> DAVIDSON: Thank you very much. If you
5 would turn to Tab 1, the adoption of the agenda
6 is up next.
7 I move. I move for the adoption of the
8 agenda for today, December 11th, 2007.
9 Do we have a second?
10 >> HUNTER: Second.
11 >> DAVIDSON: All those in favor say
12 "aye."
13 >> Aye.
14 >> DAVIDSON: Any opposing?
15 All right. Moving on. We have the
16 minutes of the public meeting, and I would ask
17 if the commissioners have any changes or if

18 there is a motion to approve?
19 >> RODRIGUEZ: I move for adoption of the
20 minutes of the last meeting held on
21 November 13th, 2007.
22 >> DAVIDSON: Thank you very much.
23 Do we have a second?
24 >> HUNTER: Second.
25 >> DAVIDSON: I have a motion made and

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4

1 seconded. Would everybody vote on the motion,
2 please, vote approving the minutes? Aye.
3 >> Aye.
4 >> DAVIDSON: Thank you. We know we want
5 to get done with our meeting right away,
6 because we have a lot scheduled for the day and
7 for this week to come.
8 But I want to take a moment and welcome
9 everybody and say good morning, and I wanted to
10 say, it is really great having you in Austin,
11 Texas, to be here with us this morning.
12 I want to thank our Standards Board and
13 our Board of Advisors members that are here

14 today in coming in early in taking part. And
15 we appreciate their continued hard work to
16 advise the commission. So welcome to
17 everybody. Thank you for being here.

18 Also, if you can see, we are using a
19 C.A.R.T. process here, which is also a
20 closed-caption service, to make sure we have
21 everything identified.

22 Anybody who is doing a presentation, would
23 you please make sure that you give your name,
24 and we have to be careful that we don't
25 interrupt each other, because if we speak over

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1 each other, we will not get it captioned
2 correctly up on the board.

3 So saying that, we'll move on and we'll go
4 into old business -- or new business, I mean.

5 And we have the election of officers.

6 This is the last meeting that I will be serving
7 as Chair of the E.A.C. It has been a -- really
8 a great Chair year, and I think, as you will
9 see from the staff that is going to be doing
10 presentations, you'll see why I am so proud of

11 our staff and of the Commission.

12 But as we move forward, it is time to
13 elect a new Chair, and Vice Chair of the
14 Commission.

15 With that, I am going to open the floor
16 for the nomination of Chair, but I am going to
17 take the prerogative of -- since I am the
18 Chair, to nominate Rosemary Rodriguez for Chair
19 of the Commission. Are there any other
20 nominations for Chair of the Commission?

21 Seeing none, I would like to close the
22 nominations on the floor and call for a vote.

23 All those in favor for Rosemary Rodriguez
24 for Chair, please say "aye."

25 >> Aye.

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1 >> DAVIDSON: Opposed?

2 Congratulations, Commissioner Rodriguez.

3 I will now move forward, and the Chair
4 will open up the floor for Vice Chair of the
5 Commission. Are there any nominations for Vice
6 Chair?

7 Yes, Commissioner, Rodriguez?
8 >> RODRIGUEZ: Thank you, Madam Chair. I
9 would be very pleased to put nomination of seat
10 for Vice Chair of the Commission, Commissioner
11 Carolyn Hunter.
12 >> DAVIDSON: Are there any other
13 nominations? Seeing no other nominations, the
14 floor is closed on nominations. I will call
15 for a vote. All those in favor for
16 Commissioner Hunter as Vice Chair, please say
17 "aye."
18 >> Aye.
19 >> DAVIDSON: Opposed?
20 Well congratulations to both of you.
21 I am going to turn the floor over to each
22 one of them for their remarks. But before I
23 do, I would like to say a few words about each
24 one of them.
25 First and most important, Rosemary --

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1 congratulations, Commissioner Rodriguez -- she
2 is a fellow Coloradan, so you know that means a
3 great deal to me, and I know personally that

4 our Commission will be in good hands.

5 Prior to coming to the E.A.C.,
6 Commissioner Rodriguez served in the great city
7 of Denver in several ways. I am going to name
8 the main ones: First, as city clerk and
9 recorder and then as -- in the city council,
10 and then finally, she served as president of
11 city council in 2005 and 2006.

12 In these roles, Commissioner Rodriguez
13 worked hard to help voters to register to vote,
14 making voting accessible to all citizens, and
15 to help assure that elections are accurate and
16 transparent.

17 Since coming to the E.A.C., she has
18 continued to focus on the same principles. She
19 has recently started a series of brown bag
20 lunches in order to allow an open dialogue
21 between E.A.C. and all of those who were
22 working to improve elections.

23 Also, Commissioner Rodriguez has focused
24 on ensuring that the E.A.C. continues to make
25 itself as open and transparent as possible.

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1 Commissioner Rodriguez, thank you for all
2 of your hard work, and I look forward to
3 working with you in the future. And I know
4 that our agency will be in good hands with you
5 as Chair.

6 >> RODRIGUEZ: Thank you, Madam Chair.

7 >> DAVIDSON: Commissioner Hunter,
8 Commissioner Hunter has worked with the states
9 on state laws and regulations as the Help
10 America Vote was implemented.

11 First, prior to coming to the E.A.C,
12 commissioner Hunter served as the deputy
13 director of the White House Office of Public
14 Liaison. And prior to that, she was an
15 Executive Officer for the Department of
16 Homeland Security.

17 Since coming to the E.A.C., Commissioner
18 Hunter has continued to work hard hand-in-hand
19 with the states and local officials in order to
20 ensure that they are able to best serve their
21 voters while meeting the laws of HAVA.

22 Congratulations, Commissioner Hunter. I
23 will give each one of you a time to have a bit
24 of a conversation.

25 So Commissioner Rodriguez, you're the new

1 Chair to be, so I will give you the opportunity
2 first.

3 >> RODRIGUEZ: Thank you, Madam Chair, I
4 will be very brief because we have a meaty
5 agenda.

6 I look forward to the coming year. I've
7 learned a lot from each of my fellow
8 commissioners over the last year, and I know I
9 am prepared for 2008, look forward to it, and I
10 hope that -- hope that it will be a good year.
11 Thank you.

12 >> DAVIDSON: I am sure it will be. Thank
13 you.

14 Commissioner Hunter.

15 >> HUNTER: Thank you, Madam Chair, and I
16 look forward to serving with Rosemary
17 Rodriguez. We started the Commission on the
18 very same day, so it will be a lot of fun to
19 work together next year and thank you for Madam
20 Chairman, and Donetta Davidson, I have enjoyed
21 and look forward to another 2008 as well.
22 Thank you very much.

23 >> HILLMAN: Madam Chair -- you keep

24 rolling right along here -- and I want to take
25 this moment to thank you for your service this

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1 year. It has been one heck of a year, one heck
2 of a roller-coaster ride. And you served us
3 well, and I appreciate very much what you have
4 done for E.A.C., as well as your hanging in
5 there with us.

6 And also, too, Commissioner Rodriguez, for
7 your service as Vice Chair and looking forward
8 to your service as Chair next year, and looking
9 forward to when we can hear, you know, sort of
10 about what the direction is and where you will
11 go, and to Commissioner Hunter as well, serving
12 as Vice Chair. Congratulations to both of you.

13 And just for the record, Madam Chair, when
14 will this take effect?

15 >> DAVIDSON: Commissioner Rodriguez, have
16 you exactly set the date for sure? I think --

17 >> RODRIGUEZ: I haven't set the date.

18 The installation will be in conjunction with a
19 meeting of the commission in January, and I

20 will work with everybody on their agendas. It
21 has been hard for me to know what to do and not
22 jump the gun, and so I will start on that
23 immediately.

24 >> DAVIDSON: Thank you. Well, I do want
25 to say congratulations to both of you, and I am

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11

1 looking forward to working with you. And I
2 think the four of us, we have a lot to do as we
3 well know. And working together and figure out
4 how we can work together and as always, we have
5 been in a learning process so it has been an
6 interesting year. Moving forward, as I said
7 earlier, this is the last meeting of 2007. And
8 so I ask for a report from the senior staff and
9 our director Tom Wilkey, and I will turn it
10 over to him to give the end of the year report
11 along with his senior staff.

12 >> WILKEY: Thank you, Madam Chair. I am
13 joined here today by three of our senior
14 program managers, Brian Hancock, Edgardo
15 Cortes, and Karen Lynn-Dyson, and they will be
16 sharing with me with great pride some of the

17 work that we have accomplished during 2007.
18 These include establishment of the federal
19 government's first voting systems certification
20 program, information distributed to assist
21 election officials in the administration of
22 elections, which was very well received. We
23 launched our language accessibility program.
24 We had two new commissioners join the EAC, and
25 we looked inward, working to make internal

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1 changes to ensure efficiency and transparency.
2 Under voting system testing and
3 certification, Brian will go into detail in a
4 few minutes. But let me just go over a few of
5 the major milestones. We launched our full
6 certification program in January. We now have
7 four accredited test labs and we have 11
8 registered manufacturers. Eight voting systems
9 are currently being tested. We have also
10 launched the voting system report clearinghouse
11 which contains reports about voting systems
12 that have been conducted by state and local

13 officials. And of course, we have already
14 issued the -- through the TGDC the recommended
15 Voluntary Voting System Guidelines, and they
16 are available during this public comment period
17 on our website, which I will be refer to often
18 EAC.gov. Under election assistance or
19 assistance for election officials, again you
20 will hear more about what we have done from
21 Brian, but I want to spend just a few minutes
22 discussing one of the most popular and
23 successful E.A.C. initiatives and everywhere I
24 go, I hear from election officials how pleased
25 they have been with this particular project.

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1 And that is our election management guidelines
2 program and the accompanying quick start
3 guides.

4 We issued this information to over 6,000
5 election officials throughout the country.

6 They include such issues as absentee testing --
7 acceptance testing, absentee voting, and vote
8 by mail, our certification, contingency and
9 disaster planning, media and public relations,

10 manage and change, polling place and vote
11 centers, voting system security. Our research
12 director Karen Lynn-Dyson has also issued some
13 very valuable information to election
14 officials. She is going to discuss that in a
15 few minutes. But I want to recognize her
16 efforts in getting these valuable resources
17 out.

18 As all of you know, finding and keeping
19 poll workers continues to be a major challenge
20 throughout the nation. That is why we issued
21 the successful practices for poll worker
22 recruitment retention training in our guide
23 book for recruiting college poll workers.
24 Ballot design is also crucial in the successful
25 administration of elections, the effective

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14

1 design of federal elections which covers not
2 only valid design but also polling place
3 signage. It also covers how to best serve
4 voters with limited English proficiency.

5 Karen has also issued the 2006 Uniform and

6 Overseas Assistance Voting Act survey. She
7 also convened a very productive conference
8 about how to better serve these voters. And of
9 course, she is responsible for the 2006
10 Election Day survey, which we will be
11 discussing later today.

12 One of the programs we have been very
13 pleased about is our language accessibility
14 program. This is another E.A.C. initiative we
15 are very proud of. Edgardo Cortes and Laiza
16 Otero oversaw the successful adoption of the
17 Spanish glossary of election terminology. The
18 first time this glossary has been updated since
19 1972. We have also translated the national
20 voter registration form into Spanish. Next on
21 the agenda is to issue a similar glossary in
22 five Asian languages as well as provide a
23 translation of the national forum. You will
24 hear more about this under our how to
25 management program from Edgardo.

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1 We of course welcomed two new
2 commissioners to the E.A.C. this year, Rosemary

3 Rodriguez and Carolyn Hunter. Both have
4 brought valuable knowledge and experience to
5 the E.A.C. It has been a smooth transition, I
6 know the staff has enjoyed working with both of
7 them, and we appreciate their support as well.

8 We have been looking inward, increasing
9 transparency and accountability. The E.A.C.
10 has produced a lot of valuable resources and
11 launched a very ambitious voting system program
12 this year.

13 But we have recognized the need to look
14 inward and make some changes. The E.A.C. has
15 received criticism over the way it handled some
16 of our research, and we have been accused of
17 not acting in a transparent manner. We take
18 this criticism very seriously.

19 That is why our Chair, with the support
20 all of all of the Commissioners, asked our
21 Inspector General to review the Vote Fraud and
22 Intimidation Research Project. We anxiously
23 await that report and will make whatever
24 changes are necessary.

25 The IG report will be made public and

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1 provided to Congress. E.A.C. provided more
2 than 40,000 pages of documents to Congress
3 regarding this issue, and the Commission voted
4 to release all of them to the public. E.A.C.
5 also has a lot of work to do regarding our
6 internal procedures and policies.

7 We have already been working to properly
8 document our administrative procedures in the
9 Code of Federal Regulations. E.A.C. has
10 contracted with ICF International to assist in
11 the process and to establish an aggressive time
12 line to accomplish its administrative
13 regulation codes.

14 The following is a summary of the
15 activities undertaken to date. The E.A.C.
16 established a CFR site at 11 CFR, Chapter I-II
17 parts, 94 through 94-99. The E.A.C. has draft
18 organizational structure for its CFR site.

19 The E.A.C. staff and counsel are presently
20 reviewing and editing draft regulations in the
21 following areas: Freedom of Information Act,
22 Confidential Business Information and Trade
23 Secrets, Government and the Sunshine Act,
24 Federal Advisory Committees Act, Privacy Act,
25 Nondiscrimination of E.A.C. programs, grants

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1 Management, Document and Witness Production in
2 Civil Litigation.

3 I will also include under this that staff
4 has been working with Council and others and
5 with our Inspector General on a new
6 organizational chart, which will be presented
7 to you in January for your approval.

8 After initial review, staff will present
9 the regulations for review and approval before
10 going through the federal regulatory process.

11 We have already made changes to increase
12 transparency which includes a very aggressive
13 notification program about developments and
14 updates voting system program, a newly designed
15 website that is updated daily, sometimes more
16 than once a day. We have already had 3,678,318
17 hits. Top page destinations include register
18 to vote, voting system testing and
19 certification and laboratory accreditation of
20 2005 Voluntary Voting System Guidelines and the
21 Spanish glossary of election terms. The most
22 popular download was the National Voter

23 Registration form.
24 In addition to information about voting
25 systems and voting system test laboratories,

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18

1 official minutes and agendas of registered
2 voters, public meeting and hearing schedules,
3 E.A.C. studies and research and more
4 information about election administration and
5 HAVA are all available at eac.gov.
6 It includes a foyer reading room which
7 provides direct access to the most frequently
8 requested documents, including the 40,000 pages
9 that we provided to Congress. Commissioner
10 Hillman spearheaded the establishment of a
11 virtual meeting room at the E.A.C. website in
12 which the public can observe draft documents as
13 well as the comments submitted by our advisory
14 and standard board members.
15 Vice Chair Rodriguez has made transparency
16 a top issue and priority. Her first statement
17 as commissioner addressed this very issue. She
18 also established the brown bag lunch meeting

19 program concept for the public to share ideas
20 and discuss issues with the commissioner.
21 Chair Davidson has established bipartisan
22 subcommittees to oversee budget, research in
23 the voter registration act. Commissioner
24 Hunter has also demonstrated her strong support
25 of operating transparently as evidenced by the

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1 posting of her proposed NVRA internal procedure
2 prior to the commission vote.

3 The commissioners have also insisted on
4 taking more votes in public instead of through
5 our tally vote process. Looking ahead, as we
6 move into 2008, the E.A.C. will focus even more
7 of its efforts to support election officials as
8 they prepare for a busy election year. Our
9 certification program will continue to
10 experience an increase in activity, and we will
11 continue to keep the public updated. We will
12 likely make tough calls in the future but we
13 have a responsibility to put voting systems
14 through a thorough and rigorous certification
15 process. We have an aggressive research

16 agenda, and we plan to increase our efforts to
17 provide a national clearinghouse of information
18 about election administration.

19 E.A.C. will continue to seek public input
20 into our activities through an accessible and
21 transparent process. Just as we have already
22 done for the transfer of the NVR regulations
23 and the draft VVSG. I must close by saying
24 that I am very proud of the E.A.C. staff. They
25 do a lot with very little. We have confidence

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20

1 in them and I want them to know how much I
2 appreciate all that they do. Thank you very
3 much for this opportunity to address you. I am
4 now going to turn the next portion over to our
5 director of certification, Brian Hancock.

6 >> HANCOCK: Thank you, Mr. Wilkey, Madam
7 Chair, commissioners. This morning I am happy
8 to give you the year-end report for 2007 for
9 the testing and certification division. What I
10 would like to do is go through each of the four
11 functional areas within our division and give

12 you a little briefing on what went on this
13 year.
14 We will start with the management
15 guidelines portion of our program. Mr. Wilkey
16 certainly covered this, but I would like to
17 reiterate that we did release seven new quick
18 start guides this year and again, they were
19 voting systems certification, acceptance
20 testing, absentee voting and vote by mail,
21 contingency and disaster planning, media and
22 public relations, managing change in an
23 election office and polling place and vote
24 centers.

25 We are currently finalizing the

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21

1 accompanying chapters in the management
2 guidelines manual detailing more specifics in
3 all of these important areas. We believe these
4 will be ready for approval by the full
5 commission very early next year. I also wanted
6 to note that all of these documents, including
7 the manual, are available on the tables outside
8 of this room for any members of the audience

9 that would like to pick up one. So we
10 encourage you to do that.

11 Our next area within our division is the
12 laboratory accreditation program. This year,
13 as Mr. Wilkey noted, we accredited four voting
14 system test laboratories under our HAVA
15 mandated program, working in conjunction with
16 our partners at the National Voluntary
17 Laboratory Accreditation program, NVLAC at
18 NIST. These labs are iBeta Quality Assurance,
19 SysTest Laboratories, infoGard Laboratories,
20 and Wyle Laboratories. We expect to have other
21 laboratories be presented to the commission
22 from lab this year, and we will do our due
23 diligence looking at these labs and forward
24 them to the commission for a vote as we have in
25 the past.

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1 We have also spent considerable time this
2 year in conjunction with our general counsel's
3 office on developing our draft of the new
4 laboratory accreditation program manual. We

5 hope to have this manual posted, draft manual
6 posted on the E.A.C. website later this week
7 and the document will also be noticed in the
8 Federal Register for a 30-day public comment
9 period in conjunction with a 60-day public
10 comment period required under the Paperwork
11 Reduction Act. This is very similar in fact
12 exactly what we did where the testing and
13 certification program manual last year.

14 Let's move on to the testing certification
15 program. At the December 2006 E.A.C. public
16 meeting, the commissioners voted to adopt the
17 E.A.C. testing and certification program
18 manual, which I just spoke. This document
19 outlines and the detail E.A.C. process and
20 procedures for moving of voting system through
21 our certification program beginning with the
22 registration of a voting system manufacturer
23 and ending with a certified voting system
24 product.

25 Pursuant to the requirements of the

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1 manual, in 2007, the E.A.C. staff processed

2 eleven manufacturer registrations, eight
3 applications for testing voting systems, one of
4 which has since been terminated. We have
5 issued six interpretations of the 2002
6 Voluntary Voting System Standards or the 2005
7 Voluntary Voting System Guidelines. We have
8 issued five notices of classification regarding
9 various aspects of our certification program
10 manual. We have drafted and released at least
11 ten notices of noncompliance and other
12 correspondence to either voting system
13 manufacturers or test laboratories.

14 In addition, the E.A.C. has posted test
15 plans and will of course post final test
16 reports on the E.A.C. website as well as any
17 other relevant information related to voting
18 systems and voting system testing. Finally, we
19 will talk a little bit about what we have done
20 on the Voluntary Voting System Guidelines this
21 year.

22 Technical Guidelines Development
23 Committee, TGDC, recommendations for the next
24 iteration of the Voluntary Voting System
25 Guidelines were received by the E.A.C. from our

1 partners at NIST on August 31st, 2007.
2 During September and October, the E.A.C. worked
3 to developed a plan for the public review and
4 ultimate adoption of these guidelines and to
5 develop an HTML version of the documents and a
6 web-based comment portal to provide easy access
7 for members of the public wishing to comment on
8 this document.

9 The initial public comment period began
10 with notice in the Federal Register on
11 November 6th, 2007. This 120-day public
12 comment period will end March 5th, 2008.
13 This initial phase is only the beginning of the
14 process for the adoption of the next iteration
15 of the guidelines. Work will continue well
16 into 2008 and likely into 2009 so that the
17 E.A.C. can receive as much input as possible
18 from all of our stakeholders both on the
19 current TGDC recommendations and later on the
20 E.A.C. draft of Volunteer Voting System
21 Guidelines. A full description of the process
22 for reviewing and adopting the guidelines for
23 the next iteration of the VVSG is available on
24 the E.A.C.'s website.

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25

1 could succeed without the great assistance from
2 all the other staff members at the E.A.C. I
3 would like to particularly thank Laiza Otero
4 and Matt Masterson who have done excellent work
5 this year for the testing certification
6 program. With that, move to Edgardo.

7 >> CORTES: Good morning, Commissioners.
8 Thank you, Brian. I have a Power Point because
9 I have a couple of figures that I thought would
10 be helpful to have up for the public to see.

11 The Election Administration Support
12 Division had a very busy year this year. First
13 off, we have a couple of major program areas
14 that we are responsible for. Probably the
15 biggest is management of the HAVA payment and
16 this includes the whole gamut of oversight
17 functions from the distribution of the money to
18 resolving audits.

19 We also are responsible -- or the division
20 is responsible for National Registration Act
21 implementation. We have recently been tasked

22 and will be working with the other division in
23 the office of general counsel on the title
24 three voluntary guidance required under HAVA.
25 Tom mentioned and I will get into a little bit

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26

1 more detail concerning the language
2 accessibility program, the Help America Vote
3 college program which includes grants which we
4 hope to have some funding from Congress this
5 coming year to give out more grants for that
6 program, the general E.A.C. poll worker program
7 and the national parent student mock election
8 grant program.

9 Start off with the oversight of HAVA
10 payments. One of the big things that we are
11 proud of this year is that we were able to
12 finally put together a big training session
13 during the NASS and NASED winter meetings
14 concerning allocable uses of and the accounting
15 for the funds the states received under
16 sections 101, 102, and 251. This training was
17 very well received by election officials.

18 There is a Power Point presentation of
19 that that is posted on our website. We also
20 this year, prior to the reporting deadlines,
21 put together a sample annual financial
22 reporting forms so that states could -- we were
23 still getting complaints that folks weren't
24 sure how to fill out and submit their annual
25 report properly so we took that on as a step to

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27

1 give people the information they needed. And
2 again all those training materials are posted
3 on E.A.C.'s website.

4 Very big project this year for us was the
5 first report that E.A.C. has issued to Congress
6 on states' use of HAVA funds. This covered
7 Section 101 and 102 funds as of December 31st
8 of 2006 and Section 251 funds as of
9 September 30, 2006.

10 This report disclosed at approximately
11 \$1.8 billion of HAVA funds had been spent,
12 about 1.3 billion was remaining, and that
13 states had -- as of the close of the reporting
14 period, states had earned approximately

15 152 million-dollar worth of interest on HAVA
16 funds.

17 And HAVA has set up a very unique program
18 for the federal government -- in the realm of
19 federal government funding where states
20 actually get to keep the interest, and it goes
21 back to supporting the HAVA programs.

22 We also have here -- I am not sure how
23 clearly it shows up for the audience -- but
24 here is a breakdown basically in terms of the
25 major categories that HAVA funds could be used

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28

1 for.

2 I think the biggest thing here is that
3 over 75percent of the funds went to either the
4 purchase of new voting systems or the
5 implementation of the statewide voter
6 registration databases.

7 Those were the two big ticket items in
8 HAVA and the report that we are able to put
9 together based on the information provided by
10 the states shows what this really is what the

11 funds have been going for.

12 The category of improving administration
13 of federal elections, a lot of that was
14 training related to implementing these things,
15 so...

16 Also, this is a little bit updated list,
17 since we issued our report. We've had six
18 states so far, certified to the E.A.C., they
19 have complied with all of the requirements of
20 HAVA, Title III, and those are American Samoa,
21 Florida, Kentucky, North Carolina, Oregon, and
22 Pennsylvania.

23 We expect that in the coming year, we'll
24 probably be getting more certifications that
25 states have met the requirements of Title III.

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29

1 During fiscal year 2007, our division
2 issued 26 audit resolution reports. Nine of
3 those were for audits conducted by the office
4 of inspector general, and 17 were done under
5 the Single Audit Act.

6 Now, as you can see, over 10 million --
7 under the office of the Inspector General

8 reports, over \$10 million were repaid to state
9 election funds for questions of costs, for
10 missing state matching funds, and lost
11 interest. About 68,000 was repaid to the U.S.
12 Treasury for unallowable costs.

13 Again, under the single audits, about 1.3
14 million was paid to state election funds for
15 those reasons and 90,000 was repaid to the U.S.
16 Treasury.

17 The money that went back to state election
18 funds will be available obviously for those
19 states to be used towards HAVA programs in the
20 future.

21 One of the items that we're very proud of,
22 and Tom mentioned, and is our Language
23 Accessibility Program. We released in April of
24 this year our "Glossary of Key Election
25 Terminology in English and Spanish," and that's

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30

1 a -- that stems from a publication that the
2 F.E.C. last published in 1979 and had not been
3 updated since then.

4 This glossary now contains 1,843 terms
5 dealing with election administration and has
6 been very well received by election officials
7 around the country.

8 When we go to the public meetings and we
9 have out the hard copies, they go pretty
10 quickly. It is also available for download on
11 our website.

12 One very exciting thing is that we will
13 add to the same -- the same 1,843 terms, we'll
14 have five additional glossaries coming out by
15 this coming summer, and those are in the five
16 Asian languages that are covered by the Voting
17 Rights Act.

18 That will be Chinese, Japanese, Korean,
19 Vietnamese, and Tagalog. We will also, in
20 connection with the Management Guidelines
21 Program, in the late spring, be starting work
22 on dealing with how election officials can deal
23 with getting information to nonwritten
24 languages.

25 You know, this -- actually Lyso Tharrell

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1 [phonetic] who is under the testing and
2 certification program who does a lot of work on
3 the Language Accessibility Program. She is not
4 here today. She is actually in Arizona
5 attending an event dealing with providing
6 assistance to native Americans, so it is a very
7 exciting project that we have going on.

8 The last thing that I'll -- that I'll go
9 over are actions under the National Voter
10 Registration Act this year. Tom mentioned that
11 the National Voter Registration form is
12 actually the most downloaded document on our
13 website. And that is a consistent thing from
14 month to month, where it is the biggest
15 download.

16 We have prepared and presented information
17 on NVRA issues at every public meeting since
18 the September meeting. We also went through a
19 public comment period -- and I'll be talking
20 about this a little bit later in the meeting --
21 but went through and recently finished a public
22 comment period on whether or not the Commission
23 should transfer the regulations which were
24 previously adopted by the F.E.C.

25 We've also provided the Commission with a

1 framework and time line for the NVRA
2 rule-making progress. Again, I'll be talking
3 about those issues a little bit later in
4 today's meetings. Those are the major
5 activities that went on this year. Thank you.
6 I will pass it on to Karen.

7 >> LYNN-DYSON: Good morning. I have a
8 number of slides here, because we did a lot in
9 the research department this year. I am going
10 to quickly go through them, and just highlight
11 the major projects and products, actually, that
12 came out of our work this year.

13 As, I know the Commissioners know, the
14 public, to refresh their memory, E.A.C.'s goal
15 is to satisfactorily conduct and report to
16 Congress the sorted research studies that are
17 described in HAVA approximately \$1.1 million in
18 E.A.C.'s budget is to go to research studies
19 and surveys.

20 And the research work that I undertake
21 with our contractors results in guidance and
22 guidelines and identifying best practices and
23 collecting and disseminating key data the

24 conduct and administration of elections.

25 Thus far, we have completed or are in the

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33

1 process of completing 17 research projects. A
2 couple of following slides enumerate the
3 projects that we are presently undertaking or
4 have actually completed: The NVRA report for
5 2005, 2006, the UOCAVA survey report findings,
6 the 2006 election administration and voting
7 survey report key findings. And you'll be
8 hearing much more in a few moments about the
9 findings from the 2006 survey.

10 Tom mentioned earlier our considerable
11 work we did this year around the recruitment
12 training and retention of poll workers in the
13 form of the series of guidebooks that we
14 created.

15 He also mentioned our effective designs
16 for the administration of federal elections
17 work, and our UOCAVA study which culminated in
18 a conference this September.

19 We have coming in the next, really month
20 or so, the results of our -- and we will

21 present to the public, the results of our
22 first-time voters who register to vote by mail
23 study.
24 >> LYNN-DYSON: This September we have
25 upcoming in the next month or so the results of

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34

1 our -- and we will present to the public the
2 results of our first-time voters who registered
3 to vote by mail study, our voter hot lines
4 report, our information website study, our free
5 absentee ballot posted return study, our
6 alternative voting methods study, and finally,
7 the ongoing work that we do under a three-year
8 contract with the National Academy of Sciences,
9 related to the ongoing implementation of
10 statewide voter registration databases. A
11 visual here you have of the first three big
12 studies that were done, and you will hear more
13 about again the Election Administration Voting
14 survey study that includes in it the NVRA
15 report that came out in June, the UOCAVA report
16 which came out in September.

17 I am going to skip over the -- quickly go
18 through the NVRA report, the findings
19 essentially. We found that there was an
20 increase in the number of persons registered to
21 vote from 2002 to 2006, but it was a decrease
22 from numbers reported in 2004. Our UOCAVA
23 report found that we are required by HAVA to
24 provide two basic numbers, that is the number
25 of UOCAVA votes cast and the number of votes

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35

1 counted. You will see on the slide here that
2 we had almost a million UOCAVA absentee ballots
3 were requested and a little more than a
4 thousand UOCAVA ballots were cast or counted.
5 Kim Brace will talk a little bit more about
6 some of what we found in terms of reporting
7 these kinds of numbers and some of the
8 tremendous difficulties we have encountered in
9 collecting this information.

10 I will skip over the 2006 survey slide
11 since Kim will be talking about that in a few
12 minutes. Here again, a slide that kind of
13 captures the key studies and products which

14 came out of our work related to poll workers.
15 In July and in August distributed in our first
16 round of printing these guidebooks on
17 successful practices for recruiting and
18 training and retaining poll workers and in the
19 general public as well as college poll workers.
20 We also with that project, did a compendium of
21 state poll worker requirements which captured
22 the state laws and regulations related to poll
23 workers early last year. As you all know, in
24 the elections field that is somewhat of a
25 moving target. And we hope to continue to

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36

1 update those statutes and those requirements in
2 the coming years.

3 We -- I am very excited to say that we are
4 on the second printing of these guide books and
5 I anticipate that the general poll worker guide
6 book, the compendium, and the college poll
7 worker guide book all in their second printing
8 will be distributed to over 6,000 jurisdictions
9 by the end of December.

10 You see in this slide the good work that
11 we did in our effective designs for the
12 administration of federal elections, quite a
13 mouthful project. This was a project which was
14 undertaken by the American Institution of
15 Graphic Art and its nonprofit affiliate Design
16 for Democracy. It resulted in a very, very
17 useful set of -- they like to call them
18 exhibits, products, if you will, related to
19 polling place signage and ballot designs.

20 There are actually some 600 polling place
21 signs, many of which are in Spanish and
22 Chinese, along with English. We have ballot
23 designs, as you can see from this slide, that
24 relate to optical scan, full face D.R.E.,
25 rolling D.R.E., voting machines and this series

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37

1 of CDs are also in their second printing and I
2 anticipate by the end of December over 5,000,
3 closer to 6,000 of those CD's will have been
4 distributed to election officials throughout
5 the country.

6 So they will have an opportunity to take

7 and use, we hope, liberally, the ballot design
8 prototypes and working with their vendors in
9 the polling place signs that their local
10 election officials can actually use directly.
11 And just have them printed. Our UOCAVA study
12 concluded its primary work in October until
13 which we had a series of case studies that were
14 done, as you can see by the slide, in the case
15 studies were done in Illinois, Florida, South
16 Carolina, and Montana. There are very good
17 series of best practices recommendations that
18 accompanied this study. The study also
19 included an international survey of over 5,000
20 UOVACA voters, and as you all know, the
21 commissioners know, they attended this
22 conference in late September in Washington in
23 which over 40 local election officials came
24 together and talked about serving UOCAVA
25 voters. I anticipate that work will be

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38

1 available to the public in the early part of
2 2008.

3 In conclusion, we have a couple of studies
4 whose work has just been completed in the last
5 week or so actually. Our first time voters who
6 registered to vote by mail study, our voter
7 hotline study, our free absentee ballot posted
8 study and our alternative voting methods study.
9 All of these studies have components to them
10 which include national surveys of voters or
11 national surveys of government agencies in the
12 case of voter hotlines report, and focus groups
13 of voters, and my hope and my expectation is
14 that the results from these studies
15 particularly the alternative voting methods,
16 the first time voters who register to vote by
17 mail studies, and the free absentee ballot
18 posted studies, we will work closely with the
19 National Association Secretary's of State to
20 unveil the results of these important projects
21 at NASS's winter meeting taking place in
22 Washington.

23 So with that, I will just say that has
24 been an extremely busy year, and I look forward
25 very much to getting these projects and

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1 products out in the public domain so that our
2 election officials have tools to conduct
3 effectively their work in the coming election
4 season.

5 >> DAVIDSON: Thank you very much. I
6 would like to say, extend a thank you to all of
7 senior staff, and also I would like to your
8 staff that is at home still working, I would
9 like to say thank you for all the hard work.

10 And one other thing I like the mention
11 because everything that you do goes out on our
12 website and the hard work that Jenny Layson and
13 Brian Whitener, meeting the needs of getting
14 everything out and trying to run, you know,
15 everything out and available and making us more
16 transparent, and I do want to thank them also.
17 They don't get the thanks that we need to be
18 given. But everybody in our organization
19 obviously works very hard and I do thank you.

20 Open it up now for questions. Commissioner
21 Hunter, do you have any questions you would
22 like to ask any of the panelists?

23 >> HUNTER: One comment for Brian Hancock
24 and then a really quick question. Brian, thank
25 you and thank you to Matt Masterson for putting

1 on the panel that is going to be conducted I
2 believe in this room today from 1:00 to
3 6:00 with most -- I believe all computer
4 scientists to discuss some of the security
5 aspects of the VVSG. And I believe you plan
6 similar kind of public forum to discuss with
7 different -- variety of different groups so I
8 appreciate your organizing that.

9 And one quick question for you was, you
10 characterized -- I think you said there were
11 ten reports from the certification program. I
12 am trying to remember what you exactly called
13 it. I wonder if you could characterize those
14 for us. Not list out each one. I think it was
15 called notice of noncompliance. If you could
16 characterize what types of issues have come up
17 in this report.

18 >> HANCOCK: Yes, Madam Commissioner.
19 That's correct, we had ten various types of
20 communication, essentially, with either voting
21 system manufacturers or test lab
22 representatives.

23 These came about from various means,
24 information that we received, information that
25 we perhaps have gotten from the test labs about

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41

1 activities that might be going on during the
2 testing process that they found out that we
3 needed to ask some additional information of,
4 say, a manufacturer, you know, to see if, in
5 fact, they were following the procedures set
6 out in our Testing Certification Program
7 Manual, those types of things.

8 And they certainly varied. There was no
9 one consistent topic for all of those. There
10 are a number of different things. It is, as
11 you know, a very new program and we certainly
12 expect more questions in the future.

13 We expect us, our staff, to do continuous
14 clarifications, our Testing and Certification
15 Program Manual, as well as ongoing
16 interpretations of the VVSG.

17 And I think it is important to keep the
18 avenues of communication open. That is the way
19 we think that will improve the program, by

20 doing these types of things and getting
21 feedback from the manufacturers, the labs, and
22 frankly, from the election officials and the
23 general public as well.
24 >> HUNTER: Thank you very much. One last
25 comment on Edgardo Cortes' report -- thank you

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42

1 very much for that. I had to laugh when you
2 said we had been talking about NVRA since
3 September, and will do so again today and
4 probably in January and maybe even in February.
5 So thank you for your patience on that.

6 I just wanted to publicly thank
7 Commissioner Hillman for her work on the report
8 that you referenced, the preparation of the
9 report to Congress on the states' use of HAVA
10 funds. I think it was a very useful report,
11 and it inspired a lot of good conversation
12 around the states.

13 The states, a lot of them, sent in amended
14 reports, and I think it was good thing. I
15 thank her for her leadership in working with

16 you on her committee to produce that report.

17 That's all I have, Madam Chair.

18 >> DAVIDSON: Commissioner Rodriguez?

19 >> RODRIGUEZ: Thank you, Madam Chair.

20 I don't have any questions, but a comment,

21 and I do think it is important to note that we

22 have not been at full staffing of the

23 organization and have been able to move a

24 number of important projects along.

25 And I just want to thank you -- take this

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43

1 opportunity to thank all of you and your crews

2 for -- for moving things along with limited

3 staff.

4 I know we have authorization for

5 additional staff, and I hope that you-all get

6 staffed as soon as you can so you can continue

7 this remarkable work.

8 >> DAVIDSON: Commissioner Hillman?

9 >> HILLMAN: Thank you, let me just begin

10 by echoing Commissioner Rodriguez's comment.

11 To receive a report like this is very useful to

12 remind, I think, even the Commission of the

13 incredible work that we do.

14 We were, and have been since inception in
15 the unenviable position of having to construct
16 an agency, develop policy and procedures, and
17 execute at the same time.

18 We did not have a period of time in which
19 we could get organized and then start our work.

20 HAVA required that we begin our work
21 immediately from the day the first four
22 commissioners were appointed. And so I think
23 it is useful to take a step back and appreciate
24 all of the hard work that the agency has done.

25 And I do have a few quick questions, so

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44

1 Mr. Executive Director, in your report, you
2 said when you talked about the internal
3 procedures and policies and the work that is
4 being done by ICF International, that E.A.C.
5 has established an aggressive time line.

6 Can you just remind me what the time line
7 is during which we will be able to actually
8 take action on the regulations and items that

9 you've listed?

10 >> WILKEY: Yes, Commissioner, I may have
11 to refer to counsel on this. Yes, Counsel has
12 indicated in my report, is reviewing a number
13 of the drafts as we speak, and I am going to
14 defer to him as to the time line, because I
15 believe that many of these things will have to
16 be put up -- out for public comment. Galvin?

17 >> GILMOUR: Well, as Mr. Wilkey noted, we
18 actually have a draft of each of the reports we
19 need. We got those very early last week. So
20 we are currently in the process. We are in the
21 process of a review of the procedures, first by
22 counsel, and then we'll have to send them out
23 to each of the staff members that which it
24 impact.

25 We want them to be able to make sure to

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45

1 look at that and that the policies are useful
2 and reflect practices and so on. They are
3 going to review that. We are then going to go
4 back to the contractor and proceed through
5 there.

6 Each one, depending upon the specific
7 administrative procedure laid out, some have to
8 go through as a comment, and those comment
9 ranges minimum of 30 to 60 days, most of them I
10 think 60 days.

11 So there is a considerable amount of
12 process, anywhere between 120 to 210 days'
13 estimate at this point to getting towards the
14 process of completing that.

15 >> HILLMAN: Okay. Thank you.

16 For Mr. Hancock, in your report you talked
17 about the seven quick start guidelines, how
18 many total have we put out? Could you remind
19 me?

20 >> HANCOCK: I believe with the ones this
21 year, that will be 11 right now. I believe
22 that is correct. We will have additional ones
23 next year. The initial management guidelines
24 project is a three-year project, so we will be
25 coming out with some additional ones next year

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46

1 as well.

2 >> HILLMAN: And under laboratory
3 accreditation, again, to remind me, you said we
4 accredited four test labs in 2007. Do we have
5 four total, or do we have more than four now?

6 >> HANCOCK: We have four total.

7 >> HILLMAN: Thank you.

8 And I think my next question is for -- I
9 don't remember whose report this is -- oh,
10 Edgardo Cortes -- compliance with HAVA, Title
11 III.

12 Can you just briefly say why only six out
13 of 55 states have submitted certifications?

14 >> CORTES: Well, let me back up. We are
15 not the agency that deals with compliance with
16 Title III. The Department of Justice actually
17 is charged with enforcing compliance with Title
18 III of HAVA.

19 These certifications stem from -- in the
20 use of the requirements payment funds. Those
21 funds have very limited usage in terms of --
22 they can only be used for complying with the
23 requirements of Title III.

24 The only way to use it with other things
25 is the state has to certify to E.A.C. that they

1 have done one of two things: The first thing
2 they can certify is they won't use more than
3 what is known as the "minimum payment amount"
4 for other purposes, and that amount is -- it is
5 about \$11.6 million, and it is the amount that
6 those minimally funded states received.

7 The other option is that they can certify
8 to the E.A.C. that they have met all of the
9 requirements of Title III, and therefore, any
10 remaining requirements payments they have can
11 be used for other purposes as to meet the
12 requirements.

13 As to why there are only six so far that
14 have certified that they met the requirements,
15 I am not sure. I think there is a variety of
16 reasons.

17 >> HILLMAN: Is certification required?

18 Are the states required to certify?

19 >> CORTES: If they wish to use
20 requirements payments money for something other
21 than Title III requirements, yes, it is
22 required.

23 >> HILLMAN: Is it something that E.A.C.
24 maybe needs to remind them, or do you think
25 states won't use those funds? I want to see

1 where we are in this.

2 >> CORTES: We have done a lot to remind
3 them. We have done it in our training earlier
4 this year, and have done it in our
5 conversations with the states when we're in
6 contact with them about use of funds.

7 But in terms of pushing states to do it, I
8 am not sure if there is anything we can do to
9 force states to do it. But we have reminded
10 them consistently that it is something, if they
11 wish to use requirement payments for these
12 other purposes, then they need to file
13 certification. It actually is an issue that
14 has come up in a handful of audits as well.

15 >> GILMOUR: It might be worth noting that
16 one of the charts that Mr. Cortes put out
17 demonstrated that the vast majority -- I think
18 over 75percent of the funding did go towards
19 Title III elements, purchasing voting systems
20 and the statewide databases.

21 And the reality is that number could

22 reflect the fact that states don't really need
23 to spend requirements payments on anything but
24 Title III requirements.
25 >> HILLMAN: That 75 percent wasn't of the

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49

1 vast amount of the monies granted from the
2 state so there is still that as of the report
3 that we submitted, we don't know the states
4 will spend, but I appreciate the comment but I
5 just hope we will keep an eye on it so that
6 states don't find themselves in positions of
7 having inadvertently spent the funds and not
8 understood the procedure they had to go
9 through.

10 And my last question is probably to the
11 Executive Director. It speaks a lot to our
12 research agenda, but it was something that and
13 I think Caroline, Commissioner Hunter will
14 agree with me that we were needing from the
15 report that while it is nice take a look back,
16 it would be useful to know what is in front of
17 us and so if a simple chart couldn't be done
18 listing all the HAVA mandated things E.A.C. has

19 to do and what is left to be done, particularly
20 in the research area.
21 Because that would have been my question,
22 and I am not going to ask that we spend the
23 time doing it now, but of all the research
24 things we have done and are on the way, what is
25 left? And that would address any other issue

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50

1 because it is hard, and I know the staff
2 appreciate the brilliance of all four
3 commissioners and our ability to stay on temper
4 of every minutia and detail, but sometimes I do
5 get lost in terms of what we have done, what we
6 have accomplished, what we have completed and
7 what is in front of us. Thank you.

8 >> LYNN-DYSON: If I might just say, more
9 than happy to do that for Executive Director
10 Wilkey and for the commissioners and to let you
11 know that we have approximately half a dozen
12 studies which are described in HAVA and remain
13 to be completed.

14 >> HILLMAN: Thank you.

15 >> DAVIDSON: My only I guess two things.
16 Follow-up, Ms. Dyson, is any of those half a
17 dozen that is left is that part of what is
18 setting right now that we just delivered this
19 last week that our council was talking about or
20 is that six additional studies that haven't
21 been started?

22 >> LYNN-DYSON: Chair Davidson, that would
23 be six additional that have not been begun.
24 And approximately four of those six can be
25 found under section 241 of HAVA which are

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51

1 described as, and I use this term very loosely,
2 possible optional studies.

3 >> DAVIDSON: So they not mandated as
4 optional studies?

5 >> LYNN-DYSON: That's --

6 >> HUNTER: I would say that the studies
7 are required. E.A.C. can determine when the
8 studies would be done but they are required.
9 So I am trying to get a handle on the remaining
10 required activities that E.A.C. has to do under
11 HAVA so that we can have a sense of not only

12 budget but timeline issues. The only other
13 thing, Ms. Dyson, I would like for you, for the
14 audience, to explain a little bit of what an
15 alternative voting is. I think that that --
16 sometimes that term is misleading, exactly what
17 it is. And you don't have to go great deal
18 into it, I just wanted a brief --

19 >> LYNN-DYSON: Let me ask my trusty
20 friend to put the slide up. You will see from
21 this slide, in particular, Chair Davidson, the
22 bullets which describe the half a dozen or so
23 queries that were done on these particular
24 issues. Election day as a holiday. Weekend
25 voting, early voting, vote by mail, and vote

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52

1 centers.

2 And Puerto Rico was used as an example of
3 how they handled as a territory, how they
4 handled alternative voting practices. So there
5 are some very interesting preliminary findings
6 I think in particular from this national survey
7 that was done of voters and their attitudes

8 about these different approaches, alternative
9 approaches to voting.

10 >> DAVIDSON: Okay. Thank you very much.

11 I think that concludes the report, and I do
12 appreciate it and thank you again, all the
13 staff for the hard work, and I think that we
14 have accomplished a great deal this past year.
15 Obviously, we have a lot more to do. But I do
16 thank each and every one of you. Thank you
17 very much.

18 And I think at this time because of the
19 fact that we need to set up and give a little
20 bit of a set up period, I am going to take a
21 ten-minute break, and then we will come back
22 and finish the meeting.

23 (Break)

24 >> DAVIDSON: If everybody would take
25 their seat. Okay. We are going to start back

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53

1 up. And next we will have the presentation and
2 adoption of the 2006 Election Day survey. As
3 many of the election officials are aware, after
4 every federal election, the E.A.C. is mandated

5 by the Help America Vote to conduct election
6 day survey of UOCAVA, and we have conducted
7 surveys of other areas in the United States.

8 One of things I like to say is data is
9 powerful. And actual reliable data is vital in
10 understanding elections. Without the
11 participation of elections officials in surveys
12 like this, we are forced to turn to other
13 sources for data. I encourage all election
14 officials to participate in survey that good
15 reliable data exists concerning elections. As
16 in 2004, the E.A.C. to conduct the 2006
17 surveys.

18 Mr. Brace is one of leading experts in the
19 field of elections statistics. Joining
20 Mr. Brace is Karen Lynn-Dyson which is the
21 E.A.C. Director of Research. I want to thank
22 both of you for being here today, and we look
23 forward to your presentation about the 2006
24 Election Day survey. I want to turn it over
25 now to I think Kim, are you going to go first?

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1 Kim Brace. No Karen is. All right. I was
2 wrong. Wrong guess. Turn it over to
3 Ms. Dyson.

4 >> LYNN-DYSON: Thank you. Commissioners,
5 Mr. Wilkey, and Deputy General Counsel Gilmour,
6 I come before the commission today with the
7 recommendation that it adopt, pending the
8 suggested edits, the 2006 Election
9 Administration and Voting Survey report. That
10 contains data gathered from the 55 states and
11 territories along with an analysis of these
12 data that was performed by the contractor,
13 Election Data Services and inside contractors
14 Clark Benson of Polidata, Incorporated and Paul
15 Gronke of Reed college.

16 This reports represents the culmination of
17 the work the E.A.C. began in June of 2005 to
18 create a survey that would be administered to
19 all 55 states and territories for the 2006
20 midterm general election.

21 The 2006 survey is the E.A.C.'s second
22 attempt to collect from each of the states and
23 territories, election data that HAVA requires
24 to be reported, along with additional types of
25 election administration data, that is of

1 particular interest to individuals and
2 organizations that track election data.

3 The process used to develop and vet the
4 2006 survey instrument included a number of
5 workshops and sessions held with election
6 officials, academics, and voter information
7 groups. This review also included an
8 opportunity for the public to review and
9 comment on the survey instrument once a draft
10 of the survey had been posted in the Federal
11 Register. A draft of the survey was made
12 available to state election officials in
13 May 2006; OMB granted final approval of the
14 survey in November 2006 and states were asked
15 to submit their 2006 election day survey data
16 by March 2007.

17 The process used to enter and verify the
18 election data states had collected for the 2006
19 survey was involved. E.A.C. staff, the
20 contractor responsible for operating the
21 web-based survey data collection process,
22 Humanitas, and the contractor responsible for
23 analyzing and verifying the states' data,
24 Election Data Services, worked intensively with

25 the states from March to September 2007 to try

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56

1 and ensure the data collected was complete and
2 accurate. This was the E.A.C.'s attempt to
3 collect for the first time county level
4 election data from each of the states, a task
5 that was for E.A.C., its contractors, and
6 especially for the states, a monumental effort.

7 The election data which are presented in
8 this report should be viewed by the public as a
9 beginning effort on the part of the E.A.C. to
10 collect detailed elections information from
11 every state in order to provide a national
12 picture of key election statistics. The
13 process E.A.C. is using to try and collect
14 these data for each general and federal
15 election is an iterative one. Efforts are
16 already underway to improve the approach E.A.C.
17 will use to collect data for the 2008 Election
18 Administration and Voting Survey.

19 For 2008, I look forward to working
20 closely with all of the states and their staffs

21 to help ensure that the information E.A.C. is
22 required to collect and that states are
23 mandated to report is accomplished in a
24 reasonable and responsible fashion.

25 In closing, allow me to publicly

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57

1 acknowledge my appreciation and thanks to all
2 of the states and their staff for their
3 enormous efforts to complete and respond to the
4 2006 election day survey. I recognize the
5 financial and staff limitations under which
6 election offices must operate and that the
7 effort that was required to complete this
8 survey was extraordinary. Thank you.

9 >> DAVIDSON: Mr. Brace.

10 >> BRACE: Madam Chairman, Commissioners,
11 I appreciate the opportunity to be before you
12 and to talk about the 2006 Election Day survey.
13 On behalf of our subcontractors and myself we
14 have spent a lot of time this year putting
15 together a lot of information, a lot of data
16 that was collected.

17 And like Karen, I also would like to thank

18 the states and local governments of this
19 country for assisting in this effort in getting
20 as much data as possible. I am going to go
21 through and talk a little bit about some of the
22 findings that we have had. But you can't start
23 a discussion about elections in this country
24 without looking at some basic election
25 administration facts.

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58

1 And the main thing is that size is an
2 important factor to remember. That over
3 one-third of the nation's counties have fewer
4 than 10,000 registered voters in each of them.
5 Very, very small. Over half of the nation's
6 counties have less than 16,000 registered
7 voters in them.

8 There is only 343 jurisdictions that have
9 more than 100,000 registered voters, and there
10 is only 14 counties in this country that have
11 more than a million voters.

12 The smallest county in this country is
13 right here in the state of Texas, Loving,

14 Texas, that has only 136 registered voters on
15 it. The largest is Los Angeles County with
16 3.9 million registered voters.

17 And it would like 930 of the smallest
18 counties in this country to make-up with what
19 Los Angeles deals with. So it is rather
20 phenomenal in terms of what goes on in this
21 country.

22 As far as the election process from a data
23 perspective for 2006, we were looking at total
24 population, we were looking at voting age
25 population, and citizenship voting age

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59

1 population, registration and turnout.

2 And in each of these instances, the
3 numbers goes down in terms of the different
4 size of the electorate, as we get to each stage
5 of the process.

6 The demographics change at each stage of
7 this process, but it is truly a steppingstone
8 coming down of the stairs of democracy in
9 looking at participation.

10 Compared to 2004, you see in this graphic,

11 for the first three bars, the population,
12 voting age, and citizenship, that actually
13 there has been a slight increase since 2004 in
14 all three of those categories.

15 But of course, as it gets into specifics
16 of registration and turnout, the actual
17 mechanics of elections, you actually see a
18 decrease.

19 That is, of course, in a normal sense
20 going from a presidential election to an
21 off-year election, so you would see that kind
22 of a decrease in 2006.

23 As it relates to registration, not all
24 states report registration the same. There are
25 24 states in the District of Columbia that say

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60

1 the active voters are the numbers that they
2 report for their registration.

3 Twenty-five states combine both the active
4 and inactive counts, and say that is the way
5 that they report their registration.

6 So there is a great dichotomy in this

7 country. One state, California, that -- we
8 were finding differences within the county
9 levels, in terms of how they report
10 registration.

11 In 2004, we saw that active -- you see
12 here in red, active; and inactive in green, and
13 then the states themselves in 2004, where it
14 was down at the local level, with the
15 break-aparts by the counties.

16 In 2006, it was different again. There
17 was similarities but there were some changes.
18 One of the most significant things in the
19 asterisk here in the chart shows where the
20 states -- there is about 10 of them that do not
21 report inactive registrations at all in terms
22 of their registration.

23 In many instances, those are the states
24 covered by statewide voter -- I am sorry -- by
25 election-day registration, and, therefore, tend

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61

1 to be exempt under HAVA from requiring to
2 follow the inactive procedures in terms of
3 registration.

4 In terms of 2006, we -- as we noted
5 before, more than 12.1 million voters more than
6 2002. However, there was 3.3 million less than
7 2004. That's steppingstone effect again -- a
8 great deal of increase from 2002 to 2004, and
9 then after the presidential, comes down a
10 little bit.

11 The country continues to grow larger in
12 terms of population on the AP. But this
13 downturn in 2006, again, was the normal
14 decrease that happens after presidential
15 election.

16 As it relates to registration as a
17 percentage of voting age population, we simply
18 put together state-level data that shows the
19 northern part of this country has a higher
20 registration rate than elsewhere in the
21 country. In 2006, that is the same pattern we
22 have seen since we have been collecting data
23 back to 1948.

24 In terms of citizenship voting age
25 population, on the next graph, shows a similar

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1 pattern but a little bit different and more
2 extreme in terms of out west, in terms of when
3 citizenship comes into being, you drop down in
4 terms of registration. And you see that in
5 Nevada and in Arizona.

6 When we looked at it on the next graphic,
7 we looked at that data --

8 >> HILLMAN: I am sorry. I hate to
9 interrupt you, but your last comment makes me
10 very nervous, because out of context, it
11 doesn't sound right.

12 You said when citizenship comes into
13 being, the rate drops. Could you please
14 explain what you mean when you talk about the
15 total voting age population to the citizenship
16 age population so that it doesn't sound like
17 people who aren't citizens are voting in these
18 huge numbers on this chart?

19 >> BRACE: Yes. You're correct, Madam
20 Commissioner.

21 What I meant to say was that when you deal
22 with citizenship voting age population, there
23 is a lower number of people that fall into that
24 category, of citizenship voting age. And,
25 therefore, you find differences in terms of

1 registration rates. And this chart

2 demonstrates that.

3 We see, like we did in just total voting
4 age population, the west tends to have a lower
5 registration rate. And you see that both in
6 total voting age population, as well as
7 citizenship voting age population. And that's
8 what the data seems to indicate in terms of
9 registration rates.

10 >> HILLMAN: We'll come back to that,
11 because I am still unclear.

12 >> BRACE: Okay. No problem.

13 >> RODRIGUEZ: Is it because the
14 population -- the younger population, with a
15 higher percentage of noncitizens?

16 >> BRACE: Yes, you have a higher
17 percentage of noncitizens out west.

18 When we looked at -- down at the county
19 level, we see a great deal of differences
20 across the country looking at percent
21 registered of voting age population.

22 And we do have, in terms of data, when you
23 start putting data against each other, you

24 start seeing anomalies, and inevitably, we find
25 there are some counties in this country with

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64

1 more than 100percent of their voting age
2 population registered.

3 They tend to be very small jurisdictions,
4 and it raises the question of whether or not
5 those small numbers are what is causing that
6 kind of a circumstance on that.

7 As its relates to turnout, as a percent of
8 registration --

9 >> DAVIDSON: Can I also interrupt there?

10 >> BRACE: Yes.

11 >> DAVIDSON: I think one of the other
12 things -- another reason why there is more of a
13 percentage of people registered than what the
14 citizens -- than what is shown on the citizens
15 graph that is qualified to be registered is
16 because growth in states.

17 I know we experienced that in Colorado,
18 and -- a high growth, it was prior to the
19 census, and so, therefore, you can have that

20 happen, especially in small jurisdictions,
21 because it doesn't take many to get above those
22 numbers.

23 >> BRACE: That is precisely correct.

24 As it relates to turnout as a percent of
25 total registration, again, we looked across the

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65

1 country in terms of where there are higher
2 turnout as it relates to registration.

3 It appears that the higher turnout is out
4 to the west. And in Georgia, there was a hot
5 contest there, also, that raised their turnout
6 rates on that side.

7 In terms of how the votes are cast, where
8 do votes come from? The E.A.C. had identified
9 four possible sources of votes. Those that are
10 cast in a polling place, we found that there
11 was 78 percent of all of the votes cast came
12 from voting in a polling place, that is, on
13 election day.

14 There is another in absentees, there is
15 another almost 14 percent of the votes that
16 came from absentee ballots. And then in terms

17 of early votes, they contributed another
18 6.4 percent of the votes across the country and
19 provisional ballots added another percentage to
20 the total of all the votes that were coming
21 from around the country. But again, state
22 variation was great, as we looked around the
23 country. In the report, we have a graphic that
24 shows the source of the ballots across the
25 country.

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66

1 And if you look closely, you see in the
2 eastern part of the country, it is more heavily
3 tilted towards voting in the polling place,
4 going down south and then further out to the
5 west, early voting and absentee ballots become
6 more larger and an important part of the voting
7 process. And you see that in that graphic
8 there.

9 Specifically in terms of persons that
10 voted in a polling on election day, this
11 graphic shows the higher concentration in the
12 east on those that voted in a polling place on

13 election day. And as far as absentee ballots
14 go, the study ended up finding that there was
15 1.2 million absentee ballots were cast in 2006.
16 That amounted to about 6.5 percent of the
17 registered voters and it was, as I said before,
18 almost 14 percent of all the votes cast came
19 from absentee ballots. There were 10.6 percent
20 of those ballots that were cast that were
21 counted. So that makes 94 percent of those
22 ballots that were cast were ultimately counted,
23 according to the study.

24 The reason for rejecting absentee ballots,
25 the two largest ones we found was almost

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67

1 40 percent of the absentee ballots came back as
2 undeliverable. This was a fact that came into
3 being in terms of this study but also
4 significantly in the UOCAVA study that we also
5 performed for the E.A.C. There were a large
6 amount of absentee ballots came back
7 undeliverable. The second largest category was
8 that they came back after the deadline of a
9 particular state, almost 20 percent of the

10 absentee ballots came back after the deadline.

11 As it relates to the states and what
12 percent of the total votes cast absentees, we
13 see the western tilt in this map and again,
14 anchored out in the state of Washington where
15 87 percent of their votes were cast via
16 absentee ballots. It is not in the polling
17 place.

18 And with vote by mail, it will go up even
19 more as it does in the state of Oregon. The
20 other category was early votes, what votes were
21 being cast early in the process before election
22 day. This is a phenomenon that started in the
23 state of Texas and Texas continues to be the
24 largest state in the nation with the highest
25 number of votes that were cast as early votes.

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68

1 Texas upwards of 45 percent of their votes were
2 cast before election day.

3 Nevada, Florida, and Tennessee are also
4 states where early votes are increasing and
5 growing source of the ballots that come out in

6 turn out to vote. As it relates to provisional
7 votes, over 790,000 persons sought to cast the
8 provisional ballot. That is about 1.3 percent
9 of all persons that went to the polling place,
10 because that is after all where they would find
11 themselves in the circumstance in need of
12 provision ballot. So it was about 1.3 percent
13 of people that went to the polls and about half
14 of -- this was in 2006, this was half the
15 amount this was cast in 2004. It was over
16 almost 1.5 million provisional ballots cast in
17 2004. Now it is 794,000.

18 Of that 794,000, 629,000 were actually
19 counted by the states. That is about
20 79 percent of the ballots that were cast were
21 ultimately counted. That was up from the
22 64.5 percent that was counted in 2004. So what
23 we are seeing in 2006 was a decrease in the
24 number of provisional ballots being cast. But
25 when they were cast, more of them were counted

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69

1 in this time. Again, there is great variations
2 by state across the board. And I have got a

3 graphic on that in a second. The reason for
4 rejecting provisional ballots, the largest
5 group was ultimately when jurisdictions took
6 those ballots back to do the research as
7 required, 43, almost 44 percent, found that the
8 persons were simply not registered at the time
9 of the election.

10 The other large category was almost
11 16 percent noted that the provisional ballots
12 were cast in the wrong precinct and under their
13 state law, that meant that they were not
14 counted also. When we look at provisional,
15 what percent of the provisional ballots were
16 counted of cast? Some of the lowest
17 percentages are here down in the south. I
18 believe Texas is the lowest percentage. Again,
19 it means that we need to take more look at and
20 research in terms of what is causing this. But
21 we see kind of the mid point of the country
22 where the lowest percentages of provisional
23 ballots being cast are being counted of being
24 cast.

25 Provisional ballots, the implementation

1 varies by the laws implemented by the states.

2 As it relates to percent of polling place

3 votes, in states that allow voters to vote

4 anywhere in a jurisdiction, in a county or a

5 township, 2.3 percent of the ballots were being

6 cast as provisional. But when you looked at

7 states that required the persons to vote in

8 their own precinct, that amounted to only

9 eight-tenths of a percent of the overall

10 polling place votes being counted as

11 provisions, being cast as provisionals.

12 >> DAVIDSON: Can I interrupt? The one

13 question I would like to ask you, is that 2.3,

14 are you talking within the whole state or

15 within the county?

16 >> BRACE: These are state laws and so it

17 is the entire state that is considered whether

18 or not it is counted if you are in the polling

19 place or counted in the jurisdiction.

20 >> DAVIDSON: So there is a different

21 figure for those within counties? That is not

22 reported here?

23 >> BRACE: It will vary across the

24 individual state, and we can generate those

25 kind of graphics in addition. But yes, you are

1 correct. As it relates to the percent of
2 ballots that were counted, there is again a
3 difference.

4 In states that allow voters to vote
5 anywhere in the jurisdiction in the county or
6 the township, 84.9 percent of the ballots that
7 were cast were counted. On the flip side, in
8 the states that require persons to vote in
9 their own precinct, the amount that was counted
10 was only 71.8 percent. So there is a
11 difference in terms of how the provisional
12 ballots are implemented according to their
13 laws. As it relates to the procedures that
14 were done for the survey, just in conclusion,
15 there was a lot of time, as Karen had
16 identified, spent in trying to make sure the
17 data was correct and came into us properly.

18 At the very beginning we found all of
19 these states here where they instead of using
20 the web-based survey, that the E.A.C. put up,
21 they simply sent in their own spreadsheets and
22 the E.A.C. in terms of temporary workers as

23 well as staff on our staff, were responsible
24 for then data entering that information.
25 There were differences as we looked across

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72

1 the various questions and how much response we
2 received. Here is a graphic here that looks at
3 how many jurisdictions provided us data on
4 in-person voting and voting at the polls.

5 We found that there were 608 counties in
6 the country that did not provide that data in
7 that instance, and there is different pockets,
8 depending upon different states.

9 As it relates to the least response that
10 we received was, in fact, asking the question
11 of: What was the undervote for federal
12 offices. And there, we found over two-thirds
13 of the jurisdictions were unable to provide
14 counts of undervotes, particularly for house
15 candidates in this instance.

16 So, each question varied, depending upon
17 the question and, therefore, as we were dealing
18 with the data and all of the data reports or

19 the tables that are in the final report, it
20 shows for each question how many jurisdictions
21 responded, and that is one of the key things in
22 analyzing and looking at the data in the
23 reports to keep in mind.

24 With that, I will be happy to answer your
25 questions.

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73

1 >> DAVIDSON: I thank both of you for
2 your presentation. And as they both have
3 said -- and I think I would really like to
4 stress to the public -- this is a very
5 difficult study to do.

6 And one of the reasons why it is so
7 difficult to make conclusions in the slides and
8 everything is because every state has a
9 different law.

10 And what means "provisional" in one state,
11 may not mean "provisional" in another. What
12 means "active" in one state, sometimes varies
13 in another state.

14 So I think -- I just want to make sure
15 that the audience is aware that this is a very

16 difficult process that we're in, in trying to
17 collect actual data and put it in statistics
18 that are shown.

19 And I do appreciate all of the hard work
20 that the staff and all of our contractors have
21 done, and it is not easy.

22 To that, I'll hope it up with questions
23 from --

24 Commissioner Rodriguez, I'll let you go
25 first if you have questions for them.

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74

1 >> RODRIGUEZ: Thank you for your
2 presentation.

3 I don't have any questions on the data
4 that was presented right now.

5 >> DAVIDSON: Okay. Commissioner Hunter?

6 >> HUNTER: I, too, don't have any
7 specifics about the specific data. I was
8 interested in hearing more from both Karen and
9 Kim about the -- going forward.

10 I know Karen has been doing some work on
11 how we can improve the data collection and some

12 of the issues that came up with respect to this
13 year's survey, but I don't know. That might be
14 better to later to discuss that.

15 >> DAVIDSON: I think what I'll do is go
16 to Commissioner Hillman, and I'll come back and
17 allow you to ask those questions.

18 >> HILLMAN: Yes, thank you.

19 A couple of division, Ms. Lynn-Dyson, when
20 you made your remarks, you said it was the
21 second time that E.A.C. had implemented the
22 election day survey to collect the data.

23 And just for the record, I want to
24 establish that prior to E.A.C. moving to
25 collect this data, is this not the first time

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75

1 that the federal government has sought to
2 collect this data?

3 I mean, I think we're all very familiar
4 with the Census Bureau reports on voter
5 registration and participation and turnout
6 rates and so on and so forth.

7 But with respect to drilling down to the
8 kind of data we're collecting, is this not the

9 first time the federal government is doing

10 this?

11 >> LYNN-DYSON: I defer to Mr. Brace who

12 has been in the business of collecting election

13 data for 30 years.

14 >> BRACE: You are correct in the vast

15 majority of the data items that are being

16 collected.

17 The only exception is, there was, from the

18 Federal Elections Commission, for the NVRA,

19 they started collecting data on registration

20 and NVRA practices back in 1993.

21 Again, those have been picked up now from

22 the study, and so that was the first study of

23 the three that we did as it relates to the

24 study.

25 But for the other two, you are correct,

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76

1 this is the first time this has been done.

2 >> HILLMAN: Thank you.

3 Mr. Brace, you noted the dramatic increase

4 in registration from 2002 to 2006 as reported

5 in this survey.

6 Do you attribute that to the data
7 collection methodology we used, or was it, in
8 fact, in the United States, there was such a
9 huge increase in registration from 2002 to
10 2006, despite the fact that it fell slightly
11 from 2004, which is the normal results, a huge
12 increase from 2002 to 2006, and what would you
13 attribute that to as we are reporting it?

14 >> BRACE: I would agree with you. That
15 was because -- it was not because of the
16 methodology in terms of the data collection.
17 It was simply a fact that there were vast --
18 larger number of persons registered. By the
19 time we got to 2006, most of that increases we
20 had noted took place between 2002 and 2004.

21 >> HILLMAN: So it was a leftover from
22 2004?

23 >> BRACE: Yes.

24 >> HILLMAN: Thank you. Now, to have our
25 conversation about total voting age population

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77

1 and citizen voting age population, back in the

2 day, before you and I had gray hair, we were
3 all using census bureau data as a guide with
4 respect to levels of registration and turnout.

5 And that was based on total voting age
6 population -- all people in the United States
7 who were reported to be ages 18 and over. Is
8 that correct?

9 >> BRACE: That is voting age population.

10 >> HILLMAN: Voting age population. Okay.

11 So in the '80s and '90s, to the best of my
12 recollection, though we would acknowledge that
13 not everybody in the voting age population was
14 eligible to vote, those were the only numbers
15 that we had to work with as predictors and to
16 keep track of levels of participation. Is that
17 correct?

18 >> BRACE: That is correct.

19 >> HILLMAN: Then sometime around 2000 or
20 thereafter -- and I sort of lost track as to
21 when it happened -- people began talking about
22 citizenship voting age population to be able to
23 identify people who were eligible to register
24 and vote?

25 >> BRACE: That's correct.

1 >> HILLMAN: Okay. So when you talk about
2 the differentiation between the numbers that
3 somebody would see when you look at percentages
4 against the VAP, total voting age population,
5 and you look at the numbers against the
6 citizenship voting age population, help me
7 understand, it does not mean that noncitizens
8 were participating, and, therefore, collected
9 in the total voting age population. That is
10 not why we're making the differentiation, is
11 it?

12 >> BRACE: No. That is correct.

13 What we are saying is that when you look
14 at total voting age population, it gives you
15 one mix of the potential of people that are
16 there that could vote.

17 Under most state laws, you have to be also
18 citizens, and so that pulls down the eligible
19 number of persons that could be voting. As you
20 get in with the -- in states that have larger
21 numbers of noncitizens in their populations,
22 that brings down those numbers even larger.

23 And so what -- what is important to take a
24 look at and be able to analyze and know both of

25 those numbers and see what impact they might

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

79

1 have in terms of the eligibility and how people
2 would, then, participate.

3 >> HILLMAN: And for the purposes of our
4 study report, we're dealing with federal
5 elections only. Right?

6 >> BRACE: That is correct.

7 >> HILLMAN: And so, therefore, we are
8 acknowledging that all persons participating in
9 the process have to be citizens?

10 >> BRACE: Yes.

11 >> HILLMAN: And so it is slightly
12 confusing as to why we are focusing on voting
13 age population that includes people who are not
14 eligible to vote.

15 I know why we're tracking the numbers and
16 it is sort of a leftover, and you have got this
17 overlapping. But for the purpose of tracking
18 the people who are eligible because they're
19 citizens and ages 18 and over, it is the
20 numbers captured under the citizen voting age
21 population. Is that correct?

22 >> BRACE: That is the ultimate. Now,
23 that still leaves out two other categories that
24 are still there. Most state laws prevent
25 persons voting if they are mentally

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

80

1 incompetent, as well as -- there is one other
2 category -- I can't remember.

3 >> HILLMAN: Felons?

4 >> BRACE: Felons, yes.

5 Both of those sets of data are basically
6 nonexistent. You don't really know either in
7 terms of those things.

8 >> HILLMAN: We're only talking about
9 eligible, in terms of meeting age and
10 citizenship requirements.

11 >> BRACE: That's correct.

12 >> HILLMAN: We're not talking about
13 eligible as it relates to each specific state?

14 >> BRACE: Yes, that's correct.

15 >> HILLMAN: Thank you.

16 And my last question -- and it doesn't
17 have to do with the E.A.C.'s report but just in

18 general, and it was triggered by the
19 provisional vote cast and count -- of the
20 people who -- of the people who thought they
21 were registered to vote, but it turns out they
22 weren't registered to vote, has any survey been
23 done that sort of captures why people thought
24 they were registered to vote when it turns out
25 they weren't? Because we're talking about

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

81

1 several hundred thousand people.
2 >> BRACE: Certainly we are, and that is a
3 very good point. We don't know. That is one
4 of the great questions and that is certainly
5 would be something that is potential for
6 research. We do know, you know, if we were to
7 work with different states or local
8 governments, to be able to go and take a look
9 at those provisional ballots and go back to
10 track down those people that thought they were
11 registered and were not to figure out why. It
12 is a very large category in that, as we have
13 noted. And it is rather significant.
14 >> HILLMAN: Thank you.

15 >> DAVIDSON: As we move forward, would
16 you like to go ahead and ask our questions.
17 How we are moving forward in the next year as
18 we look forward to collecting data in the
19 future?

20 >> HUNTER: Sure. As I mentioned before,
21 we acknowledge in the report, and we have done
22 so in other forums that there were problems
23 with the data collection and you know some of
24 it was based on the web-based surveys and some
25 states just don't collect the information as

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

82

1 much as they may want to, and they are not
2 required to collect it by any kind of law and
3 so their systems aren't set up to do. So I was
4 wondering if the two of you might provide us
5 with a little bit of an overview of the work
6 you have done recently to improve the data
7 collection.

8 >> LYNN-DYSON: I am happy to say and
9 report Commissioner Hunter that with Kim and
10 his subcontractors assistance, Clark Vincent

11 and Paul Gronke, we were able to undertake what
12 I thought was an incredibly important and
13 helpful series of teleconference calls last
14 week in which we were able to discuss with
15 43 --
16 >> BRACE: 43 states.
17 >> LYNN-DYSON: 43 states, not only their
18 experiences with the -- their attempts to meet
19 the requirements and accommodate the E.A.C. and
20 its request for data for the 2006 survey
21 questions. And moving forward Kim will be
22 capturing what we heard in those
23 teleconferences, making a series of
24 recommendations to the E.A.C. about how best to
25 proceed.

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

83

1 It is my expectation that in January, we
2 will work to develop a new request for quotes
3 to issue a contract in which the winning bidder
4 would work with us to develop a new survey
5 instrument, to identify the key data sets that
6 we wish to collect based upon what we heard in
7 last week's conference calls, we anticipate

8 that we are likely to develop a series of
9 templates in which states will, for 2008, be
10 given a choice of instruments that they can use
11 to actually report the data.

12 We are talking about for example Excel
13 spread sheets, Access spread sheets. And I
14 think it is important to note for the record as
15 I did in all of the conference calls, that as
16 you all well know, the public may not know this
17 as much, that we as an agency are required to
18 submit to the Paperwork Reduction Act and go
19 through a public vetting and hearing process
20 for our survey instrument. What that means for
21 us as an agency is that we must work very, very
22 quickly to get to the states as close to a mock
23 survey instrument and to the public get this
24 document out so that we can begin this OMB
25 clearance process, Paperwork Reduction Act

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

84

1 clearance process, which takes 120 days.

2 So we have expressed to the states that we
3 certainly expect and anticipate that they will

4 have a draft and an idea of what they will be
5 working with in January and that we -- it is
6 our sincere plan and hope that they will have
7 no later than May the finalized document. So
8 that is the outline of the plan beginning in
9 early January.

10 >> BRACE: I would add to that that when
11 we started our contract with you for the 2006
12 study, in May 3rd I believe it was, and we
13 began talking with the states and hearing some
14 of their English in terms of dealing with the
15 data, dealing with the web-based survey and all
16 of that, I became very much committed early on
17 to make sure that their views were
18 correspondingly transmitted to the E.A.C.

19 And I am very much thankful to the
20 commission for giving us the second contract to
21 implement that. And in doing the series of
22 five teleconferences that we did last week,
23 that some of you listened to and participated
24 in, and Karen ended up attending all five of
25 them. It was very informative in terms of the

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(512)480-0210

1 experiences that they went through. But also,
2 106 the differences that there are out there in
3 the states.

4 We are a nation of 50 states and that is
5 why we have 50 different election laws, and it
6 is important as we try to collect data that we
7 understand those differences. And I think that
8 started very much so in terms of these
9 teleconferences.

10 >> DAVIDSON: Okay. Thank you very much.
11 I appreciate that. Thank you.

12 All right. As we move forward, we have
13 the report in front of us for approval. I know
14 there has been some changes made that we have
15 in front of us here. How would you like to
16 proceed? Ms. Rodriguez.

17 >> RODRIGUEZ: Thank you, Madam Chair.
18 The process that we operate under is that we
19 post as soon as we adopt something, we post it
20 on the website. And so if Ms. Layson is here,
21 is she here? Any way, we post these things as
22 immediately as we adopt them. And there is a
23 great deal of interest in this product.

24 Yesterday I attended an election line
25 seminar on the 2008 election and a number of

1 reporters were looking forward to the release
2 of this report. I understand that you have
3 made some minor, very minor, edits to the
4 report that you gave the commission about ten
5 days ago. And I just wondered if you would put
6 in the record those edits.

7 I don't know if the commissioners will
8 have questions or anything, but if you would
9 put in the record those edits so that
10 Ms. Layson can post the report with the
11 additional information that it will be very
12 slightly revised.

13 >> DAVIDSON: Can I ask, when you say put
14 in the record, my hope is that we will take the
15 time now to go through them; is that what you
16 meant by putting in the record?

17 >> RODRIGUEZ: Yes.

18 >> DAVIDSON: Okay. Which one would you
19 like, Ms. Dyson, will you be leading this?

20 >> LYNN-DYSON: I am happy to do so. We
21 can begin with the letter to the public.

22 And --

23 >> DAVIDSON: Can you do it --

24 >> LYNN-DYSON: Quickly?

25 >> DAVIDSON: Yes.

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

87

1 >> LYNN-DYSON: Essentially what we have
2 done in our letter to the public is we have
3 softened our seal in which we talk about how
4 invaluable this document is, and we just think
5 that it will help.

6 >> HILLMAN: Do you have a page number or
7 something?

8 >> LYNN-DYSON: Page one.

9 >> DAVIDSON: I think there is a year
10 change in the instruction.

11 >> LYNN-DYSON: No, that one has not
12 changed.

13 >> DAVIDSON: Sorry that I interrupted.

14 >> LYNN-DYSON: That is okay. In the
15 letter we also note that we have --

16 >> HILLMAN: I am sorry, could you just
17 read the language that will be used.

18 >> LYNN-DYSON: Is that the way you would
19 like to proceed? Okay. Once again, in the
20 letter that you all issued to the public, you

21 are saying the information we collected will
22 help the American public better understand what
23 is happening throughout the country.

24 It originally read as the information we
25 collected is invaluable in helping the American

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(512)480-0210

88

1 public better understand. We have now struck
2 from the letter the sentence the survey also
3 helps this agency meet its statutory
4 requirements to study various portions of the
5 election process and report to Congress.

6 Moving forward, Executive Summary, Page 3,
7 the language in the draft report reads:

8 "Persons have to be at least 18 years of age,"
9 parens, "voting age population or VAP." Next
10 sentence, "Some states require those persons to
11 also be United States citizens."

12 The language now reads as one sentence:

13 "Persons have to be at least 18 years of age,"
14 comma, "be United States' citizens, and,"
15 comma, "some states prohibit felons and
16 mentally incompetent persons from

17 participating."
18 Down to the third paragraph in the
19 Executive Summary, there was an error --
20 >> DAVIDSON: I am sorry. The one I am
21 looking at, say the "States' citizens," are we
22 just saying "be citizens"?
23 >> LYNN-DYSON: Yes, should be "United
24 States citizens" or can say "be citizens."
25 Moving down to the third paragraph, there

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

89

1 was an error. It should read, "the National
2 Voter Registration Act of 1993" and not 1992.
3 Moving to Page 4, the third full
4 paragraph, in the original draft text, the last
5 sentence -- last portion of that sentence read,
6 "states only require voters to cast their
7 ballots in their own overall jurisdiction for
8 the provisional ballot to be counted."
9 It now will read, "Only require voters to
10 cast their ballots in their own county or
11 township, for the provisional ballot to be
12 counted."
13 >> DAVIDSON: Would it not pertain to

14 cities?

15 >> HILLMAN: For example, it is my
16 understanding that cities, particularly in new
17 England and maybe Chicago and others administer
18 federal election?

19 >> BRACE: Yes, that is correct. We can
20 make that change, yes.

21 >> DAVIDSON: Go ahead, Commissioner
22 Rodriguez.

23 >> RODRIGUEZ: Thank you, Madam Chair.
24 In Colorado, you can cast your provisional
25 vote in your jurisdiction. So that

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90

1 jurisdiction point would be correct for some
2 states.

3 >> BRACE: And in Colorado, jurisdiction
4 is defined as what?

5 >> RODRIGUEZ: Your voting district.

6 >> BRACE: Your precinct.

7 >> RODRIGUEZ: No, not your precinct.
8 Your district.

9 >> BRACE: Your district, okay.

10 >> RODRIGUEZ: So it is your -- I mean, I
11 could vote in a congressional district in a
12 county in which I did not reside if -- as long
13 as -- if as long as I were in that
14 congressional district.

15 >> BRACE: Okay.

16 >> HUNTER: I have a suggestion on
17 something that may clear this up a little bit.

18 Instead of saying -- instead of striking
19 "overall jurisdiction" and replacing it with
20 "county or township," one way, I think, to do
21 this would say, but "a smaller number of states
22 require voters" -- wait, excuse me, "a smaller
23 number of states do not require voters to cast
24 their ballots in their precinct for the
25 provisional ballot to be counted or partially

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

91

1 counted."

2 So we're drawing a distinction between
3 states that require you to vote within your
4 precinct and states that don't, because there
5 are so many varieties.

6 And Colorado is a good example of a state

7 you can vote just for president in any part of
8 the state, I think per commissioner Davidson's
9 order, when she was Secretary of State, but I
10 think that is a plainer way of saying it.

11 >> BRACE: Yes, I think that would be a
12 better way of saying it.

13 >> DAVIDSON: Did you get that language?

14 >> LYNN-DYSON: I did, Madam Chair. "But
15 a smaller number of states do not require
16 voters to cast their ballots in their precinct
17 for the provisional ballot to be counted."

18 >> HUNTER: Say that again. Sorry.

19 >> LYNN-DYSON: "Most states require to
20 have voted in their home precinct for their
21 vote to be counted, but a smaller number of
22 states do not require voters to cast their
23 ballots in their precinct for the provisional
24 ballot to be counted."

25 >> DAVIDSON: Or partially counted.

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

92

1 >> HUNTER: I think I said "or partially
2 counted."

3 >> LYNN-DYSON: "To be counted or
4 partially counted." Okay.

5 And finally, on Page 5, Commissioners,
6 again recognizing the difficulty in the
7 iterative process we are going through in terms
8 of trying to create a good survey instrument,
9 this is the second report I am voting produced
10 by the E.A.C., the first, the 2004 report was
11 released in September 2005. Rather than
12 "significant improvements," we will say
13 "improvements, which are detailed below, were
14 made for the 2006 survey process."

15 >> DAVIDSON: With those changes read into
16 record, how would the Commissioners like to
17 proceed? Do I have a motion?

18 >> HUNTER: Okay. I move to adopt the
19 2006 Election Administration and Voting Survey
20 with the changes that were read into the
21 record.

22 >> DAVIDSON: I have a motion.

23 >> RODRIGUEZ: Second.

24 >> DAVIDSON: I have a motion and a second
25 to adopt the 2006 Election Administration and

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310 East 34th Street, Austin, Texas 78705
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1 Voting Survey with the changes that have been
2 read into the record.

3 With the motion and a second, I call for a
4 vote -- or is there any discussion? Excuse me.

5 Seeing no discussion, I'll call for a
6 vote.

7 All those in favor say "aye."

8 >> Aye.

9 >> DAVIDSON: Opposed?

10 Thank you very much. I appreciate it.

11 Job well done.

12 >> WILKEY: Madam Chair, just for purposes
13 of clarification, for our communication staff,
14 we did indicate to the media that we would
15 release these data sets today.

16 Since it appears we're only talking about
17 some minor language changes on the document, we
18 would like to move forward with doing that
19 release, if that is all right.

20 >> DAVIDSON: I see no problem with doing
21 that. I think the only thing you are going to
22 do is make a statement at the bottom or
23 something saying that there would be a few
24 changes in the -- you know, that have been read
25 into the record, minor changes, because I think

1 we all agree they were very minor.

2 >> WILKEY: Thank you, Madam Chair.

3 >> DAVIDSON: All right. Thank you very
4 much. I appreciate it.

5 We're going to take like a three, four
6 minute break, so don't run off. We're taking a
7 three to four minute break, so don't run very
8 far.

9 (Recess taken)

10 >> DAVIDSON: As soon as we have
11 Commissioner Hunter in the room, we'll get
12 started again.

13 All right. I am going to get started
14 again, and next on the agenda, you will notice
15 that it says, "Discussion of E.A.C. policy
16 regarding voting system reports," and I -- we
17 have, right now, two reports that has been
18 posted on our web, that is from California and
19 Kentucky as a part of the E.A.C. clearinghouse
20 function.

21 And Commissioner Hillman had requested to
22 discuss -- a discussion regard the E.A.C.

23 voting system reports clearinghouse policy.

24 I will turn it to you, Commissioner

25 Hillman.

TEXAS CLOSED CAPTIONING
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(512)480-0210

95

1 >> HILLMAN: Thank you.

2 In early August or late July -- I forget
3 exactly when -- E.A.C. adopted a policy where,
4 upon appropriate submission from a government,
5 either state or local government official
6 regarding a report on a voting system through
7 its clearinghouse responsibilities, E.A.C.
8 would post the reports.

9 By broadly stating government officials,
10 it could be any official, whether an attorney
11 general or possibly even, you know, a district
12 attorney or a state legislator. We would
13 receive the report, consider that it came from
14 an appropriate source and post it.

15 In the process of doing that, my -- my
16 concern, and I am urging the E.A.C., that we
17 adopt a procedure, if not part of the policy,
18 that we will notify the state -- the chief
19 state or the chief local election official when

20 a report has been received from an official

21 that is not the election official.

22 And I say that because HAVA requires
23 E.A.C. to work to improve the administration of
24 federal elections and we do that work with a
25 lot of our constituencies, but principally with

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

96

1 the election officials.

2 And I think it is E.A.C.'s responsibility
3 to make sure that election officials know that
4 a report about the voting system they have
5 responsibility for has been submitted to E.A.C.
6 and will be posted on E.A.C.'s website. We can
7 call it a courteous heads-up, if you will.

8 My concern that we don't have currently
9 written procedures to implement the policy, and
10 so I guess what I am encouraging is that we
11 quickly develop those procedures and that we
12 make it as a part of the ongoing procedure
13 that, whenever a report like that comes from an
14 official who is not the chief state or chief
15 local election official, that we would provide

16 them notification at the time that we receive
17 the report, so they will know that the report
18 is being posted.

19 >> DAVIDSON: Any other comments or
20 concerns?

21 None. We'll move on in our agenda.

22 >> HILLMAN: Before we move on, I saw a
23 nodding head from the executive director, but I
24 don't have any feedback whether I am talking
25 for the record, whether my colleagues agree on

TEXAS CLOSED CAPTIONING
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(512)480-0210

97

1 that, or where we are on this.

2 >> WILKEY: I totally agree with you,
3 Commissioner. I think it is a great
4 suggestion. We want to put as many of these
5 reports up as we can. I think we took great
6 care when we adopted the initial policy to make
7 sure we included other people that may be
8 involved in the election process, such as the
9 attorney general or it could be a chairman of a
10 state legislative committee that deals with
11 elections.

12 But I think your comment is we will make

13 that a part of our procedure. I think my only
14 question will be, and we could have a further
15 discussion at the time -- at some other time,
16 if you wish, is that: If the jurisdiction that
17 is involved wants to make a comment, would that
18 comment also be posted along with that report?
19 Because that is likely to happen.

20 >> HILLMAN: Yeah, I don't -- you know, I
21 don't -- I mean, I would certainly hope so, but
22 I -- it is just not something that's come up
23 yet, and the question is how we anticipate --
24 or how we develop a procedure around an
25 anticipated possible happening.

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

98

1 So I would hope that E.A.C. would be
2 willing to allow the official who has the
3 responsibility for the voting system in
4 question to be able to respond.

5 And I am not at all suggesting the
6 procedure is a way to hold up or prevent the
7 posting of any reports, but rather, a
8 professional courtesy notification to the

9 officials.

10 >> WILKEY: Okay. We will proceed with
11 that recommendation. I think it is a good
12 recommendation, and then we will also have some
13 further discussion about how we will proceed
14 with what I just mentioned and go from there,
15 perhaps even into the next meeting.

16 >> DAVIDSON: Any other comments?

17 Yes, Commissioner Rodriguez?

18 >> RODRIGUEZ: Yes, thank you, Madam
19 Chair.

20 But Mr. Wilkey, only bring it to us if it
21 requires our action. That's all I ask.

22 >> WILKEY: So noted.

23 >> DAVIDSON: Now moving forward, Edgardo
24 Cortes.

25 >> CORTES: Good morning again,

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

99

1 Commissioners. There are two items up on the
2 agenda concerning the National Voter
3 Registration Act. The first one that I will be
4 talking about, I mentioned earlier, but on
5 December 3rd, we finished a public comment

6 period regarding whether or not the E.A.C.
7 should administratively transfer the
8 regulations, the NVRA regulations previously
9 adopted by the F.E.C. The agency that was
10 previously responsible for NVRA implementation.

11 I provided a memo to commissioners last
12 week summarizing the comments and have the
13 comments as an attachment as well as some other
14 information. That was posted on our website
15 and is still available on our website under
16 meeting materials. I will say that since
17 the -- since the September meeting, during
18 which the commissioners voted to have us do
19 that public comment period, we have done a
20 couple of steps to get to where we are today.
21 The first one, Mr. Wilkey mentioned, was that
22 we have established a code of federal
23 regulations site. In order to move the
24 regulations or transfer the regulations over we
25 need that site in place. We currently have a

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

100

1 draft organizational structure that is being

2 finalized and as Mr. Wilkey mentioned, it is in
3 title eleven, chapter two of the Code of
4 Federal Regulations. The NVRA regulations are
5 tentatively set to occupy parts 9430 and 9431
6 of that chapter.

7 Again, we received five comments during
8 the public comment period. They were provided
9 to the commissioners. The majority of them
10 were in support of the administrative transfer
11 with the note that of course there was an
12 expectation that as commissioners move forward
13 in amending those regulations that there would
14 be ample opportunity for public comment and
15 participation.

16 At this juncture the commissioners have in
17 consultation with the office general counsel,
18 we think there are two possibilities for the
19 commissioners to do at this point. The first
20 one would be to approve the administrative
21 transfer of those regulations and which case
22 the E.A.C. staff would coordinate with F.E.C.
23 to enter into joint rule making process. That
24 will require a extensive work with several
25 E.A.C. divisions as well as some folks on the

1 F.E.C. side to draft that and get that into

2 place.

3 Once that joint rule making process has
4 been done and the note is published, those
5 regulations would become E.A.C.'s regulations.

6 At that point, the E.A.C. would need to enter
7 into a rule-making process to amend those
8 regulations. The reason I say this is because
9 the current or the NVRA regulations in the
10 F.E.C. past were passed prior to the passage of
11 HAVA, and there are several items that require
12 bringing the regulations into compliance with
13 the HAVA requirements.

14 The second option before the commission is
15 that the -- y'all would reject the
16 administrative transfer and the E.A.C. would
17 simply begin a full rule-making process to
18 develop NVRA regulations. So those are the two
19 items or the two possibilities before you this
20 morning.

21 >> DAVIDSON: Mr. Cortes, I appreciate you
22 explaining this to us and going through it, and
23 I think it is very important as we move forward
24 to be able to make NVRA compliant as we
25 obviously move forward and as HAVA requires,

1 they must end up at the E.A.C. So I am going
2 to open it up for a motion from the commission
3 to take action. So would one of you like to
4 make a motion on the -- how we move forward?

5 >> HILLMAN: Madam Chair, I would move
6 that the election, the U.S. Election Assistance
7 Commission approve the administrative transfer
8 as described by Mr. Cortes and provided.

9 >> RODRIGUEZ: Second.

10 >> DAVIDSON: We have a motion and a
11 second to approve the administrative transfer
12 of the rules from the F.E.C. to the E.A.C.
13 using the suggestions that you have in the
14 memo, which I believe is option one?

15 >> CORTES: Yes, ma'am.

16 >> DAVIDSON: Is there any discussion on
17 the matter?

18 >> HILLMAN: I would like to speak to the
19 motion. But let me just defer to what the
20 general counsel has to say. And then I will
21 speak to my motion.

22 >> GILMOUR: Based on the present motion,
23 I want to make sure that you are approving
24 staff of the executive director to take action
25 to transfer. We just want to make sure to the

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

103

1 public that we are not suggesting that this
2 action results in the immediate transfer.
3 There are still procedures in place, and they
4 must be followed. I think that is understood
5 by everyone here. We want to make sure that
6 those words to include that.

7 >> DAVIDSON: I definitely appreciate
8 that. Thank you very much.

9 >> HILLMAN: I was -- I am pleased to make
10 the motion because I think that it is
11 critically important for the Election
12 Assistance Commission to be moving as quickly
13 as possible to engage the rule-making process
14 for our responsibility to the NVRA, the
15 National Voter Registration Act.

16 And as I understand it, following up on
17 the general counsel's technical correction of
18 what the motion would be, that we are just not

19 simply going to accept the transfer of the
20 regulations but that we will engage in a
21 full -- not fool -- full rule-making process to
22 amend the E.A.C.'s NVRA regulations to make
23 sure they are HAVA compliant and make any
24 changes that are determined appropriate by the
25 E.A.C. commissioners.

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

104

1 In the meantime, we have some things
2 pending, and I am hoping that the commissioners
3 will be able to do two things. One, is to
4 identify those changes to the state specific
5 instructions, the process that we can agree on
6 now as temporary procedures through whatever
7 process we have to go through as quickly as
8 possible, and diligently work those things
9 where the commissioners may not be in agreement
10 on. But just encourage that we continue moving
11 this forward, and there will be lots of
12 discussions about NVRA but that we can get
13 procedures in place quickly.

14 >> DAVIDSON: We have a motion on the

15 floor to -- and a second. Commissioner
16 Rodriguez?
17 >> RODRIGUEZ: Thank you, Madam Chair. I
18 just want to take this opportunity to thank the
19 individuals and organizations even though one
20 of the comments wasn't particularly helpful for
21 the groups that are watching this process and
22 took the time to write thoughtful feedback and
23 reaction to the transfer. We -- this is going
24 to be a long process.
25 Just like every other process where you

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310 East 34th Street, Austin, Texas 78705
(512)480-0210

105

1 make sure that you comply with every possible
2 regulation, but I am pleased that we have
3 agreed -- well, I will be pleased to support
4 the motion to start the process of working with
5 the F.E.C. to transfer the regulations.
6 >> DAVIDSON: Any other comments? Seeing
7 none, I will call for the vote. All those in
8 favor of starting the process of moving the
9 regulations over from the NVRA regulations from
10 the F.E.C. to the E.A.C. and taking option
11 really one and really outlines the steps that

12 has to be taken, say aye.

13 >> Aye.

14 >> DAVIDSON: Oppose? The motion is

15 carried. Okay.

16 Over the last few months --

17 >> HILLMAN: I am sorry. May I just ask a

18 question in terms of the next two steps in

19 anticipated length of time now that the motion

20 is passed?

21 >> CORTES: Well, our next step will be

22 later this week we will contact F.E.C. They

23 actually have within their office of general

24 counsel have part of their legal team assigned

25 to working on regulations. Because they issue

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

106

1 other regulations as well. And so we will
2 contact them to see about the length of time
3 that it will take for us to get through this
4 process.

5 As I said, it will require development of
6 a Federal Register notice, that meets not only
7 Administrative Procedure Act but several other

8 requirements that are out there regarding the
9 administrative transfer of regulations.

10 So we'll begin working with them. I can't
11 give you a specific time line at this point,
12 obviously I want to get it done as quickly as
13 possible, but a lot of it will be dependent on
14 F.E.C.

15 >> GILMOUR: There are a number of
16 determinations that have to be made regarding a
17 variety of other statutes and executive orders
18 which we believe we have a good handle on, but
19 ultimately, we will have to rely on a number of
20 other entities whose activities are somewhat
21 beyond our control, but we will be pushing as a
22 team hard to get this done.

23 >> HILLMAN: In addition to the F.E.C.,
24 what would another entities beyond our control
25 be?

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

107

1 >> GILMOUR: Depending upon some
2 determinations, a number of statutes, it could
3 be O.M.B. They have two different offices
4 there. There is OIRA and of course, the Paper

5 Reduction Act folks. There are some
6 determinations there, which unfortunately, I
7 think we have a handle on that, but because the
8 F.E.C. is exempt and we're not, there could be,
9 unfortunately, some more complicated issues
10 there, but our effort will be to proceed as
11 quickly as possible.

12 >> HILLMAN: Thank you.

13 >> DAVIDSON: Okay. As we move forward,
14 over the last few months, the Commission has
15 tried to reach consensus on the interim policy
16 of the process of states' requests. No
17 consensus has been reached at this time.

18 The ideal situation would have been first
19 that we had adopted an interim policy and then
20 applied it to the states' request, but we
21 cannot wait any longer.

22 We have specific requests from five states
23 to change the instructions on the form, and we
24 have a responsibility to the voters to make
25 sure that the national form is accurate and up

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

1 to date.

2 That is why I've called for the Commission
3 to vote on each request. The voters expect and
4 deserve leadership and action from the E.A.C.
5 on this issue, and they expect and they deserve
6 it now.

7 Every day that we do not make a decision,
8 we run the risk of disenfranchising voters. I
9 thank the E.A.C. staff for working with all of
10 us to try to reach consensus. You have done
11 your job, and now it is time for the
12 Commissioners to do our job.

13 Edgardo Cortes of the E.A.C., I would now
14 ask you to go through each one of the states'
15 requests separately, so it is not confusing for
16 the Commissioners, and we'll take a vote on
17 each one of them as we go through them.

18 Thank you.

19 >> CORTES: Thank you, Madam Chair.

20 Again, last week -- well during last
21 month's meeting, I presented a memo that
22 detailed requested changes from four states.
23 Early last week, we got an additional request
24 from the state of Delaware, and so I added that
25 to the memo and reissued it at the end of last

1 week on December 6th, so that was also posted
2 on our website under the materials for the
3 meeting.

4 Would you like me to read the specific
5 changes or detail what it is they're --

6 >> DAVIDSON: I definitely feel the
7 Commissioners need to be aware of what they
8 were so that they -- they can vote and make
9 sure that they understand each and one of them.

10 >> CORTES: The first one I have here is
11 Rhode Island, and Rhode Island has requested a
12 change in the language and instructions for
13 number 9, which deal with their state
14 eligibility requirements.

15 In particular, we're looking at a change
16 previously. To register to vote in Rhode
17 Island, you had to be neither -- and this is
18 quoted in the memo, the exact language -- this
19 is what is currently on the form.

20 It said, "You must be neither serving a
21 sentence, including probation or parole for
22 which you are imprisoned upon final conviction
23 of a felony imposed on any date, nor serving
24 any sentence, whether incarcerated or

25 suspended, on probation or parole upon a

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

110

1 finally conviction of a felony committed after
2 November 5th, 1986."

3 Since that time -- in the past year, the
4 state of Rhode Island has amended their
5 constitution regarding that requirement, and
6 they now wish it to read -- and this is in
7 accordance with their state constitution --
8 that "to register in Rhode Island you must not
9 currently be incarcerated in a correctional
10 facility due to a felony conviction," so that
11 is the specific change which they request.

12 >> DAVIDSON: All right. Do I hear a
13 motion?

14 >> HUNTER: I move to adopt that specific
15 change and reflect it in the state instructions
16 portion of the Federal Voter Registration form
17 under the state of Rhode Island.

18 >> DAVIDSON: Is there a second?

19 I will second it.

20 All those in favor of --

21 >> HILLMAN: I would like to speak to the
22 motion, please.

23 >> DAVIDSON: All right. Is there any
24 discussion?

25 >> HILLMAN: Yes. On Friday of last week,

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

111

1 December 7th, I put before all of the
2 Commissioners and the senior staff a proposed
3 policy that would allow us to adopt
4 temporary -- a temporary policy and procedures
5 so that all requests from states for changes to
6 the state instruction portion of the Federal
7 Registration Form could be considered the same.

8 And I agree with you, Madam Chair, that
9 E.A.C. has a responsibility to the states and
10 to the voters of this country, but I also
11 believe that E.A.C. has a responsibility to
12 take actions under adoptive policy, and that to
13 take the requests state by state puts us in
14 jeopardy of, one, not having in place the
15 appropriate authority that we have been told
16 this year that we should have in place; and
17 two, that state requests would not be treated

18 the same.

19 And I think it is really important that,
20 when these decisions are made, we are making
21 them under policy.

22 >> DAVIDSON: Commissioner Hillman, I
23 agree with you, and I appreciate your hard
24 work, and I am sorry that it wasn't done
25 earlier, where we could amend our -- our

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

112

1 Federal Register notice to make sure that it
2 had been properly noticed on the agenda to be
3 discussed today, your procedure.

4 And I publicly will say that I support in
5 moving forward in a policy in working with all
6 of my fellow Commissioners in getting one
7 addressed.

8 But last month I was criticized for not
9 having addressed it with the Federal Register,
10 and I really had, and I feel that it is
11 important, as we move forward, trying to be
12 transparent, that we move forward and treat it
13 all the same.

14 And I realize we have all been very busy,
15 and I do look forward in working with you and
16 all of the others in trying to get to a
17 resolution.

18 But we are really close to the election --
19 presidential elections that is right there upon
20 us. And we take -- we are right now in the
21 process of disenfranchising voters who could
22 possibly be voting and don't know what the
23 rules and regulations are for the states.

24 So that's why I took the urgent need to go
25 ahead and put them up for vote. I think we can

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

113

1 vote on them fairly, on each and every one of
2 them, as we move forward, and that we must do
3 so.

4 I noticed it. I even called the
5 Commissioners several weeks ago and let them
6 know that I intended to put it up this way so
7 that it was done in a public setting.

8 So is there any other discussion of the
9 manner?

10 Ms. Rodriguez?

11 >> RODRIGUEZ: Thank you, Madam Chair. I,
12 too, am abstaining from this vote absent a
13 policy with which we deal with the problem.

14 >> DAVIDSON: Then we'll proceed with the
15 vote, and then you can cast your vote as you
16 wish.

17 Would you take the roll?

18 >> GILMOUR: Commissioners, please state
19 your vote -- Commissioners, please state your
20 vote for the record after I call your name.

21 Commissioner Carolyn Hunter?

22 >> HUNTER: Aye.

23 >> GILMOUR: Commissioner Gracia Hillman?

24 >> HILLMAN: Abstain because we do not
25 have a policy.

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

114

1 >> GILMOUR: Vice Chair Rosemary

2 Rodriguez?

3 >> RODRIGUEZ: Abstain.

4 >> GILMOUR: Chair Davidson?

5 >> DAVIDSON: Aye.

6 Would you continue on with Colorado, the

7 address change?

8 >> CORTES: Yes.

9 >> GILMOUR: Madam Chair, could you please
10 state for the record the results of the vote?

11 >> DAVIDSON: The record showed that there
12 was two yes votes and two that abstained,
13 because we did not have a policy.

14 >> CORTES: Yes, ma'am.

15 >> GILMOUR: Madam Chair, could you please
16 state for the record the results of the vote.

17 >> DAVIDSON: The record shows that there
18 was two yes votes and two that abstained
19 because we did not have a policy.

20 >> GILMOUR: And that motion will not
21 carry?

22 >> DAVIDSON: That's correct.

23 >> CORTES: Madam Chair, the second
24 request pending is from Colorado. They have
25 requested a change in their mailing address as

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

115

1 their -- since they have switched location, the
2 forwarding to -- mail forwarding from their
3 previous location has expired. The previous

4 mailing address was 1560 Broadway, Suite 200 in
5 Denver, Colorado. That address has been
6 changed to 1700 Broadway, Suite 270, Denver,
7 Colorado, and that is the change that the state
8 has requested.

9 >> DAVIDSON: Any discussion? Is there a
10 motion? I move that we changed the address for
11 Colorado. Is there a second?

12 >> HUNTER: Second.

13 >> DAVIDSON: Discussion? I will take a
14 vote. Roll call, please.

15 >> GILMOUR: Please state your vote for
16 the record after I call your name.
17 Commissioner Caroline Hunter?

18 >> HUNTER: Aye.

19 >> GILMOUR: Gracia Hillman?

20 >> HILLMAN: Abstain.

21 >> GILMOUR: Vice Chair Rosemary
22 Rodriguez?

23 >> RODRIGUEZ: Abstain.

24 >> GILMOUR: And chair Davidson.

25 >> DAVIDSON: Aye. Let the record show

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

1 there was two yeses, two abstains, so the
2 motion has failed. Continue.

3 >> CORTES: The next request is from
4 Delaware, it pertains to their registration
5 deadline. Previously their registration
6 deadline was 20 days prior to the general
7 election and 20 days prior to the primary
8 election.

9 They have since changed their state law,
10 and they have requested a change, the change
11 registration deadline to read, the fourth
12 Saturday before a primary or general election
13 and ten days before a special election.

14 >> DAVIDSON: Is there a motion to address
15 the issue from Delaware?

16 >> HUNTER: I move to make a change in the
17 state instructions for the registration
18 deadline for the state of Delaware.

19 >> DAVIDSON: I will second the motion.

20 And I see no discussion. Would you go ahead
21 and call roll please.

22 >> GILMOUR: Please state your name for
23 the record after I call your name.
24 Commissioner Caroline Hunter?

25 >> HUNTER: Aye.

1 >> GILMOUR: Commissioner Gracia Hillman?

2 >> HILLMAN: Abstain.

3 >> GILMOUR: Vice Chair Rosemary

4 Rodriguez?

5 >> RODRIGUEZ: Abstain.

6 >> GILMOUR: Chair Davidson.

7 >> DAVIDSON: Aye. Let the record show

8 there are two ayes and two abstains so the

9 motion has failed. Edgardo, New Jersey I

10 believe is next.

11 >> CORTES: Yes, Madam Chair. New Jersey

12 has also requested a change to their voter

13 registration deadline information. Previously

14 or as listed currently in the form, the

15 registration deadline was 29 days before the

16 election. They have since changed their state

17 law and the registration deadline is now 21

18 days before the election.

19 >> DAVIDSON: Is there a motion? On the

20 New Jersey?

21 >> HUNTER: I move to amend the New Jersey

22 state instructions to reflect their new

23 registration deadline of 21 days before the

24 election.

25 >> DAVIDSON: I will second the motion.

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

118

1 Discussion? Counsel, will you call the roll,

2 please.

3 >> GILMOUR: Please state your vote for

4 the record after I call your name.

5 Commissioner Caroline Hunter?

6 >> HUNTER: Aye.

7 >> GILMOUR: Commissioner Gracia Hillman?

8 >> HILLMAN: Abstain.

9 >> GILMOUR: Vice Chair Rosemary

10 Rodriguez?

11 >> RODRIGUEZ: Abstain.

12 >> GILMOUR: Chair Davidson.

13 >> DAVIDSON: Aye. Let the record show

14 that there are two who voted aye and two that

15 abstains. So the motion has failed. Last one.

16 >> CORTES: Yes, Madam Chair. Arizona has

17 requested the following change in the section

18 labeled I.D. number in their state

19 instructions. The big change here to know and

20 I can read the entire thing if you would like.
21 Essentially after the language with the I.D.
22 number, they have also asked the E.A.C. to
23 reflect on the form a new requirement which
24 they have listing documentation regarding
25 citizenship, and they have then a list of

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

119

1 acceptable documents to show a potential voter
2 citizenship. So that is the change. I can
3 read the entire thing if you would like.

4 >> DAVIDSON: I think that we have all
5 read it and at public meetings in the past. Is
6 there a motion to address the Arizona request?

7 >> HUNTER: I move to adopt the language
8 detailed in the memo by Mr. Cortes to properly
9 reflect the state law in Arizona regarding
10 eligibility to vote.

11 >> DAVIDSON: I second the motion.
12 Discussion? Counsel, would you call the roll,
13 please.

14 >> GILMOUR: Please state your vote for
15 the report after I call your name.
16 Commissioner Caroline Hunter.

17 >> HUNTER: Aye.
18 >> GILMOUR: Commissioner Gracia Hillman?
19 >> HILLMAN: Abstain.
20 >> GILMOUR: Vice chair Rosemary
21 Rodriguez?
22 >> RODRIGUEZ: Abstain.
23 >> GILMOUR: Chair Davidson.
24 >> DAVIDSON: Aye. And let the record
25 also be shown here that two voted aye, two

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

120

1 abstained. The motion has failed. Yes, go
2 right ahead, I don't know who was first but
3 okay, Commissioner Hunter.
4 >> HUNTER: Thank you, Madam Chair. I
5 would like to point out for the record, I
6 believe and Mr. Cortes can correct me if I am
7 wrong, that the E.A.C. has made changes to the
8 state instructions in the past since the
9 inception of the E.A.C. absent a policy. So
10 that is one comment I would like to make.
11 Another is, I proposed a policy as did
12 Commissioner Davidson in previous public

13 meetings on this subject, and you know, I
14 posted and it was discussed and it did not
15 pass. And as Commissioner Davidson pointed
16 out, everybody agrees that we should try to
17 come up with a policy that we can use in making
18 these kind of decisions but unfortunately
19 nobody has been able to come up with one that
20 can get three votes.

21 So one of things I plan to do at the next
22 public meeting is to reintroduce not my policy
23 again because it has already failed. But the
24 F.E.C. policy, that the F.E.C. used to deal
25 with this matter when they were still handling

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

121

1 the voter registration form, and especially
2 since we have now transferred the regulations
3 from the F.E.C., may be that is a policy we
4 could use at least in the interim until we come
5 up with another one.

6 So I plan to propose that at the next
7 public meeting, and I also plan to propose a
8 disclaimer to be added to the federal form to
9 note that the Election Assistance Commission

10 knows that the state instructions portion of
11 this form is inaccurate. And I think that is
12 irresponsible. I regret that we are in this
13 position.

14 But I think the public should be made
15 aware of that fact. And these are the only
16 five issues we know about. Mr. Cortes told us
17 in the last public meeting that there may be
18 other issues with the state instruction that we
19 are not aware of because I believe he, the way
20 he described it in the last meeting was he
21 doesn't have the adequate staff to go out there
22 and determine what the actual state instruction
23 should be in each state. And last time on the
24 record with all of this conversation in
25 previous meetings, but I do think that the

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

122

1 state instruction should properly reflect, you
2 know, the state law of the states.

3 The states obviously have a Constitutional
4 right to establish eligibility and the state
5 instruction portion is just a mechanism to

6 reflect to voters in that state what their

7 state law is. Thank you very much.

8 >> DAVIDSON: Commissioner Rodriguez?

9 >> RODRIGUEZ: Thank you, Madam Chair.

10 And I appreciate Commissioner Hunter's
11 frustration. But when the minutes we approved
12 earlier in this meeting, we approved that
13 discussion that we had last month about the
14 absence of the policy and Commissioner
15 Hillman's reluctance to vote on the state's
16 requests absent a policy. And she is not --
17 commissioner Davidson and Hunter are not the
18 only ones that have proposed a policy.
19 Commissioner Hillman also did but it wasn't in
20 time for us to consider at this meeting. I do
21 want to note that for the record.

22 I am not taking a qualitative position on
23 any of the states' instructions. I wish we had
24 a policy so that we could adopt them. But the
25 fact that we, in the past, have made decisions

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

123

1 ad hoc doesn't to me be a good enough reason to

2 continue to do things ad hoc.

3 And so I commit to work with my colleagues
4 to try to come up with something that we all
5 agree on that may be the F.E.C. policy, I am
6 willing to consider that formally.

7 Commissioner Hillman suggested we might even
8 work with a facilitator to at least knock out
9 the areas that we can agree on. These are
10 very, in my opinion, some of the most important
11 issues that we are working on at the E.A.C.

12 But there should be an easy way for the simple
13 administrative changes to be reflected on the
14 form and in the state instructions. I just
15 simply will say again that I am not willing to
16 adopt them without an overarching policy.

17 >> DAVIDSON: Thank you.

18 >> HILLMAN: Let me also say that my
19 position has nothing to do with the proposed
20 changes submitted by the states but rather that
21 E.A.C. responsibly needs to be making decisions
22 under policies. As you noted, Madam Chair, you
23 would not support the policy proposal I put on
24 the table because it hadn't been noticed for 30
25 days.

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

1 So I would submit that E.A.C. must make a
2 commitment to figure out what it is going to
3 put, notice the 30 days. We cannot wait until
4 our January meeting to find ourselves in a
5 position where we won't consider a proposed
6 policy because it hadn't been out for public
7 comment for 30 days.

8 Where we aren't going to consider a
9 proposed policy because it hadn't been out for
10 public comment for 30 days. Thirty-day public
11 comment, plus time for the staff to analyze
12 the -- to be brought back to the Commission for
13 discussion and consideration means minimally 45
14 days. So that means we are well into February.

15 So I would say, Commissioners, that we
16 have a responsibility. As we have a
17 responsibility to timely respond to matters
18 brought before us, we have a responsibility to
19 move post days to figure out a way that we can
20 agree on the things that we can move forward
21 with. When I put my proposed policy out, I
22 identified those things based on previous
23 conversations that I believed we could come on
24 agreement today if we put our minds to it, that
25 there are other components of the NVRA that we

1 don't have agreement on.

2 There are some things which E.A.C. has
3 little or no discretion because of the U.S.
4 Constitution or because of the requirements of
5 the National Voter Registration Act and the
6 Help America Vote Act. There are other things
7 where we don't agree as to what the extent of
8 the discretions are.

9 And I believe that it is our
10 responsibility to capture the things we can
11 agree on and move forward with those, and if
12 we're going to be consistent in this, then any
13 policy that comes before us for consideration
14 has to be noticed for 35 days, and let's just
15 accept that means we won't be discussing it
16 again until February

17 And the longer we wait to come up with a
18 proposed policy, the longer it is going to take
19 before we can move forward on these items.

20 Thank you.

21 >> HUNTER: Madam Chair, point of
22 clarification, I don't recall your saying

23 this -- maybe you did -- that we have a 30-day
24 requirement for any posting of policy.
25 That was not my understanding, and perhaps

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

126

1 the general counsel could speak to that.
2 >> GILMOUR: I don't think I understand,
3 either, what we're referencing.
4 >> HILLMAN: My comment is that whatever
5 we discuss at our public meetings and whatever
6 we take a vote on in our public meetings should
7 be in the Federal Register. It is not a 30-day
8 period for the Federal Register, I believe,
9 more like --
10 >> GILMOUR: It is a one-week minimal time
11 period.
12 >> HILLMAN: Well, there seems to be the
13 confusion of two things. There is -- what I
14 heard you tell me earlier, was that the
15 proposed policy should be up for public comment
16 30 days before the Commissioners take it
17 under -- excuse me, this is something that
18 Commissioner Davidson shared with me.

19 I am perfectly willing to say if it is a
20 week out there for public comment, if it is 14
21 days, but we can't sometimes say it can be
22 three days or 14 days that we agree, that if
23 we're going to consider a policy proposal on
24 this issue, that the proposal itself be
25 available for public review and comment or not.

TEXAS CLOSED CAPTIONING
310 East 34th Street, Austin, Texas 78705
(512)480-0210

127

1 I just want to get some clarification on that,
2 then.

3 If we're only talking about what is on the
4 agenda and materials made available for public
5 review, or are we talking about putting
6 something out for public comment?

7 >> DAVIDSON: My clarification -- and I am
8 sorry if I confused the issue -- is that I feel
9 that -- and in being transparent, as an agency,
10 we need to have anything that we discuss or a
11 vote that is taken at a meeting be on the
12 Federal Register and up on our website and
13 listed into our agenda.

14 That was what my concern was, is that it
15 had not been, I felt like, properly noticed to

16 the public because of the Federal Register and
17 because it wasn't on the agenda that had been
18 out for a week.

19 >> HILLMAN: Well, my request is in
20 response to Commissioner Hunter, that we not
21 just individually come in with proposals, but
22 that we make a commitment for the four of us,
23 whether it is through the assistance of a
24 mediator or somebody on staff or somehow,
25 because the four of us can't discuss this

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128

1 unless it is at a public meeting, that we find
2 a way that we can agree on what will go in the
3 proposal so that we can move past where we are.
4 We have been here for 90 days and that is 89
5 days too long.

6 >> HUNTER: Of course I am willing to do
7 whatever it takes to come up with a policy, and
8 we can certainly talk two of us at a time, and
9 I think that is maybe something we also ought
10 to do more of.

11 >> DAVIDSON: I agree, that, number one,

12 we need to come up with a policy immediately,
13 as soon as we possibly can, so it can be
14 presented and voted on at the next meeting.

15 And I give my -- I plan on putting as much
16 as I possibly can. I will be talking with each
17 and everybody to see how they feel
18 individually. I mean, it does slow down our
19 process obviously because we can't sit down
20 together, and if we think a mediator to help us
21 come up with those and to record them -- I know
22 our staff is extremely busy, so maybe that is
23 the approach we need to take, that they can
24 work with two of us at a time and come up with
25 those.

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129

1 But you've got my willingness to do that
2 along with -- I think everybody in the audience
3 has been made aware that all four of us are
4 committed to come up with a policy as quickly
5 as possible so that we can address the issues.

6 I am sorry to cut the meeting short, but
7 we are supposed to be out of the room about
8 five minutes ago.

9 So this concludes my last meeting, and I
10 do want to say thanks to my fellow
11 Commissioners.

12 >> GILMOUR: I am sorry to interrupt you.
13 I want it to be clear for the record that there
14 was no decision or vote just previously made.

15 >> DAVIDSON: That's right.

16 >> GILMOUR: The goal, of course, is to
17 move forward on this issue, as fast as we
18 possibly can, consistent with the requirements
19 for a public meeting.

20 >> DAVIDSON: That is correct.

21 As I started to say, I do want to thank my
22 fellow Commissioners. They have been very
23 supportive through my year as the Chair, and
24 I -- I thank the staff for their tireless and
25 their -- all of their work and how much their

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130

1 efforts has meant to me in standing behind me
2 in trying to accomplish everything that they
3 have in presenting it.

4 So at this time, it is in order to have a

5 motion to adjourn the meeting.

6 >> HILLMAN: Madam Chair, I know we're in
7 a hurry to leave, but I just want to take a
8 point to acknowledge some literature that was
9 given to me just a minute ago at the beginning
10 of the meeting.

11 Pat McCarthy who was the Pierce County
12 Auditor in Washington state, are you still
13 here? Yes. Okay.

14 A year or so ago, I, in making speeches,
15 referred to poll workers as champions of
16 democracy. And in dialoguing with election
17 officials, encouraged them to do whatever they
18 could to highlight, thank, promote, call
19 attention to the incredible work that poll
20 workers do.

21 And Ms. McCarthy has gone ahead and taken
22 the term "champion of democracy" and uses it on
23 her literature to promote and highlight her
24 poll workers, and I am proudly wearing my
25 "champion of democracy" pin, and just as an

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131

1 example that communication and exchanges of

2 ideas do work, and so I want to thank you for
3 that very much.

4 >> DAVIDSON: Any other comments?

5 >> RODRIGUEZ: Thank you, Madam Chair.

6 I, too, want to thank you for your year as
7 Chair. It certainly made my transition to the
8 E.A.C. feel like a homecoming because we have
9 our shared Colorado roots and our shared home
10 sickness sometimes.

11 And you had, I think, an amazing year with
12 the movement of the Voluntary Voting System
13 Guidelines, the progress you've made in testing
14 and certification and in the leading, all of
15 the technology aspects and access to reliable
16 equipment, aspects of the E.A.C. and I
17 personally, too, want to thank you for a good
18 year.

19 >> DAVIDSON: Thank you very much.

20 Okay. Now we're ready for that motion to
21 adjourn.

22 >> RODRIGUEZ: So moved.

23 >> DAVIDSON: Second?

24 >> HILLMAN: Second.

25 >> DAVIDSON: All those in favor say

1 "aye."

2 >> Aye.

3 >> DAVIDSON: We are adjourned. Thank

4 you.

5 (Meeting adjourned)

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133

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3

4 REPORTERS' CERTIFICATE
5 UNITED STATES ELECTION ASSISTANCE COMMISSION
6 PUBLIC MEETING
7 DECEMBER 11, 2007

8 We, the undersigned Certified Shorthand

9 Reporters in and for the State of Texas,

10 certify that the above and foregoing

11 proceedings were taken down, as stated in the

12 caption, and reduced to typewriting under ou

13 direction, and that the foregoing represent a

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16 SUBSCRIBED AND SWORN TO under our hand and

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18 December, 2007.

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21 April C. Balcombe, CSR, CRR, CCP

22 Texas CSR 5752

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