

Minutes of the Public Meeting

United States Election Assistance Commission

Held at
1225 New York Avenue, NW
Suite 150
Washington, DC 20005

On Monday, December 8, 2008

VERBATIM TRANSCRIPT

The following is the verbatim transcript from the meeting of the United States Election Assistance Commission ("EAC") held on Monday, December 8, 2008. The meeting convened at 10:02 a.m., EDT. The meeting was adjourned at 3:39 p.m., EDT.

PUBLIC MEETING

CHAIR RODRIGUEZ:

Good morning. Welcome to the December 8th meeting of the U.S. Election Assistance Commission. Please join me in the Pledge of Allegiance.

[Chair Rodriguez invited all present to recite the Pledge of Allegiance.]

CHAIR RODRIGUEZ:

Mr. General Counsel, roll call please.

GENERAL COUNSEL GILMOUR:

Certainly. Commissioners, would you please indicate your presence by responding verbally after I call your name?

Chair Rosemary Rodriguez.

CHAIR RODRIGUEZ:

Here.

GENERAL COUNSEL GILMOUR:

Vice-Chair Donetta Davidson.

VICE-CHAIR DAVIDSON:

Here.

GENERAL COUNSEL GILMOUR:

Commissioner Gracia Hillman.

COMMISSIONER HILLMAN:

Here.

GENERAL COUNSEL GILMOUR:

And Commissioner Gineen Beach.

COMMISSIONER BEACH:

Here.

GENERAL COUNSEL GILMOUR:

All members are present.

CHAIR RODRIGUEZ:

Thank you very much. I'd like to welcome everyone, this morning, to the last meeting of 2008, in what I think we would agree was a successful election year. I'm very proud of the Election Assistance Commission's role in promoting, not only best practices for election officials, but being a real place for information for voters. And I think we spent a good deal of time on the road, on the radio and in all types of media promoting voter responsibility and access. So I think it was a good year.

I'm going to ask for a motion to adopt the agenda and hope that Vice-Chair Davidson will suggest an amendment to the agenda, so that we might postpone an action of new business to the afternoon.

Commissioner Davidson.

VICE-CHAIR DAVIDSON:

Thank you, Madam Chair. I would like to ask that we move the nomination of the Chair to after lunch. And with that I would like to move the agenda.

CHAIR RODRIGUEZ:

Okay. Is there a second?

COMMISSIONER HILLMAN:

I'll second that. And I just have a question about time...

CHAIR RODRIGUEZ:

Okay.

COMMISSIONER HILLMAN:

...or where on the agenda we think we will be breaking for lunch.
How far down the agenda do you think we will get before we break
for lunch?

CHAIR RODRIGUEZ:

Our intent is to get to the Election Day -- to start the Election Day
Survey section of the program after lunch at 1 o'clock.

COMMISSIONER HILLMAN:

So it would be a 1 o'clock break?

CHAIR RODRIGUEZ:

Yes.

COMMISSIONER HILLMAN:

Thank you.

CHAIR RODRIGUEZ:

Okay. All those in favor of adopting the agenda as amended
indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

I recognize Commissioner Hillman for celebrating America's Poll
Workers.

COMMISSIONER HILLMAN:

Thank you, Madam Chair. Commissioners, we have some very
special guests in the audience today. It is always one of my

favorite things to do, is to acknowledge the dedication and hard work of our citizens who serve as poll workers. And, as we have done in past Federal election years, I have a resolution that I would present for your consideration for adoption.

But before doing so, I would like to acknowledge the people who are with us today, who have some at very special invitation of the Election Commission, individuals who had served as poll workers in Washington, D.C. and in Virginia. And we also have some people from American University participating as a part of the college poll worker program. So, if it is comfortable for you when I call your name, if you would just please stand and stay standing. If you don't wish to stand and if you would just, at least, raise your hand, so that everybody can know who you are, and I'll just call your names. If I have omitted anybody's name, I'll pick up on that at the end, because we were trying to make sure we knew who had actually checked in.

We have Mary Heinze, Richard Tier, Nena Rollins, James Hill, John Wennersten, Lilla Midgetta, Annie Winborne, Helen Francis, Ernestine Brown, Aaron Goldstein, who is from American University, Dorothy Anthony, Alison Prevost from American University, as well, and Don Hodgen, who is from Virginia. Did I miss anybody? If so, just please stand and tell me your name.

MS. SOFTLI:

Linda Softli.

COMMISSIONER HILLMAN:

Linda Softli?

MS. SOFTLI:

Yes.

COMMISSIONER HILLMAN:

Thank you. And?

MS. MICKOWITZ:

Althea Mickowitz.

COMMISSIONER HILLMAN:

Althea Mickowitz.

MR. HARLEY:

Kruze Harley.

COMMISSIONER HILLMAN:

Kruze Harley. Okay, great. Anybody else? Anybody else in our audience who served as a poll worker and we don't know it, please feel free to stand and let us know you're here.

Commissioners, I would just ask that we join in a round of applause to thank these individuals for giving of their time and energy and commitment and talent, in having joined hundreds of thousands of people from across the United States serving as poll workers on Tuesday, November 4, this year's election. Thank you so much.

[Applause]

And I will read the resolution now, and it would be Resolution 2008-01 National Election Worker Appreciation Week. "Whereas, on November 4, 2008, more than one million persons served in the process of conducting our Federal election; Whereas, election workers represent every facet of our society and communities and provide a tangible link between the voting public and the election process; Whereas, election workers provide an invaluable function

to our country and are one of this country's most valuable resources; Whereas, election workers volunteer to serve their fellow citizens with distinction and provide an invaluable service to their communities; Whereas, election workers span the generation gap from high school students to senior citizens and mirror the amazing diversity of their communities and American society as a whole; Whereas, election workers are the backbone of American democracy and their dedicated service allows our democracy to flourish; Whereas, election workers are America's champions of democracy, it is most appropriate to recognize the contribution that election workers make each time we cast our votes. Now, therefore be it resolved, that the United States Election Assistance Commission, in concert with the states, counties and election jurisdictions of the United States proclaims the week of December 7 through 13, 2008, as National Election Worker Appreciation Week. Be it further resolved that the United States Election Assistance Commission extends its appreciation and admiration for the election workers of this country and the vital services that they perform in conducting this country's elections. Adopted by vote of the United States Election Assistance Commission this 8th day of December 2008 in Washington, D.C.

VICE-CHAIR DAVIDSON:

There's a couple more -- one more at least.

COMMISSIONER HILLMAN:

Okay, why don't we, since we're in the middle of the resolution, if we could just adopt the resolution and then I'll acknowledge.

CHAIR RODRIGUEZ:

Was that a motion to adopt the resolution?

COMMISSIONER HILLMAN:

Yes.

CHAIR RODRIGUEZ:

Is there a second?

COMMISSIONER BEACH:

I second it.

CHAIR RODRIGUEZ:

It's been moved and seconded that we adopt the resolution, as read by Commissioner Gracia Hillman. Is there any discussion on the motion?

I'd just like to thank Commissioner Hillman for proposing the resolution. The EAC took a strong position in poll worker recruitment. I don't know if we were responsible for any of your activity, but we certainly did a number of statements in support of volunteers on Election Day and extensive research. Our Research Department has a very fine poll worker recruitment and training manual, so I hope that some of you had that as a resource. And also, on our website there are training vignettes. So, we've been trying to be a partner and a resource to poll workers all across the country. And, again, I appreciate Commissioner Hillman for recognizing your work and the work of the hundreds of thousands of others who joined you.

Commissioner Davidson.

VICE-CHAIR DAVIDSON:

I'd also like to add, not to repeat everything that's been said, but you know that we cannot hold elections without you. So the part

that you do, in serving as poll workers, is vital to the process throughout our nation, and we certainly appreciate your work. And we know that you're not paid near well enough. We know most of the time is volunteer, but we do want to say thank you again for everything that you do.

CHAIR RODRIGUEZ:

Commissioner Beach.

COMMISSIONER BEACH:

I second both my colleagues' sentiments. And I must say it wasn't until February of 2008 that I actually served as a poll worker in Maryland, and it is certainly a long day and a lot of work. So I truly understand what you are doing and I appreciate what you have done to serve our country in this capacity. Thank you.

CHAIR RODRIGUEZ:

Very good. Are we ready to vote? All those in favor of adopting the resolution indicate by saying aye. Are there any opposed? The motion is adopted.

[The motion carried unanimously.]

COMMISSIONER HILLMAN:

Okay, we have additional Champions of Democracy who have joined us. And just so that you'll know, I'm wearing my Champion of Democracy lapel pin today in special honor of all of you. But if we could just recognize the poll workers who have come in since.

MR. NYENGELE:

Mfuni Jean-Jean Nyengele.

COMMISSIONER HILLMAN:

Could you just repeat the name? I couldn't get the name.

MR. NYENGELE:

Mfuni Jean-Jean Nyengele.

COMMISSIONER HILLMAN:

Thank you.

MR. WILSON:

My name is Nathaniel Wilson. I'm the captain of St. John Precinct
52.

COMMISSIONER HILLMAN:

Nathaniel Wilson.

MS. CHAPPEL:

I'm Mary Rose Chappel. I worked at Poll 78. I'm one of the six poll
workers from 1964.

COMMISSIONER HILLMAN:

Mary Rose Chappel. Thank you very much.

[Applause]

COMMISSIONER HILLMAN:

And we hope that you will stay for as much of the meeting as you
can. Thank you.

CHAIR RODRIGUEZ:

Thank you for joining us. I know it's cold out today.

Okay, our next order of business is the correction and
approval of minutes from the October 7, 2008, meeting. Is there a
motion to approve?

VICE-CHAIR DAVIDSON:

I so move.

COMMISSIONER HILLMAN:

Second.

CHAIR RODRIGUEZ:

It's been moved and seconded to approve the meeting minutes from Tuesday, October 7th. Is there discussion? All those in favor of approving the minutes indicate by saying aye. Any opposed?

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

This is your first meeting.

COMMISSIONER BEACH:

Yes, it is.

CHAIR RODRIGUEZ:

Okay, I just realized -- Commissioner Beach has been around for about a month but I just realized that today is her first meeting. I'd like to welcome Commissioner Gineen Beach to the Election Assistance Commission. Is there anything you want to say about joining us? She was a member of our oversight staff at the House Administration Committee and I believe you worked for the State of Maryland for a time.

COMMISSIONER BEACH:

Yes.

CHAIR RODRIGUEZ:

Maybe you could just talk a little bit about your background, by way of introduction.

COMMISSIONER BEACH:

Sure. Well, first I'd like to say, I am honored and privileged to be here, especially sitting here with my colleagues working on these very important election issues. And, as the Chair said, I did start my career in the elections field working for the State of Maryland as Governor Robert Ehrlich's policy advisor in this area. And so, you know, Governor Ehrlich did take office in 2003 after the Help America Vote Act was signed into law, so it was certainly new ground and new territory that we were looking at in the state. So, I do have experience and familiarity on the state level. And subsequent to that, and most recently before I joined the Commission, I worked for the House Administration Committee as ranking member Vernon Ehlers' Chief Elections Counsel. So, I'm familiar with HAVA, and also the EAC, being a counsel to the Oversight Committee. And I'm excited. We certainly have a lot of work to do and we had a very successful election year, so I'm looking forward to working with my colleagues here, in fulfilling our requirements and mandates under HAVA.

CHAIR RODRIGUEZ:

Thank you. And welcome again.

Okay, our next item of business is our report from our Executive Director Mr. Wilkey.

EXECUTIVE DIRECTOR WILKEY:

Thank you, Madam Chair. First, before I begin my report, let me add my congratulations to the Commissioners for adopting that resolution. I can't think of any other resolution that you have taken up that's more important than this one. And for those of you who are poll workers or have been poll workers over the years, let me

tell you a little secret from somebody who's been around awhile. We have federal authorities, state authorities and local authorities and they all think they run elections. They do to a certain extent. But they turn it all over to you, and you are the framework and the bulk of what happens on Election Day. So I congratulate you. I'm happy for this resolution. And we hope you will stay around awhile and keep working because we need you.

I also want to welcome our new Commissioner to her first meeting.

It's been a busy couple of months since our last public meeting and today I'd like to run through the highlights of our work in the weeks leading up to and after Election Day.

Under Election Administration: we released several resources for officials before the election, including a Voter's Guide translated into six languages, training videos for election workers on Contingency Planning, Polling Place Management and making polling places accessible. We also released, before the election, four new Quick Start Guides about serving voters in long-term care facilities, provisional ballots, conducting a recount and canvassing and certifying an election. We also provided information for voters. Our state voter information pages on our website allowed voters to find information about registration, early and absentee voting and UOCAVA voting in their state. These pages also showed them how to contact their state and local officials to find basic information such as the location of their polling place. Finally, we drafted a timeline of, and an excellent paper, on the Electoral College to inform voters and other interested stakeholders of the process

between Election Day and the swearing in of our new President Elect, as well as a history of the Electoral College.

Under research, we recently released a study on best practices for voter information websites. You can find it on our website under “Research, Resources and Reports.” We’ve also added frequently asked questions about the 2008 Election Day Survey to our site, along with a final draft of the survey questions.

Under Commissioners’ Statements, I’d like to welcome everyone to review recent Commissioners’ statements on a wide variety of issues. And these are all posted on our website. Chair Rodriguez has issued a Post-election Statement thanking everyone who worked so hard to make this election a success. She also released a statement on Next Steps for Improving Elections and issued a call for public input on agenda items for today’s public meeting. Written testimony for this is being accepted until 5 p.m. today. In addition, Vice-Chair Davidson has released a statement on Maintenance of Effort. These statements and all the others can be accessed from the Commissioners’ individual web pages accessible from the “About the EAC” tab on our homepage.

Under Testing and Certification, there’s been a lot of activity in our testing and certification program these last couple of months. EAC officially suspended SysTest Labs on the recommendation of the National Institute of Standards and Technology. We also posted a letter from SysTest requesting to cure EAC program non-compliance and their plan for doing so. It also approved the request of three voting system manufacturers; Unisys, Premier Election Solutions and ES&S to change test labs. We also

accredited CIBER, Incorporated on the recommendation of NIST. EAC posted the new iteration of the requirements matrix v.5.2. We've updated our list of voting systems applying for certification and the test labs that they are using. We also uploaded two new draft test reports for the MicroVote Voting System 4.0. And finally, we have posted our replies to GAO's recent reports on our testing and certification program.

Under HAVA Funding; over the past several weeks the Office of Inspector General has issued HAVA spending audit reports for North Carolina, Florida and Washington State. If you're interested in knowing which state audits are on the horizon, the OIG, our Inspector General, has posted an annual work plan for fiscal year 2009. In addition, before the election we posted five new advisory opinions. Also around that time we received new advisory opinion requests from Indiana and New York. And as a reminder, the advisory opinion request process is for election officials to inquire about the use of HAVA funds. You can access all documentation concerning it from the HAVA funds management link on our homepage.

And under Tally Votes; the Commission held six tally votes since our last public meeting and all of them received unanimous support. They include: approval and filing of the FACA Charter for the EAC Standards Board, that's the Federal Advisory Committee Act; appointing Gineen Beach, our new Commissioner, as the Designated Federal Officer to the EAC Standards Board; posting a portion of today's public meeting, in which the EAC will discuss election of a General Counsel; advisory opinion and response to

question regarding revolving loan fund in West Virginia; advisory opinion in response to question regarding certifications filed under HAVA Section 251(b)(2); advisory opinion in response to question regarding use of HAVA funds to replace voting system purchased with HAVA funds.

Under EAC General Operations; the Office of Inspector General has issued two reports concerning EAC operations: An audit report of the EAC's fiscal year 2008 financial statements; and, an evaluation of the EAC with respect to the Federal Information Security Management Act. We've also posted a Performance and Accountability Report.

Finally, the EAC is now accepting applications for the newly created position of Chief Financial Officer. You can find the job posting on our website, and the application period closes on December 19. We recently also hired our first Director of the Budget.

That is my report, Madam Chair. I'll entertain any questions you have.

CHAIR RODRIGUEZ:

Thank you, Mr. Wilkey. Are there questions from Commissioners on the report? Commissioner Hillman.

COMMISSIONER HILLMAN:

Mr. Wilkey, if you can't do it right now, could you, at some point during the meeting, update us on the states that have received the 2008 requirements payments, which are in the queue for right now and where we are with that whole effort?

EXECUTIVE DIRECTOR WILKEY:

Yes, I can. I have a list on my desk and I can also ask our program and services to get a list together and report that back to you.

COMMISSIONER HILLMAN:

Okay.

EXECUTIVE DIRECTOR WILKEY:

Thank you.

CHAIR RODRIGUEZ:

Any further questions? Thank you, Mr. Wilkey.

The next item for consideration by the Commission is the Proposed Draft Working Group Policy. Commissioner Hillman.

COMMISSIONER HILLMAN:

This is an update. As you know, we've been considering a draft policy on the use of working groups for a variety of issues that we might deem appropriate. And when we started this, we were also in the process of adopting our Policy for Notice and Public Comment. And so, where we are today, finally, is that the draft policy on draft Working Groups has been conformed to make sure it complies with the Notice and Public Comment Policy. And then, the staff spent a fair amount of time with, what I call, "noodling" this policy since October, to make sure that it comports with our roles and responsibilities document and, in fact, have recommended a much streamlined policy from four pages to two pages. The only difference you will see is that the staff recommended, and I would concur with that, removing specific procedures that are already covered in the roles and responsibilities document. And that's the purpose of the roles and responsibilities document, so that the

policy stands on its face and isn't containing specific procedural items, which would be left to staff for interpretation.

So, just as a reminder, at our last meeting in October, we agreed that once the policy was ready we would send it out by tally vote. Regrettably, it did get sidetracked by the elections and by the staff process. But I will be sending out the tally vote this week, which would be a tally vote to draft the policy -- to publish the draft policy for notice and public comment, which would be a 30-day period.

CHAIR RODRIGUEZ:

Thank you. Are there any questions for Commission Hillman?
Commissioner Davidson.

VICE-CHAIR DAVIDSON:

Commissioner Hillman, did you say that it had been reduced from the four pages to two pages?

COMMISSIONER HILLMAN:

Yes.

VICE-CHAIR DAVIDSON:

Okay.

COMMISSIONER HILLMAN:

So what you will see will be...

VICE-CHAIR DAVIDSON:

So, what I pulled up is the incorrect one.

COMMISSIONER HILLMAN:

What you will see is -- well, we just finished that, literally, last week, so that's why I didn't try to put it in here for us to do a vote on, because we hadn't noticed it that way for this meeting, that we'd

act. We had already agreed that we would do it by tally vote in between. And so, all you will see is that the specific items that direct staff have been deleted, so it will conform with our roles and responsibilities.

And I would just say, for any future draft policy, is that Commissioners submit, and staff as well, but I think the staff are fairly in tune with this, is that we really do have to look at the Notice and Comment Policy and we have to look at the Roles and Responsibilities Document, to make sure that the proposed draft policy doesn't contradict or isn't duplicative of whatever's in the roles and responsibilities. The purpose of roles and responsibilities was to delegate who would be responsible for what.

And so, it's been an interesting exercise. I didn't mind being the person to go through working on the first draft policy under both of those documents. And I think by now, the staff have enough information to be able to put in place the kind of procedures that will indicate, once a policy is approved, what happens next.

CHAIR RODRIGUEZ:

Commissioner Beach.

COMMISSIONER BEACH:

With the policy moving forward, and I have different versions and it may be because, you know, I had just begun, so I tried to look back the history on this, does the proposed Working Group Policy include working groups to assist on the Help America Vote Act and NVRA, in its entirety? Because I have one version that says Help America Vote Act. I have one version that refers to NVRA. So I just wanted to get clarity on that.

COMMISSIONER HILLMAN:

Yes, both.

COMMISSIONER BEACH:

Both? Okay.

COMMISSIONER HILLMAN:

Uh-huh. It's meant to encompass EAC's responsibilities. It started out to be narrowly focused on HAVA spending issues, because those were the ones that were coming at us fast and furiously. We then realized, as we went through the consideration process, that it should be set up as a standing policy that could be used to cover any number of activities that EAC will have to undertake.

COMMISSIONER BEACH:

Okay. So it's really mostly to include our authority with NVRA, not the entirety -- the whole -- all issues concerning NVRA?

COMMISSIONER HILLMAN:

No, no. I don't know what you mean about, all issues concerning NVRA. The purpose of working groups is to help the Commission when it is considering whether or not it should adopt a policy to do something. So, certainly consideration of anything regarding the NVRA regs and what EAC will do once the transfer of those regs has been finalized would be covered by a working group. The working group is not meant to consider what any entity other than what the EAC is considering for policy development.

COMMISSIONER BEACH:

Okay, thank you.

CHAIR RODRIGUEZ:

Very good. And we appreciate your efforts on this policy.

Now, moving to New Business, we have moved the officer elections until after lunch. I will now call on the Commissioners who had the good fortune to be outside of the office on Election Day, and Mr. Wilkey. I was here, so I missed the fun. But I'm very interested in hearing about the Election Day activities of each of the Commissioners and Mr. Wilkey.

We can start -- whoever wants to start first. Donetta, do you want to?

VICE-CHAIR DAVIDSON:

That's fine, I'd be more than happy to.

CHAIR RODRIGUEZ:

All right, thank you.

VICE-CHAIR DAVIDSON:

Well, Election Day was -- I started the day before, and it was an exciting time to be out on the road. First, Monday the 3rd, I went to Wayne County, Indiana to view pre-election preparation and also they were voting people at a voting center. In other words, anybody could vote within that county in one location. So I was reviewing that because they have -- in their law, they went in for a pilot and they had three counties that was doing this, so we were able to view one of the counties that was actually doing it. And the voters were very pleased. There was a line when we got there. It was a steady line of, I'd say about ten people, as they were voting. This was a smaller county.

And so, after we visited Wayne County, we went on to the Secretary of State's Office. And the Secretary of State had prepared a working lunch. And when I say a working lunch, it was

a working lunch. He had presentations from election officials, three different election officials throughout the state was there, as well as some of his staff in the office. And they went through what Indiana had done to prepare for the preparedness report. And it was general information on their election administration and also their voter registration system in Indiana. They had counties that gave reports on how they prepared for the election. Indiana, they had done quite a bit of media outreach to the constituents throughout the state. And then, later, after lunch we did a press interview with not only Secretary Rokita, myself, but also some of the election officials that was present. So overall, the election officials and Secretary Rokita felt that they were very fully aware -- they had put into place contingency plans to make sure that they were prepared for the unknown, as much as they could be. And so, they were ready to roll out Election Day and they felt very confident that they had made proper procedures and plans and put them into place.

So then, after that we drove down to Kentucky and we got there in time for dinner with Secretary Trey Grayson and Sara Ball Johnson, the Director, and also George Russell, a board member for their board. They are a board. Their Secretary of State is part of that board, but the board also oversees elections. And so, we had dinner that night and talked about their preparations kind of informally. And then the next morning, early, we went to their office, and they had their full board sitting that day and they were actually handling calls in from poll workers. If there was anything that needed to take place, they were able to take action as a board at that time. So that was a very interesting process. I had never

seen a board actually working on Election Day, so that was good to be able to see that.

Then we drove to observe the Hamilton County, Ohio, election. And we visited with John Williams out of Hamilton County. We toured some polling places. We saw people in line from 30 minutes to an hour. They were very calm. They were very pleased that they were there. I even was able to see a couple of gentlemen high-fiving each other after they voted. They were very pleased with their accomplishments of voting. They were young men, and it may have been the first time they had voted, I didn't ask them, but they were very pleased with the day.

We went on and we visited -- well the biggest problem in that county, I will go back and tell you, the biggest problem was that they had to get a hold of the transportation area because they were paving in front of two of the polling locations and it was stopping voters from getting in. So they had to stop that process that public service was doing, or whoever was -- the road crew was doing in Hamilton County.

We went on to Franklin County and visited and toured with Matt Damschroder and watched their process there. Again, at that time the lines weren't as long. The later we got in the day, the less we saw that there were lines outside of the polling places or even in the polling places. People were moving, coming and going, but there wasn't really lines that was there.

Then we drove on to Allen County which was Keith Cunningham and Keith Cunningham we closed the precincts down, watch them close. They had Boy Scouts that was there accepting

all of the poll workers' documentation and votes from Election Day. They were all in their uniforms. It was really -- the press was enjoying it and so was the Boy Scouts, I have to say. It was a neat process to watch. The older Boy Scouts were being charged with the more important duties of what they were accepting. The young ones were learning from the older ones and taking things that, obviously, weren't as important as the documents. But everything was being checked in. Their chief Counsel people were there with them and so it was very efficient. I was pleased to see it.

The following day, Wednesday, we met with Secretary of State Jennifer Brunner, and spent about an hour-and-a-half with her, visited a lot about different areas within the EAC and had a great conversation.

So overall, I felt like election officials and poll workers were very hospitable as we went through. And each and every county that I visited was very pleased that we were there. Plus, also I would say that the Secretaries in all three states were very willing to tell us what they were doing within their states in meeting with us.

It was a great experience. I enjoyed my three days on the road. Thank you.

CHAIR RODRIGUEZ:

Very good. Who would like to go next?

COMMISSIONER BEACH:

I'll go.

CHAIR RODRIGUEZ:

Commissioner Beach.

COMMISSIONER BEACH:

Okay, thanks. Well, I only really had one day on the road but I was able to visit two great places. The first place I went to was Bernalillo County in Albuquerque, and I went to two precincts in the morning and went to their warehouse to observe their absentee ballot count and their early voting count tabulation. And I want to thank Maggie Toulouse, who is the director there who was gracious to allow me to observe their process. When I visited the two precincts in the morning, there didn't appear to be any lines or any problems, but I was also told, as well, that most of their voters had cast their ballots early. So that may have been a reason why there weren't lines, you know, early in the morning at their precincts.

After visiting New Mexico, I went to two counties in the Denver area. First, I went to Adams County and visited some vote centers there and I also went to Broomfield County to do the same. And I'd also like to extend thanks to Karen Long and Russ Ragsdale, Russ is also on our Standards Board, for hosting me, and showing me around, particularly in the evening, which is, you know, a busy time of the Election Day. And to cap off my evening, I went to the City of Denver to watch their central count process. And Stephanie O'Malley, who is the elections director there, showed me around and watched them do the tabulation, bring the ballots in. It was a very transparent process and very impressive, to add.

So I had a very good experience. And I'd like to add also, when I went to Colorado there wasn't any lines either, in the evenings, when I went to the different vote centers, and they explained to me, even in some counties in the Denver area, they

had up to 70 percent of their voters vote early. So, I think that probably attributed to the fact that they didn't have long lines at the high peak of voting, which is usually in the mornings and in the evenings.

So I had a very good experience with the day that I went out in the field and I'd like to thank everybody and to extend my thanks to the poll workers, too, because without you the voters wouldn't have had the experience that they had on Election Day.

CHAIR RODRIGUEZ:

Great, thank you. Commissioner Hillman.

COMMISSIONER HILLMAN:

As you know, I spent Election Day in Florida. But the week before, I had visited early voting sites in both Tampa and Orlando, so that I could have an appreciation for the dynamic of the activity during early voting, as compared to what was going to happen on Election Day. And on Election Day, I was in the Miami-Dade area, as well as in Broward County and Fort Lauderdale.

And I walked away with several impressions. One is, clearly, early voting was the preferred activity in Florida, and people seemed to have great tolerance for standing in line for a fairly long time to cast an early ballot. But still, there's the recognition that even though people were willing to be patient and tolerant of that, there's got to be a way to approach the system so that people aren't expected to be tolerant to stand in line for an hour or two hours or three or four hours.

Secondly, people obviously heeded the message. Part of the message was what we were saying as the Election Assistance

Commission, and that was to check to make sure you were registered to vote before you went to vote, to make sure you knew where your polling place was, so that you wouldn't lose time by showing up at the wrong polling place and to make sure that you knew what identification would be required, because identification is a requirement in Florida. And so, the websites and the hotlines at the election officials' office were getting many, many, many hits with people doing precisely that; gathering the information before Election Day.

One thing I did observe on Election Day was that there were a number, in the session I observed, 2,000 absentee ballots that could not be counted, because there was no name or signature on the outside of the envelope. And I think there probably needs to be, if people are going to embrace absentee voting, whether it's no-excuse absentee voting or early voting by any other name, early voting by mail, that there needs to be voter education to assure the voter that there is privacy if they put their name or signature on the outside of the envelope. In trying to peel back the onion on why people would do that, some people did share the concern that they felt that people in the election office would see their name and open the ballot to see who they voted for. And so, I think there needs to be some reassurance of the respect and the professionalism of election staff to know that law requires it be a secret ballot and that only when somebody is faxing back their ballot do they have to affirmatively acknowledge that they're waiving their privilege. So it was sort of, I'm sure, discouraging for people to know that as many as 2,000 ballots in one county, and maybe more, would not be

counted, because they had absolutely no way of knowing who the voters were who had cast those ballots.

Florida has gone to paper ballot. And I will tell you, the warehouses storing these paper ballots are mind boggling. I mean, somehow there's got to be a way that technology can help the election officials with efficiency and effectiveness, because having millions of ballots, particularly if the ballot is more than one page, and certainly, in Broward County it was a two-page ballot. So there were storage and retention issues. And the other thing is, which is interesting, that depending on the quality of the paper of the ballot, if there are recount issues after it's been handled three or four times by human beings, the quality begins to deteriorate. And so, the scanner doesn't necessarily recognize it. And so, I think these are all issues that we have to take into consideration to make sure that the voters continue to receive improved services.

It appeared, by all measures, that turnout in Florida was higher, but I haven't seen any numbers that would suggest how much higher it was in 2008 over 2004. But I did not observe anything that I would say was particularly troubling. What I did observe would be a sign to poll worker training and education. For example, when it was clear the line was going to be very long, the accommodations that had to be made for people who could not stand for long periods of time or whose disability required that they could not stand or be in the hot sun or whatever, some precincts accommodated that and some did not. And so, there needs to be, probably some recognition that there should be some uniformity, so people who have a disability don't see some people getting to go to

the front of the line and others not. And then the question of, can it be, you know, if it's not a recognized disability, you know, how do you treat a person who can't, for whatever reason, stand in the sun for a long period of time. So, I think the post-election issues and discussions we will have will be very informative on this.

I did also get to attend last week, what I believe, is the first state post-election summit that's been held in the country, and it was convened by Secretary Brunner in Ohio. And she had about 300 people in attendance and some very interesting panel discussions that included perspectives across the board, as well as an opportunity for people in the audience to pose questions, just doing an assessment of what appeared to work very well and the issues that appeared to need further attention.

I think the overarching concern, from both, what I observed in Florida, discussions I had with people in Georgia and Mississippi, as well as Ohio, is going to revolve around the issue of when somebody is administratively deemed no longer eligible to vote in that precinct, how that process is handled. The public is still not clear. That process may not be transparent enough in all cases. And the question rises, and I think justifiably so, how is it that an administrative decision can take away my right to vote? And, you know, what are my recourses on that if I show up believing I'm still registered and it turns out I'm not, because I didn't vote in the past two elections and I may have moved and didn't notify somebody that I moved, but I'm still a citizen and I'm still eligible? What happens to me if I fall through the cracks in the system?

CHAIR RODRIGUEZ:

Very good, thank you. Mr. Wilkey?

EXECUTIVE DIRECTOR WILKEY:

Thank you, Madam Chair. I had a similar experience that Commissioner Hillman had. I had the opportunity to be in Los Angeles County, which is the largest election jurisdiction in the country. They have over 4 million registered voters in LA County, 25,000 poll workers, over 4,000 precincts. It is a huge undertaking to manage that election operation, but I will tell you that it was like a well oiled machine.

I arrived there on Sunday afternoon and went immediately to the election headquarters, and when I arrived, there was a line of people that circled the building and went down the next block. And I learned later on that it had been like that since they had started their early voting process at their headquarters in LA, and that continued right up through Election Day. On that particular day that I was there, on that Sunday, they had over 5,000 voters. And the remarkable thing was, we walked that line for an hour or so, saying hello to everybody and not a whimper, not a complaint, not anything. And it was a nice typical California hot day for them to be standing in line, but it was just an unbelievable experience.

On Monday, I had an opportunity to sit through all their coordinating meetings. They have about 45 coordinators who cover the county. They are there to take care of any problems that will happen on Election Day. They are equipped with supplies, even generators. Generators came in handy because that night before election, a big rainstorm came through and two polling places couldn't open because of electrical problems. They were

immediately -- the coordinators were there, got the generators going, moved the polling place outside and got the voting started. I also had the opportunity on that Monday to spend a lot of time in their service center, in their warehouse. The building is large enough to hold a 747. It is a huge building. It is where they keep all their supplies, all their voting equipment, all their operation center for their phone calls. They have a bank of about 100 people who take information calls on Election Day. They have people specifically assigned to the local radio and TV stations where you can email or call in your questions and they are emailed the answer right away, so that they can broadcast them over the network. They have training for all of their inspectors that they have, all of their poll workers that they have, to fill in any vacancies that occur. It was just a mind boggling experience.

We were out all day on Election Day, went to a number of polling places across LA. It's a big, big county and it is very difficult to get from one end of the county in any amount of time. So we spent a lot of time on the highway. But we got to see a good part of the county and we got to see long lines starting some places, they were there at 5 a.m. for their polls to open at 7 a.m. And again, no complaining, just wanting to get in there and cast their ballot.

Election Night was remarkable. They count their ballots after the close of the polls. They bring in ballots from all over the county by sheriff's car and even by helicopter. So it was very interesting watching the helicopters come in to deliver the ballots in flame retardant bags, from all over the county, from the outreaches of the county, from Catalina Island, to be counted. And they counted over

3 million ballots between Election Night and the next day. They had over 780,000 absentee ballots. They had some 706 different ballot styles that they had to deal with. It is a testament to the work of Dean Logan, the current registrar, and Connie McCormick, the former registrar. As I said, it was just an unbelievable operation to see it.

I'll just add a personal word here. Come January 1st of this next year, 40 years ago, I signed my oath to come into this business. I've been in a lot of polling places. I've talked to hundreds and thousands of voters. I've seen a lot of problems. But I don't think I've ever seen anything as overwhelming and as awesome as standing on that knoll, watching 5,000 people stand in line to cast their ballot. It is a testament to our American democracy and it is something that for everything that I've seen in this career, it was just overwhelming and it is a testament to the people in Los Angeles, the thousands of people that helped put it together. But it was overwhelming.

Thank you Madam Chair.

CHAIR RODRIGUEZ:

Well, it sounds terribly exciting. Again, we here at the Commission were expecting to be very busy and it ended up to be a very quiet day. And what we heard from you, who were out in the field, was that there was a glut of voters in the morning and then very light activity the rest of the day.

I wonder if any of our poll workers, who are here with us today, I think we have about 15 minutes, if any of you would like to share an experience or a synopsis, brief, about your Election Day.

Is anyone interested? And I'd invite you to come up to the table and tell us what your day was like. We'd like to hear from you if you are inclined to share a story. Would anybody like to do it? Please come up. And if you'd sit at one of the microphones, press the green button. They're on?

MS. ROLLINS:

Yes.

CHAIR RODRIGUEZ:

Okay, very good.

MS. ROLLINS:

Good morning, my name is Nena Rollins. I worked at Precinct 83. I've been an advocate with the polls since I was 11. I was there when we put Fauntroy in the House, so I got a chance of really getting into it. Ever since then I've been a volunteer. I was a care person for six years for Head Start with policies and procedures. I'm retired from D.C. public schools, Department of Recreation. I made sure that all my students that was old enough got out to register to vote. They let me know that they were there that day.

I got there at five. People had their lawn chairs, their chairs, their coffee and things. Some had been posted since four to 4:30 that morning.

CHAIR RODRIGUEZ:

Waiting to vote. Those folks were waiting to vote.

MS. ROLLINS:

Waiting to vote. When I seen some of my people with disability -- I also volunteer with AARP. I seen a lot of the disability people out there. I had my staff to go inside -- I worked in the school building

so I was very familiar with the principal and we got chairs and we put them ahead of the line. I thought we were going to have a little problem with that, but it wasn't a problem at all. Our rush started from seven that morning. It was just so funny because I lived in the area for 29 years and when I got there they -- J.L. Wilson is like on 6th and K -- they was wrapped around from 6th and K to L to the other back part of the school, and I was amazed with that. And they thought it was so funny. I said, "Okay, you all, let's get ready." I looked at the time, it's like one minute until seven. I went outside. I said, "Everyone, it's show time." And they had a ball.

Our rush hour went from like seven that morning to 11:45. We thought that, okay, it's going to peel off for now, but our rush didn't stop until about 8 o'clock that night. So we had a pretty good crowd of people. We had students that came out. We had college students that was there. Everyone just worked just so beautiful. I was really loving it that the students came out. They didn't only come out for community service, they came out because this was history to them. And I was just proud of it and hope I'll still be around for another one. And I will always be a part of the election.

And I want to thank you all for even having me down today. I didn't know what it was all about, but I appreciate coming down to the Commission to hear exactly what's going on.

CHAIR RODRIGUEZ:

Thank you very much...

MS. ROLLINS:

Thank you.

CHAIR RODRIGUEZ:

...for sharing your story. Is there anyone else?

VICE-CHAIR DAVIDSON:

While she's coming forward, I was at a meeting this last week and one of the things -- it was an election meeting talking about voter registration systems -- and one of the things that was said by a state, that I think would be well that we share with other states, and I know there was other states there, that people with disability or if they were over, I think, the age was 70, they automatically went to the front of the line, whether it was early voting or Election Day. And I think that's a great thing that we could do for our voters to make sure, as Commissioner Hillman said, sometimes they can't stand and they need to have accommodations to make sure that they're taken care of.

So, I just add that while you were coming forward. Thank you.

CHAIR RODRIGUEZ:

Thank you. We'd like to hear your story.

MS. MIDGETTA:

Well good morning. My name is Lilla Midgetta. I've been with the Board of Elections since 1964. This was our very beginning. We started -- well I must tell you something about it. We used cardboard partitions for our voting booths. We didn't have machines, we just had the ballot that we would punch the card with a pen. But we have progressed, so now we have machines, we have wonderful booths for the people to go in to vote and it makes it much more convenient. Everyone is happy with our conditions now. Of course, we were then, because I remember when I was

21, I couldn't wait to cast my first ballot. I'm normally a Virginian, but now I've been in Washington over 40 years. 60 odd years to tell you the truth.

But anyway, our Election Day was very progressive, and we had long lines, but everyone was happy. We had no problems. If persons were handicapped or what not, we tried to bring them in so they could be seated and be comfortable. Our poll workers did well. We had many more than we usually have, but our team mended well together. And we all had a wonderful day. It was a delightful day and we were all happy. And it was a great opportunity, and I hope to have many more.

Thank you.

CHAIR RODRIGUEZ:

Thank you very much. Ma'am, in the green blouse.

COMMISSIONER HILLMAN:

While we're waiting for her to come up, standing -- for the poll workers, standing in the back of the room at the door is Maisha Leek. If you would like us to mail to you a copy of the resolution after the Commissioners have signed it, we'll be glad to do that. And so, just make sure that she has your mailing address before you leave and we'll be sure that you get a copy of the resolution.

MS. KARIUS:

Thank you very much for allowing some space for this comment. I'm quite a newcomer to working the elections. I worked for the first time in P.G. County in Maryland. And so, thank you very much for putting focus on public comments today.

And I'd like to just say, I do feel, because I am a first-time

volunteer in that situation, that a lot of questions came forward. Also, because I have been working in the area of election integrity, since I returned to the United States after many years working and living in the Netherlands. So that has a particular perspective.

A couple things I noticed were the issues on provisional voting and the process and how to handle discrepancies, as well as the various discrepancies concerning the database and how to make determinations when things were grossly off in the database compared to what the person was showing, in terms of their identity. Also, other concerns I had regarding those procedures, had to do with possible conflicts of interest when those situations arose. So, I would just like to highlight those areas and say that I'm very glad that you're taking some time to consolidate what you've developed in terms of best practices, concerning the polling place and to continue to draw attention to this issue.

One, sort of notable thing for me, because I didn't know everything in the thick handbook I was given, I was also given a training of one day that was approximately two-and-a-half hours with no testing afterwards. And, in terms of our leadership that day, we had two election judges who were supposed to represent two parties. And I was an unaffiliated member on that side, opposite the Democrats because Maryland, as you know, is a very democratic state. So, what I noticed is that when the election superior judges were not completely clear on the procedures or it seemed that one was more clear than the other, I saw that there was an opportunity for something to go wrong, in terms of the oversight of and the independence of that process. So, I just

wanted to mention that; that I wasn't sure about my superior leadership in that situation.

And also, the term provisional ballot to me suggests, by definition, that that's not automatically so; that whoever casts a provisional ballot should have that counted voted. And so, I was concerned that the people voting provisional did not understand the procedure afterwards, to ensure that their vote would be counted. And I, myself, as a worker didn't feel that I was equipped to answer that question for them. So, I thought if I had even studied all the chapters in the book that I was required to know, then I really wondered what can make this process better and how can we all know better to make it an inclusive process but, of course, one where someone's in charge, has authority and is able to handle the flow of election, which I thought was a bit sedentary. Because I noticed, if I'm very, actually, you know, an educated and willing member to that process, then what about all the volunteers who are less interested than me? And how can we make that process move along a little better and within that context, ensure that it's as bipartisan and independent procedure as possible, is, I think, hugely important for the American public, today, considering some of the problems that arose.

The last thing I'd like to say, is that I thought that -- I was working on both sides of the machines; getting people to the machines to vote, as well as checking people in on the e-books, which is on the on-line -- or the electronic database containing all the names and informations of the registered voters. I just was sort of, concerned that there were a lot of flaws in it. And I thought,

yeah, one out of five flaws in the database are kind of concerning, if we are going to start to make more firm rules about handling that. And so, I really appreciated your comment about what are we going to do in the case that things are wrong and there are discrepancies on signing in for these days.

So thank you very much for allowing me that time to talk.

CHAIR RODRIGUEZ:

Thank you. And thank you for your work on Election Day.

MS. ANTHONY:

Good morning. Or is it afternoon? I'm Dorothy Anthony. I worked at the counting center, 441 Judiciary Square, where we really counted votes -- ballots. And I mean we really counted ballots. But I would like to extend gratitude for the staff, how professional they were, how organized they were, in addition to all the ballots that we had to count. They really was on their job, so I wanted to give a lot of credit. I wanted you all to know how I feel very confident with them, what they did and how professional they did, in addition to all the ballots. And we counted ballots from the 4th up until. I just wanted to extend that. Thank you very much.

CHAIR RODRIGUEZ:

Thank you, ma'am. Thank you very much. Very good. Oh, sir, please. We have about five more minutes.

MR. HODGEN:

My name is Don Hodgen. I'm from Arlington County. I guess I've been an election official, I guess, three or four years. I started off being just an election official and then, all of a sudden, I was called like a month before one of the general elections, whether or not I

wanted to be a chief, because the one that was assigned to be chief had to go into the hospital and so forth. So I said, "Sure. Why not?" And it was quite a learning experience. I can say for Arlington, we do have a very good training program. And this past year was very more exciting, because I guess, you realize in the State of Virginia, we had rules that you couldn't -- Arlington has electronic voting and we needed to get more voting booths and so forth, so then, we also had to have scanning. So, we have a dual type of system in Arlington. Not only do we have electronic, we also have the scanning machines, which are basically the paper ballot, which are then scanned through.

It was a very interesting time this year, because we also had early voting. I shouldn't say early voting. We had a absentee in-person voting, which means you had to have a reason why you needed to vote before November 4th. You had stipulations whether or not you were going to be out of town or whatever, hospital, and so forth. It was quite interesting because the very last day, talking about lines and so forth, for a small county of Arlington on November 1st, the last person that was in line at 5 o'clock, Saturday afternoon, got to vote at ten of nine that evening. So that was about -- and for that whole week before, it was between a three to four hour wait line. So, people were quite interested in voting. And, again, nobody complained. We even had families with kids and so forth, but it was quite interesting.

What we did, which was very useful, is getting electronic poll books, because we also had students and so forth, during election time, making sure that people that were in line they would go up

and down -- we had a spare one -- that would go up and down the lines, in the morning, making sure that people were registered to vote within the precinct and so forth. And then we were able to tell them if they weren't in the right precinct, where they were able to go to.

Getting back to provisional ballots, I mean, there are different training. In Arlington, you have the general training for the general workers and then you have the chiefs and we also have technical training for those that are dealing with electronic machines and so forth, that if there's problems with it, they would be our first go to -- person to go to.

I know that this one lady mentioned about not knowing about provisional ballots. True, many of the general workers may not know what that is, but the chiefs, I mean, we go through extra training and so forth, so we can answer those types of questions. So, I guess it's the type of training that you have. The longer that you're there, you tend to move up, so they train you a little bit more on certain aspects of what needs to be done, when there are questions to be raised.

But it was very enjoyable. I worked, not only on the poll day, I also -- I'm still working part-time, technically, because things don't end on November 4th. You have to go through all the registrations. You have to notify other states making sure. We're still working.

CHAIR RODRIGUEZ:

That's a very good point. It sounds like a prevailing theme has been the young people involved, and that's pretty exciting. And you, sir, will be our last speaker. Thank you.

MR. NYENGELE:

Good afternoon.

CHAIR RODRIGUEZ:

Good afternoon.

MR. NYENGELE:

I have two comments. The first one has to do with the fact that having worked as a captain at Martin Luther Library, I suddenly received about 45 different agency -- press agencies from the world. I was told that they would come to have a look at how the system worked, because this election was special, in terms of attracting the attention of the people. So most of them, meaning about 40 percent of them, had one question, because they were waiting for people who were coming after voting. And some of them were grumbling, or most questioning the integrity of the system itself and it was about provisional ballots. So, the question was, they wanted to know why it was normal for people to come in and vote and yet their vote wouldn't even count. So what -- and then it became clear to me that it would be important for the system to explain to the public, because it's a very bad thing if many people question the integrity of the system. So, basically what I was -- my answer to them was that, to the journalists, was that everything goes back to the main book that rules the land, the Constitution, and the two main principles that govern it is the balance and check. And I told them, I said the reason why we cannot -- the votes are not counting is because it wouldn't really fit with the checking part. And I told them that the reason why they have to pre-register is to make sure that afterwards there will be a place where they will be

able to check. But the reason -- and then they asked, "Why are you accepting them?" I said because as a poll worker in a poll place we have to be -- to respect courtesy first and appreciate the fact that they came in at all, and also prevent them from accusing us of not having served them. Now, it's not like a punishment, but then I told them the people who are putting those rules in place are voted in by the people themselves, so that the whole circle is well balanced.

And the second one is, that when we, as a captain -- I was a first time captain, so people had worried that I wouldn't be able to handle what was taking place, but thank God I had my former captain, who had coached me and was available, so that if I had had any questions she would be there for me. But when I tried to call in for other questions, thinking that she might be too busy, since she had already promoted to being a rep, it was impossible to get in. And we had already been told that on Election Day it might be impossible, because all the lines will be too congested. Then I realized that the problem is, because if you have everybody calling, even for small problems, then you might have every line jammed, then you need a new system. So, the new system would be for some captains who are available and who have already a certain expertise should become like a mentor to the rest of the team, so that when we call them, at least we know that they're going to answer the phone. And not only that, if we need to cover ourselves or they need workers, we can swap workers.

Those are my two points. Thank you.

CHAIR RODRIGUEZ:

Thank you very much. And again, it's a wonderful opportunity to hear from actual workers out in the field. It sounds like we have some provisional ballot it's difficult to explain -- complicated to explain, even to poll workers, but especially to voters, and the whole electronic poll book seems to be a pretty handy solution to redirecting people.

Any final comments? And then we'll go to the next agenda item. Commissioner Hillman.

COMMISSIONER HILLMAN:

Yes. Before we close this out, I'm told that we have an additional Champion of Democracy who's joined us, Carol Collins. Is Ms. Collins here? Yes, okay. Thank you. Please stand, so we can recognize you. Thank you for your service and we appreciate your being here.

CHAIR RODRIGUEZ:

Are there any other poll workers that we didn't recognize? Okay, thank you all very much.

And now, we'll go to the Strategic Plan. I'm very happy to see this document. And Alice Miller, the Chief Operating Officer for the U.S. Election Assistance Commission.

MS. MILLER:

Thank you, Madam Chair. I just want to take one moment to recognize the poll workers. As you know, I spent a lot of time in the District of Columbia before I came here as the Chief Operating Officer. A lot of the individuals in the audience today are from the District of Columbia. Without the poll worker help, as you all know, none of these elections would be possible, we wouldn't be able to

process our voters and we'd have bedlam on Election Day. The staff, in most election offices, are very small. They do not have, at their fingertips, what is necessary to work elections and we couldn't do it without the volunteers. And so, having said that, I just want to thank the Commissioners for passing the resolution and having the foresight to do so. And also, again, to thank the poll workers who come out and serve us on a volunteer, and I mean truly volunteer, basis. Thank you.

And now, with respect to the Strategic Plan, as you've indicated, I'm here today to present you with a proposed Strategic Plan for the EAC. The Plan has been prepared for fiscal years 2009 through 2014. The Plan was developed in accordance with the guidance set forth in the Office of Management and Budget Circular A11 guidelines and with the dedicated effort of the managers and staff of the Commission, who put forth a tremendous amount of effort in working to determine the significant goals and related outcomes during the time period between fiscal years 2009 and 2014. The Plan lays out an approach to create a receptive and productive agency, fully capable of the unique leadership role it has been given as a national clearinghouse, a manager of federal financial assistance, a certifier of voting systems, and a resource for election officials throughout the country regarding the administration of federal elections.

As required, the Strategic Plan has been reviewed by OMB and a special committee of the Advisory Board as well as the Executive Committee of the Standards Board. Comments were received from the Advisory Board and those suggestions have

been incorporated into this final draft. We would like to thank the members of both Boards for reviewing the Strategic Plan and for providing guidance and suggestions to the Plan. Further, I would like to acknowledge Roger LaRouche with the Election Administration and Programs Unit, who has dedicated a substantial amount of time and energy to coordinating, developing, organizing and promoting the completion of the Strategic Plan. Mr. LaRouche's assistance has been extremely helpful with the preparation of the document before you.

I just want to state for the record, as you know, the Commission is divided into specific units, all of which ultimately fall under the direction of the Executive Director. Among those units are Communications, Payments and Grants, Voting and Certification, Election Administration, Programs and Research. As you can see, the draft before you is a comprehensive document that identifies the goals and objectives of the Commission by unit. Rather than focus on all the goals that have been identified within each unit for the five-year period that's covered in the Plan, I'll highlight and summarize those goals.

Communications unit. The primary goal there, is identified as communicating timely and delivering accurate information on effective administration of elections for federal office and on the operations and services offered by the Election Assistance Commission. This communication goal is furthered by the need to operate the EAC clearinghouse effectively, respond to outside requests timely and accurately and to convey the results of the EAC operations and accomplishments.

With respect to the management and oversight of HAVA funds, the objectives can be summarized as an obligation to accurately and timely distribute federal financial assistance, which the EAC is responsible for administering. Further, through this unit, the EAC will effectively monitor the financial assistance which it administers and, in addition, provide technical assistance, as well as guidance on the management of federal financial assistance. The guidance will be provided in an effort to reduce the risks of inappropriate use of funds, as well as reduce the risks of accounting errors.

The EAC is charged with a very important mandate of conducting research. The goals associated with this mandate are summarized as the requirement to study, guide and assist. The responsibilities tied to the Strategic Plan, in relation to the research objectives, include completing research on issues that improve the administration of elections for Federal office, expeditiously report on critical administration subjects, and collecting required and useful data on election administration practices, voting methods and demographics. The research unit will be further charged with making recommendations for improving the quality of practices, methods and data, issue guides, translations and other tools that are timely and useful, and providing reports to Congress, as required by HAVA.

As it relates to testing and certifying voting equipment, the Strategic Plan addresses this responsibility through objectives which directs that the EAC will develop and update the voluntary voting system guidelines, provide the accreditation and revocation

of independent, non-federal qualified laboratories, which have been qualified to test voting systems to Federal standards, administer the testing, certification, decertification and recertification of voting system hardware and software by accredited laboratories.

And finally, the Strategic Plan recognizes that organizational and management excellence must be reached in order for the goals and objectives to be implemented and successful.

As with each component of the Plan, there are specific measures which provide the roadmap for achieving the goals and satisfying the underlying objectives of the Strategic Plan in its entirety.

As is recognized in the document, the Plan provides an important opportunity for the EAC to work together as a team with a collective strategic outlook. With the help of the Commissioners, a vision and mission is confirmed in the Plan. EAC's senior management team have taken the task of identifying the critical issues facing the Commission in the coming year and has determined how to best meet them. The Plan focuses on those issues, as I have just summarized, and is intended to be the foundation from which to address challenges that arise during fiscal years 2009 through 2014.

Once the Commissioners vote to adopt the draft Plan as it is presented, it will be posted on the website for 30 days and it then may be made final at the next meeting subsequent to the 30 days.

Thank you.

CHAIR RODRIGUEZ:

Thank you, Ms. Miller. Are there any questions or discussion items for Ms. Miller? Mr. Wilkey.

EXECUTIVE DIRECTOR WILKEY:

I'd just like to add a comment to this document. And I thank Ms. Miller for her presentation this morning.

You know, I frequently point out to everyone I talk to, about what an outstanding staff we have here at the EAC, and this is a testament to that. We're very grateful to Roger LaRouche for his work on this, for walking us through this process. It is not an easy process. When I have talked to directors from other small agencies and from working with OMB to develop this, they have acknowledged the fact that the first one is not an easy one to do. And we've spent a lot of time on this, a lot of hard work, and it is a testament to all of the staff and to the division managers to come up with what I consider an extremely good document. So I want to publicly thank them, as I do for all their work.

You know, I think when we come to the end of this year and we take a look at our annual report that will be presented to Congress at the end of January we'll see an enormous amount of work that's happened during 2008, in addition to coping with a Presidential Election year. And that's a testament to you, Madam Chair, and to the Commissioners who are here present, and to all of the staff. It takes a lot of team work. We've had our ups and downs and we've been through a lot this year, including our first financial audit. We've learned a lot of lessons. But I think what you see here is a roadmap that will serve us well through 2014 and beyond. And it's an outstanding effort and, again, I want to thank

the staff and thank you for your patience in waiting this period of time for us to give it to you. And I'm hopeful that the public when they receive it will make their best efforts to comment on the understanding that we have a lot of our plate in the upcoming years.

Thank you.

CHAIR RODRIGUEZ:

Thank you. I have a question about the Chief -- the position of Chief Financial Officer. And I know that we have not -- the Commission has not yet reorganized the organizational chart. It is a recommendation in our financial audit. And I wonder if the Strategic Plan should reflect, even though we don't have a person in that position yet, if the org chart attached to this should anticipate filling that position. Is that the kind of feedback you're going to want in the next 30 days?

MS. MILLER:

That's correct, because this is a draft, so certainly it can be modified and adjusted. And the organization chart, as you indicated, does not currently reflect the position of Chief Financial Officer. But we do have a proposal for that with the appropriate units falling under a CFO.

CHAIR RODRIGUEZ:

Okay. The other thing I'm hoping is to see a plan for monitoring our progress against the goals and objectives of the Strategic Plan because a plan without the monitoring and the matrix by which we measure progress won't be as helpful to the organization, in my opinion. So maybe, concurrently, either through staff briefings or

through a side document, I'd like to see a plan for measurement of progress against the Strategic Plan.

Are there any other comments? Commissioner Hillman, Davidson?

COMMISSIONER HILLMAN:

I have two questions. One is specific to the org chart and the other is more general.

Specific to the org chart, and I know that it's hard to get a lot of information on an 8-1/2 x 11 piece of paper that's portrait, but I am concerned that we show one position here, which makes it look like the Executive Director is subordinate to the Coordinator. If you look at the org chart and you look under Advisory Committees, there's a position of Coordinator...

MS. MILLER:

Uh-huh.

COMMISSIONER HILLMAN:

...and it looks like the Executive Director reports to the Coordinator. I would suggest before we put this out publicly, that we do whatever we have to do, to come up with an org chart that shows the appropriate reporting responsibility for that position, because it could...

MS. MILLER:

That's a good point. We can make that adjustment.

CHAIR RODRIGUEZ:

Rotate it or something.

MS. MILLER:

Yes.

COMMISSIONER HILLMAN:

Right. The other question I have for you, and that is, as we are catching up on the work we have to do to implement our policies and procedures, I'm wondering if you've had a chance to look at how staff will be able to use this document and the roles and responsibilities document, to sort of, guide them along the way. I mean, we're sort of putting the avenues on our roadmap as they are necessary, and this certainly is one, and the roles and responsibilities document is another and -- but I just want to make certain that we aren't losing sight of the roles and responsibilities document as we roll out these kind of plans.

MS. MILLER:

Everything -- I think you're right. Everything has to be looked at as a complete package. We need to be cognizant of the roles and responsibilities as well as the responsibilities outlined in the Strategic Plan. So, we need to look at it as a whole and put it together and make sure one doesn't overlap the other. So, I understand your point.

CHAIR RODRIGUEZ:

Commissioner Davidson.

VICE-CHAIR DAVIDSON:

My question is, obviously, this is our first one and commend everybody that has worked on this. But, as we are growing and we see that there needs to be updates, can you tell us -- I mean, obviously, this is an internal document. We're going to see that there is times that we need to change things. What would be the process of doing that?

MS. MILLER:

Yes, this is not cast in concrete.

VICE-CHAIR DAVIDSON:

Right.

MS. MILLER:

It is a plan. It can be adjusted, it can be modified. Any changes to it would have to be taken up by the Commission in a formal process, such as we're doing now.

VICE-CHAIR DAVIDSON:

Okay, I think that's important for the public to know.

CHAIR RODRIGUEZ:

Thank you. And Commissioner Beach was also going to ask that question.

Finally, I just have one more request, and that is to, once we get our appropriation for 2009, I'd like to see how the departments plan to budget those funds through this lens of our Strategic Plan, if it's adopted by then.

MS. MILLER:

We have started doing some performance based budgeting for 2009. And, as Mr. Wilkey indicated, we do now have a budget director and she's been real helpful with sitting down with each unit, each division head and coming up with the budget as it relates to the Strategic Plan, to carry out the performances dictated in the Plan. So...

CHAIR RODRIGUEZ:

Okay. You know what? I see her in the room. I wonder if you might introduce her.

MS. MILLER:

Sure.

CHAIR RODRIGUEZ:

I realize that she's new to the organization since our last meeting.

MS. MILLER:

Annette Lafferty, would you come forward please?

CHAIR RODRIGUEZ:

We've very glad Annette that you've joined us.

MS. LAFFERTY:

Thank you.

MS. MILLER:

She looks surprised and stunned.

CHAIR RODRIGUEZ:

No, I just want to recognize you and just say that you really represent part of the evolution of the EAC into a federal agency, and so, your help is going to be invaluable in growing the organization. Thank you.

MS. MILLER:

And, as I indicated, just in a short period of time, she's already met with all of the division heads, already started devising the performance based budgeting from the document that we had previously developed and, you know, has given us some insight as to what we need to do and what we need to look for, down the road, with respect to keeping certain that we don't over-spend, i.e., or under-spend, based on what each division is responsible for doing, and as a Commission as a whole.

CHAIR RODRIGUEZ:

Great. And the budget, really, is the transparency tool between the EAC and the public. And I'm really optimistic about what we're going to be able to do in the coming year. We push transparency all the time on election officials, and so, we're going to be as good as our word. So thank you again. Thank you Ms. Miller.

Are there any final questions? Mr. Gilmour, do you have any questions? All right, then, we are adjourned until 1 o'clock.

COMMISSIONER HILLMAN:

Were we supposed to take action?

MS. MILLER:

Yes, you do have to take a vote.

CHAIR RODRIGUEZ:

Oh, we do take a vote?

EXECUTIVE DIRECTOR WILKEY:

We need to approve the draft and publish it.

CHAIR RODRIGUEZ:

Okay, I'm sorry, we're not adjourned. So, we're going to entertain a motion -- the Chair will entertain a motion to publish for comment the draft Strategic Plan. Is there a motion?

COMMISSIONER HILLMAN:

Can I just ask, technically, and maybe it's for the Counsel, do we have to adopt or accept the report and instruct that it be published? Or are we just publishing it? I mean, are we embracing this draft as a Commission and putting...

CHAIR RODRIGUEZ:

It says adoption.

COMMISSIONER HILLMAN:

...it out for comment?

MS. MILLER:

You're adopting.

COMMISSIONER HILLMAN:

We're adopting and -- okay, thank you.

GENERAL COUNSEL GILMOUR:

One point of clarification. We are putting it out for public comment so that -- I question whether or not we'd be adopting the Plan as is if it's going out for public comment. The idea being, we would want to take public comment and potentially incorporate what we get before it would be finalized?

MS. MILLER:

That's correct.

GENERAL COUNSEL GILMOUR:

So, I think that that might be a -- I had that circled in my minutes. I don't know, in the minutes, that was the appropriate language to use. So my understanding is, from what Alice reported, that we are voting to post it on our website for a period of 30 days, is that correct,...

MS. MILLER:

That's correct.

GENERAL COUNSEL GILMOUR:

...to receive public comment and consider public comment for your final adoption after that point.

CHAIR RODRIGUEZ:

So we're voting to post?

GENERAL COUNSEL GILMOUR:

Is that correct, Alice? I'm sorry to...

MS. MILLER:

That would make sense.

COMMISSIONER HILLMAN:

Well, okay, I'm just going to add one thing to this. If we are comfortable and want to signal that this Strategic Plan is going in the direction where it is, then might I suggest that we, at least, accept it? That we do something other than, say, post it. I think it's important for the Commission to communicate. We know how long the process has been to develop this. We've been communicated and consulted with, and I would move that we accept the report and have it published in the *Federal Register* and on our website for the 30-day comment period.

VICE-CHAIR DAVIDSON:

I will second that.

CHAIR RODRIGUEZ:

Any discussion on the motion? It's been moved and seconded to accept and post, including in the *Federal Register*, the Strategic Plan. Any discussion on the motion?

COMMISSIONER BEACH:

Actually, I just have a quick question.

CHAIR RODRIGUEZ:

Commissioner Beach.

COMMISSIONER BEACH:

Because this is an internal document, is it required to be published for the *Federal Register* or not? I just want clarification.

GENERAL COUNSEL GILMOUR:

It's certainly not, but I know that OMB guidance does recommend, perhaps, that it be posted on the agency's web page for public comment for 30 days. There is that recommendation in the OMB. It's not required.

COMMISSIONER BEACH:

Okay.

GENERAL COUNSEL GILMOUR:

But, at least, publication on the website is a recommendation that they give as an example.

COMMISSIONER HILLMAN:

And, also, our own Notice and Comment Policy includes *Federal Register*.

COMMISSIONER BEACH:

Thank you.

CHAIR RODRIGUEZ:

It's especially good since it's our first time. OMB will be very proud of us.

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

[The motion carried unanimously.]

CHAIR RODRIGUEZ:

Okay, now we are adjourned until 1 o'clock. Thank you very much.

[The Commission recessed at 11:37 a.m. and reconvened at 1:02 p.m.]

CHAIR RODRIGUEZ:

The December 8, 2008, meeting of the U.S. Election Assistance Commission is reconvened. We had amended the agenda, first thing this morning, to consider the election of officers for 2009 after lunch. I'm wondering -- I'd like to propose, and see if there's agreement on -- because of the election we haven't had time to talk about a number of issues, such as rotation. And rather than try to do it now, ad hoc, I wonder if there would be agreement to postpone the election of a Chair to the next meeting, on a date that we can agree on, so that we can have those conversations about rotation and other things.

And I'll hear any Commissioner who wants to speak on this proposal. Commissioner Davidson.

VICE-CHAIR DAVIDSON:

I don't have a problem of waiting and discussing. Obviously, if we set a policy, it will have to go through other things, but, to having the discussion, I'm very willing to postpone it.

CHAIR RODRIGUEZ:

And, I think as evidence that I'm not interested in prolonging my seat in the Chair, I'll ask Commissioner Davidson as Vice-Chair to chair the first meeting -- the next meeting, so that it doesn't look like I'm trying to cling to the gavel, because I'm certainly not. But would anyone else want to be heard on this? Commissioner Hillman.

COMMISSIONER HILLMAN:

Madam Chair, I would agree with that as well. I think that there have been unclear interpretations and expectations, because we haven't provided that clarity and haven't had the conversations among ourselves, and I think it would be really good for us to do

that and be ready with a clear statement when we do the election. So, I would concur that we could do that as the first order of business at our January meeting.

COMMISSIONER BEACH:

I just have, I guess, a procedural question. If we do pursue that, is Vice-Chair Davidson able to chair a meeting in January? Is there any prohibition, I guess, because the term ends, I guess, within a year and I know Commissioner Davidson didn't serve a full year as Vice-Chair, that she's able to Chair? And, I guess, I would like to get that answer from General Counsel.

GENERAL COUNSEL GILMOUR:

Yes, the statute says you can only serve for a one-year period. So, at the end of that one-year period, and I'm not sure exactly the date of your...

CHAIR RODRIGUEZ:

I don't remember the date.

COMMISSIONER HILLMAN:

It was January something.

GENERAL COUNSEL GILMOUR:

It was January something. The idea is, if we have the meeting prior to January something, then that would be the best way to proceed, because there would be no issue there. Otherwise, there would be no Chair.

COMMISSIONER BEACH:

Right. I just want to make sure, procedurally, that we can do this.

GENERAL COUNSEL GILMOUR:

The other option would be a tally vote process, where the appointment could be done by tally vote and announced. That way it could be done within the timeframe and not necessarily have to be a public meeting. It's another tool...

COMMISSIONER BEACH:

You're talking about the appointment for Chair and Vice-Chair can be done by tally vote, is that what you're saying?

GENERAL COUNSEL GILMOUR:

Yes, it would be another tool you could use. I don't believe the Commission has ever, necessarily, done it that way before, but that's another tool that could be used to achieve the timeframes here, without having the situation where there's no Chair.

CHAIR RODRIGUEZ:

Is that agreeable?

COMMISSIONER BEACH:

Yes.

CHAIR RODRIGUEZ:

Okay. Commissioner Davidson.

VICE-CHAIR DAVIDSON:

Thank you. I just, then, would like Gavin, for you to do a little research and make sure what day we actually had the meeting in January. And then, also, as you stated Commissioner Beach, I did not take over the first of the year. I don't know if that makes any difference...

COMMISSIONER BEACH:

That's what I was kind of alluding to.

VICE-CHAIR DAVIDSON:

...because I took over mid-term as Vice-Chair. I don't know if that makes a difference, but just so we have those answers and we can make sure, procedurally, we're following all the rules and do everything properly.

COMMISSIONER HILLMAN:

Well, just as a point of clarification, and I think you'll remember this from last year, in what we've done, is that at the January meeting, that's the first meeting in which the new Chair would assume duties. Now, in the past, the oath of office had occurred before the January meeting, they weren't on the same day. Last year, the oath of office and the first meeting happened on the same day, so that made it a little different. But the incumbent Chair has always convened the January meeting and then turned the gavel over to the new Chair.

CHAIR RODRIGUEZ:

So, in terms of process, Mr. Gilmour, do we need to do anything or just table this item?

GENERAL COUNSEL GILMOUR:

You can do it either way. You can table it and it must be brought up next time, then. Usually, you already have a motion when you table something. If you just, basically, say you're not going to get to it, it's not going to be brought up, it can be reconsidered in old business or, as I said again, brought up via tally vote.

CHAIR RODRIGUEZ:

By a tally vote, okay. And Mr. Wilkey, just for our information, can you have someone look up to see when I assumed the gavel in

January, just so we have a clear idea, by when we need to either meet or vote by tally? Very good, thank you.

All right, the much anticipated discussion on the 2008 Election Survey. Ms. Lynn-Dyson, I'll invite you up, Sean Hogan, the Deputy Project Manager of the Election Day Survey from RTI International, and Susannah Goodman from Common Cause.

And Secretary Browning, we have carved out time for you at the end of this panel, but in time, so that you can make your next appointment.

SECRETARY BROWNING:

That's fine, thank you.

CHAIR RODRIGUEZ:

Thank you very much. Ms. Lynn-Dyson.

MS. LYNN-DYSON:

Commissioners, Mr. Wilkey and Deputy General Counsel Gilmour, I'm pleased to come before the Commission today, to provide you and the public with some background on our 2008 Election Day Survey. I will allow Sean Hogan, who is the Deputy Project Manager with our contractor, the Research Triangle Institute, to provide you with a more detailed description of the process that has been implemented, thus far, on the execution of the survey along with the process that we'll be using to assist states with collecting and inputting their survey data into data templates and online tools that have been created for them.

Beginning last December, EAC and its 2006 Election Day Survey contractor, Election Data Services, conducted a series of teleconferences with each of the states in order to receive detailed

feedback on the 2006 survey, so that planning for the development of the 2008 survey could begin. During January and February of this year, EAC staff and Election Data Services developed an early draft of the 2008 survey and developed a draft of a companion document, the 2008 Statutory Overview. I believe the development of this Statutory Overview and EAC's interest in cataloging the information contained in it is noteworthy, as it takes into account the tremendous differences in election terms and administrative practices employed by the states and territories.

As the Commissioners and Mr. Wilkey may recall, EAC research staff shared drafts of the 2008 Election Day Survey and the Statutory Overview with election officials during the winter meetings of the National Association of Secretaries of State, (NASS) and the National Association of State Election Directors, (NASED). Having gathered input from a wide range of sources, most especially election officials, who are responsible for compiling these election data, EAC research staff finalized that draft survey and began the OMB Paperwork Reduction Act clearance process in March of 2008 with the publication of the survey in the *Federal Register*.

At the conclusion of this 60-day public comment period, the EAC had received 53 comments. The majority of these comments centered on questions related to Election Day activities, followed by questions related to voter registration, UOCAVA, and the Statutory Overview. Comments related to election administration and election results were not as numerous. EAC staff cataloged each of these comments and with its contractor, RTI, worked to integrate

them by refining the wording and format of a number of the questions contained in the final version of the survey.

The public comment period occurred between March and May 2008, and EAC staff requested that because of the pending November election, OMB grant an emergency/expedited review and clearance for the survey. This review was completed and OMB approval of the final version of the 2008 Election Day Survey was granted in late September. The survey and the data templates that would allow states to enter the necessary election data were provided to the states in early October.

As you might gather from this brief chronology, EAC staff and our contractor, RTI, have worked diligently during the last year to create a survey instrument that will yield good information, along with the best, most reliable data possible. My staff, RTI staff, and I, very much, look forward to the next three months during which we will be working very intensively with each state's point of contact and its data collection teams to collect the data that is required from the survey.

Allow me to conclude, by noting that I'm very optimistic that we will be able to collect useful information that will help advance our agency's mandate to improve the conduct of elections. Thus far, we've been able to collect the information contained in the Statutory Overview from 49 states and anticipate receiving a draft report from the Research Triangle Institute summarizing that information in late December. States have been asked to complete and submit their 2008 Election Day Survey data to the EAC in early March. I expect the draft reports specifically related to the NVRA

and UOCAVA portions of the survey will be ready for EAC staff to view in May and that EAC will meet its mandate to report to Congress on NVRA in June and on UOCAVA in the summer. The overall report on the findings and analysis of the 2008 Election Day Survey is on track to be completed and ready for review in the fall.

Thank you.

CHAIR RODRIGUEZ:

Very well. And I have a brief bio for Dr. Hogan. Should I proceed?

MS. LYNN-DYSON:

By all means.

CHAIR RODRIGUEZ:

Sean O. Hogan, Ph.D. is a survey director at RTI International. Based in RTI's Chicago office, Dr. Hogan has more than 12 years experience in the design, implementation, and analysis of qualitative and quantitative research efforts. Dr. Hogan has held responsibility for all facets of research projects, including staffing, financial management, quality assurance, client relations, data collection and reporting. He's developed and implemented numerous quantitative and qualitative reviews of decision-makers such as elected and appointed officials, business managers, physicians and athletes. Prior to joining RTI Dr. Hogan managed research teams at the University of Illinois and University of Wisconsin. He has published in the areas of elections and campaigns, voter attitudes, state governing systems and survey methodology. He earned his Ph.D. in public policy analysis and master's degree in political science from the University of Illinois in Chicago.

Dr. Hogan.

DR. HOGAN:

Thank you. Madam Chair, Commissioners, Executive Director Wilkey, I appreciate the opportunity to speak to you today. I'm here on behalf of RTI International and I am summarizing our progress on the 2008 Election Administration & Voting Survey. I am Sean Hogan, the Deputy Project Director for the Election Survey. Our project director, Toby Moore, asked me to express his regrets that he was unable to be here today.

We are delighted to bring you the resources of a large research institute to bear on the Election Day Survey, and RTI is proud to support this important work of the EAC. RTI is one of the country's largest not-for-profit research institutes, with more than 2,500 employees in offices around the country and overseas.

RTI began work on the Election Day Survey in July of this year. Our first task was to organize our team of researchers, programmers, subcontractors and consultants to help administer the Election Survey.

Please allow me to describe briefly how we organized our staff on this project. Dr. Moore has overall responsibility for our project. Before joining RTI, Dr. Moore was a redistricting expert for the Department of Justice and he served as project manager for the Center for Democracy and Election Management at the American University. He is involved in each step of our outreach to individual states and coordinating the work with our research partners. Dr. Moore is responsible for making sure we adhere to our deadlines and to our budget.

I came on board in the project in October and my job was to oversee the data collection activities, and to work with our programmers, our subcontractors to facilitate the communication of the data. My Ph.D. is in public policy analysis and I have spent my career in the field of data collection. I have been with RTI for five years. Our colleague, Ryan Gordon, is a survey specialist and he is also heavily involved in all phases of our projects. Nathan Sikes from our Research Computing Division is overseeing the development of the Election Survey web page and our programmed instruments.

We are working with colleagues at three universities and two consulting firms in the execution of the Election Survey. The experience of our consultants on past Election Day Surveys has helped us to anticipate and to address potential problems in gaining state cooperation. We have also enjoyed working with Karen Lynn-Dyson and Shelly Anderson, who have been directing our efforts.

Since beginning work, we have worked with EAC staff to prepare the proposed surveys for review at OMB and to publish announcements in the *Federal Register*. We received and acted on the public comments. This feedback has led us to make minor revisions that lent greater clarity to the questions. This feedback has helped us to ensure that appropriate response options would be available to meet the needs of each jurisdiction. Our next step was to format and to administer the two components of the Election Day Survey. Our first component was the quantitative portion, and the second is the Statutory Overview. We are currently beginning

to collect the quantitative information while we are preparing our analysis for the Statutory Overview.

The Statutory Overview is a new feature of the Election Survey. It will serve two purposes. First, it will allow the EAC, researchers, legislators, and others to compare state laws and regulations governing elections in the states and territories. Second, it will provide a richer context for understanding the quantitative data that the states will submit next year.

The Statutory Overview is organized into three sections and covers 30 questions. It addresses laws and regulations related to the conduct of elections. It asks states to describe how they verify eligibility for voters and how they remove names from voter rolls. It collects information about how states use terms such as “spoiled ballot,” and “defective ballot,” “absentee voting,” “active voter,” or “inactive voter.”

We transmitted the Statutory Overview to the states and territories in September. We assigned three members of our staff, including Dr. Moore and myself, to provide technical assistance and encouragement to the 55 states and territories. We have each made periodic telephone and email contact, and so far we have received 49 completed surveys from 55 jurisdictions.

On November 18, we sent the responses that we had in our possession to Moritz College of Law at The Ohio State University. Professor Dan Tokaji and his staff are performing the analysis and preparing a report for the EAC. A draft of this report of the Statutory Overview data set will be delivered at the end of this month. Karen Lynn-Dyson and her team will review and comment

on the draft before we submit the final document in February. We will provide EAC with full text responses of each of the questions in an electronic format.

The quantitative portion of the Election Day Survey focuses on collecting total numbers of voters, such as the numbers of UOCAVA voters, numbers of absentee voters, and so on. It is organized into six separate sections and covers 835 data points. This is a large and complex data collection activity and we recognize that it is no small task for the states to collect and to report these data to us.

Due to the complexity of this, RTI has implemented several steps to facilitate states' cooperation. First, we organized the states and territories, as I mentioned earlier, so that each of us at RTI is responsible to provide support to a subset of jurisdictions. This fosters familiarity between the states and the RTI team member assigned to support that jurisdiction.

Second, we distributed the final version of the questionnaire in September. By sending it prior to the election, states were able to anticipate the types of information that we would be collecting. Third, we distributed a pre-formatted template for data entry. Fourth, we developed a website that states can log onto and post their data and receive updates from us. Fifth, we continue to adapt our data collection instruments to minimize the burdens on the states, to maintain scientific rigor, and maximize the return of reliable data.

The backbone of our data collection is a customized, electronic data entry template. We sent these by email to each of

the states and territories. Each state has its own template, which lists the local jurisdictions by name and FIPS code. The template is programmed to minimize data entry error by summing selected responses to numeric entries, or by blocking out-of-range entries.

As you see on the slide here, if you can make it out, we have a sample from the State of Wisconsin. As you scroll across line 11, the individual questions will pop up in the box with the yellow background. There are shorthand names for the questions rolling across the top in the purple background and then down the columns are the places for the entries for the individual jurisdictions within each state. At the bottom is a blocked area and that summarizes the numeric entries that the individuals in the states supply to us. It automatically sums those data for them.

So we anticipate that the states will vary significantly in how they collect these data. So RTI has worked with states individually to provide them with customized tools that will help them to perform this task. For example, we recently produced a customized data collection instrument to accommodate a request from the State of California.

Here is an example of our website, and you can barely make it out, but on the left-hand side are hyper-links. They provide additional copies of both the quantitative and qualitative portions of the Election Day Survey. We have supplemental instructions. We have a web-log going on there so that we keep communication going with the jurisdictions. We have links to the EAC itself and to other election offices. And we have a link to the Department of Justice's Enforcement Bureau.

Finally, once we have received all of the data from our states, they will upload it through the website or directly through email to us, or by whatever means is most appropriate to them. Once we have received it, each of our data collection staff will then review these results. We will ask the states to verify responses before we assemble it into a final data set and at that point we will work with our consultants to begin our analysis and to draft various reports that are required by the EAC.

Thank you very much. And I would be happy to answer any questions you may have of us.

CHAIR RODRIGUEZ:

Thank you, Dr. Hogan. I think I'll go through all three presentations before we take questions.

Our next speaker this afternoon is Susannah Goodman. She is the Director of the Election Reform Project at Common Cause where she works with national staff and Common Cause state offices and a wide range of coalition partners and advisors to press for reforms that repair and strengthen our elections process at both the state and federal level. She was director of the 2008 Common Cause Election Protection efforts. She's the co-author of a number of reports and papers on voting reform, including most recently "Is America Ready to Vote? State Preparation for voting Machine Problems in 2008", which was recently released with the Brennan Center for Justice and the Verified Voting Foundation and "Voting at Risk 2008", which was released with the Verified Voting Foundation. Ms. Goodman has presented testimony to Congressional Committees and appeared on national and local

television and radio programs as an advocate of voting reform. She joined Common Cause after 15 years of work as an advocate and organizer with various organizations, including Public Citizen and Podesta Associates. She's a graduate of Wesleyan University.

And the reason Ms. Goodman is on this part of the program is, she represents those who submitted comments to the Election Day Survey advocating for something that we didn't include in the survey, and that is the collection of machine malfunctions and anomalies. And recently -- I guess we didn't communicate broadly enough, the final survey and whose comments had been accepted in the final version. And there's been a lot of questions about why we did it the way we did it, and so we thought we'd give those a public airing. And I thank you Ms. Goodman for coming today.

MS. GOODMAN:

Thank you very much, Chair Rodriguez and the Commissioners for having this hearing, Executive Director Wilkey, and General Counsel Gilmour. It's good to be here today and to testify on the importance of reinstating questions about voting machine performance into the Election Day Survey as part of an overall effort to track and share information on voting system performance.

Common Cause is a national non-partisan, non-profit public advocacy organization founded in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process and to hold their elective leaders accountable to the public interest. With 36 state organizations, we have been at the forefront of election reform advocacy working to improve accessibility, accuracy, transparency and verifiability in our democratic process.

My spoken testimony follows in two parts. First, I'll discuss the need for the federal effort to track information on voting system performance as part of an overall program to improve elections. And, second, I'll discuss how reinstating questions on voting system performance into the Election Day Survey can be a meaningful part of the process.

In the interest of time, I've trimmed these remarks to be shorter than the written version. And I just would like to say in advance that, you know, I've had the opportunity to talk with folks from EDS and RTI about, you know, how to address this problem going forward so that we can just really resolve this constructively.

Like all machines, voting systems are not problem free. Touch screens go out of calibration, paper trail printers jamb, optical scanners malfunction, software bugs, inadequate code and programming problems have all occurred. Systemic problems in the tabulation equipment have led to the loss of votes. And all of these malfunctions have, at times, led to serious problems for election officials as undervotes, lost votes and phantom votes have thrown the outcome of a number of elections in question.

Perhaps in anticipation that problems with new voting equipment might occur, and as prudent stewards of the billions of taxpayer dollars spent on some of this equipment, the drafters of HAVA charge the Election Assistance Commission with "maintaining a clearinghouse of information on the experiences of state and local governments and operating voting systems in general" so that election officials in one jurisdiction might learn of problems and forewarn election officials in other jurisdictions.

If we begin a system of tracking these problems through different means, including the EAC Election Day Survey, election officials can have what they need in advance to be forewarned. For example, as we all know after the March primary in Ohio, it was discovered that a central tabulator manufactured by Premier failed to upload hundreds of votes from memory cards. The problem, it was discovered was a “logic error” of the central tabulator. Premier eventually sent out an advisory to all election officials warning of the faulty product and that it may fail to upload votes and how to prevent vote loss. However, that advisory didn’t run until August of this year. It’s important to note that this problem may have been identified as early as 2004. In DuPage County, Illinois, a remarkably similar problem occurred with the Premier central tabulator -- then Diebold central tabulator failed to properly upload memory cards during the March primary. Election officials, not only in Ohio, but in all of the jurisdictions using Diebold/Premier systems, could have benefited from this information.

At present, election administrators must rely on voting machine vendors to voluntarily alert election officials to system irregularities. And, unfortunately, not all vendors are forthcoming. On October 3rd, the Washington, D.C. city council held a hearing to investigate voting system malfunctions that generated 1,500 phantom votes in the District primary. The D.C. council members asked representatives from the Sequoia Voting Systems if their equipment or software had ever previously malfunctioned or produced incorrect totals. Sequoia had testified that it had not.

And one of the council members later produced news accounts of Sequoia voting equipment malfunctions from different states.

It's clear that there's a need to collect, track and share information about voting system performance, and this has been identified as a problem for election administrators by the General Accounting Office in at least two GAO reports. In its 2005 report, *Federal Efforts to Improve Security and Reliability of Electronic Voting Systems are Under Way, but Key Activities Need to be Completed*, the GAO concluded: "The continued absence of a national clearinghouse for voting system problems means that segments of the election community may continue to acquire and operate their systems without the benefit of critical information learned by others regarding the security and reliability of those systems." The GAO again held a similar conclusion in its report on voting system performance in 2008.

Clearly, there's an outstanding need to collect data on voting system performance so that election officials can have access to information about the strengths and weaknesses of their systems and can prepare for irregularities that could occur.

Common Cause is committed to working with the EAC and state and local governments, the Administration and Congress to expand the work the EAC has already begun to track voting system performance.

That said, the need to collect information is urgent and, therefore, we urge the EAC to begin collecting information on voting equipment incidents through less prescribed and complex methods,

starting by reinstating questions on voting system performance in the Election Day Survey.

As you know, the 2004 Election Day Survey included basic questions on voting system performance, which exposed some common problem areas but the overall data collection was insufficient. In comments, Election Data Services, the contractor who compiled the survey results, recommended the EAC expand collection of data on voting system performance, stating, "We recommend that the EAC institute a more extensive program designed to investigate reported voting equipment problems...with wide ranging rumors and reports of voting equipment problems that came out of the 2004 election, there is a lack of full information to substantiate or dispel the rumors." Unfortunately, questions on voting machine performance have been removed from both or were just not put into the 2006 and 2008 surveys.

While we understand that the Election Day Survey is not the only instrument to collect data, and that it is an imperfect instrument, a correctly worded, funded, set of questions on voting system performance is critical to improving our voting systems so that the public and election officials can understand performance problems and be prepared for them. We recommend that the EAC take the following steps in fairly short order:

- 1) Solicit information from states, perhaps using the current survey as a vehicle about those jurisdictions which currently have exemplary practices in collecting data on voting system performance and election administration. In other words, if there

are best practices currently in existence, the EAC should query state officials to bring them to light.

For example, Maricopa County, Arizona, has established a robust, award winning program for election incident reporting, which includes real time reports called in by election workers and voters. The data gathered from the Maricopa hotlines serves both to quickly resolve problems on Election Day and to alert election administrators to problems which are systemic, be they related to voting machine performance, language assistance or disability access. The data is stored in a sortable, accessible database. A review of this type of program can help inform how the Election Day Survey can include questions on voting system performance in the future.

2) Work with experts in the field of election administration and data collection to determine how best to craft questions and create a good survey instrument to collect data on voting system performance.

3) Perhaps conduct a pilot program in collecting this data during the next off cycle federal election to inform questions for the 2010 survey.

We understand that this effort will take time and resources, but we will be willing to assist in any way that we can to facilitate this process.

We need to have a comprehensive understanding of how well these systems have performed. A great first step would be to include detailed specifics about voting machine performance in the Election Day Survey and we'll be happy to work with EAC,

Congress and state and local election officials to strengthen this vital undertaking.

Thank you very much for your time.

CHAIR RODRIGUEZ:

Thank you. All right, thank you panelists. And now I'll open it up for questions from the Commission. Are there any questions or comments from the Commission at this point? Commissioner Hillman.

COMMISSIONER HILLMAN:

I do. And I don't know if it will go to the second -- or be covered under the second panel, but maybe it's a question for the Executive Director. In terms of what information EAC will collect about system performance and problems under the testing and certification program, could you just help put some of the comments today and what's in our Election Day Survey in context with that? Because for me it feels like that piece is missing from this discussion.

EXECUTIVE DIRECTOR WILKEY:

Under our certification and testing process, which the Commission has adopted, there is a requirement that once a system is certified by the EAC that the vendor is responsible for notifying the EAC of any anomalies or any problems that occur with that system. And that is so that we can take the necessary steps to investigate that situation and perhaps go through a decertification process if necessary. Now I believe, and Counsel who worked carefully on our manual, could probably attest, I believe, that if they do not

report this information and we were later to discover this information that also could lead to decertification of that equipment.

There was a lot of discussion during the development of the certification manual on this issue, and one of the reasons that we decided to go this route is that we had some real ability and authority to do something. And by having the risk of losing a certification that they had paid a great deal of money and went through a great deal of effort to do, that we would have the ability to decertify if this information exposed problems that needed to be either recertified or if they didn't give us the information that we could go through a decertification process. So we have that ability to do that under our certification program.

And I'll let Counsel comment on his...

COMMISSIONER HILLMAN:

Okay. And just for when Counsel comments as well, because I guess I'm trying to get the real time report of this, that is what would the anticipated lag time be between when the incident would happen, under our testing and certification program, and when we would be notified of it.

GENERAL COUNSEL GILMOUR:

Our Executive Director is correct. There is the requirement the manufacturers provide that information. I do not recall the specific timelines. There's not an annual reporting period but rather a responsibility to report at any time in the process where something is known to them to immediately report that to the EAC.

There's also a part of that program, again we're talking about for certified systems here, whereby election officials have a form

essentially to report anomalies. This is a second tool, where it's basically a form on our website where if election officials in the field who have first-hand experienced something we give them the tool that they can report it to us. And, again, so it's not just again the manufacturers but also these election officials also have this anomaly reporting tool. And, again, that would be really -- we can't place requirements that election officials have to report to us. It really is a means by which they can. We can't make them. So, again, that would be sort of a voluntary reporting process. We would assume that would happen around election time, obviously.

COMMISSIONER HILLMAN:

Okay. So, finally, I can get to my question for Ms. Goodman, because I'm hearing three different things and so I'm trying to see where these three things connect, converge, go in opposite directions, I don't know. With respect to the Election Day Survey, the data is collected and due to us, remind me again, March of the year following the federal election?

MS. LYNN-DYSON:

That's correct, March.

COMMISSIONER HILLMAN:

So that's five months after -- November, December, January, February, March -- five months after the election happened. So it wouldn't be timely. And by the time EAC collects it and has it in a format to publicly report, it's another period of time. So we're talking about data that is six months old. And I'm not saying it's not useful to have that there, but we also know that if it is a real issue a right thinking manufacturer has fixed it. By the time we report it,

then we're reporting a problem that no longer exists. So that's one thing I'm hearing.

Secondly, the issue of real time. That is, the example you used from Arizona. That's Election Day and they gather it that day. I don't know what Maricopa does with it; if they post it, share it, what they do with it, but that's more real time. Now there's no time to analyze what caused it, was it because there was a power flickering and it caused the machine to -- we don't know, we're just getting data.

And my concern is that on at least one or two occasions EAC has been admonished, if you will, for reporting data that came in from one source when the state did not even know that that complaint was coming to us and so it sort of caught them by surprise. So, you know, our policy says any state or local public official. Well, that could be anybody. That could be a mayor, a city council member, an elected school board member. It could be anybody. So I think that there's a question that I have for you, Susannah, about the value of reporting a problem when EAC can't ascertain whether it was a problem that was fixed within a couple of hours and it's no longer a problem, whether the reporting should be just to put people on notice, "You may experience this" or "Don't be surprised if this happens to you," or if what we're trying to get to are the more serious systemic problems that can't quickly be fixed by a technician on the spot and no longer a problem and the machines function properly for the rest of that election and the next couple, or three, elections coming up.

MS. GOODMAN:

I hope I can answer this question, and I'll follow-up in writing, too, because I think this is, you know, this is a big puzzle and what we're trying to do is create a system -- I mean other -- airplanes have -- the FAA has a system collecting problems, the National Highway Safety Transportation Agency has a robust system for collecting problems about problems with automobiles. This is really critical equipment that serves the public interest that was bought with public dollars. The EAC survey is a good instrument, among many sort of ways to collect data on voting system performance. And otherwise we're sort of left to -- I mean, we really have to think clearly going forward how best to collect this data. I think it will be very valuable data. I think it's a question of how to do this. And, again, I am not a data collection expert, but I did speak with RTI and EDS and this is their job, you know, and they were saying, you know, "Well, what you want to do is see who's doing a good job. Who knows how to do this. Who's collecting information that, you know, maybe there again -- for example with the GEMS tabulator, that whole issue if election officials are forewarned they can prevent the loss of votes if they go through these certain steps or processes. But that's a serious education issue. And that advisory didn't go out until August. So maybe that's the kind of thing that the survey data can give us a heads-up about in the future.

I mean, I think we can go forward and we can create something that really serves the public, election officials, everybody in a way that -- I mean, let's face it, we have a major fiscal crisis on our hands. We are not going to see the appropriation of, I would be surprised, of another billion dollars for voting systems. We're kind

of are going to work with what we've got for a while. So let's find what the problem areas are, what the glitches are and, you know, help election officials cope with those so that mistakes don't have to be repeated again and again. And that's what the GAO has said on a number of different occasions and the EAC Advisory Board.

So, I mean, I think this survey that you have today is good, you know, and I think if we had been more forceful advocates in the spring there would have been questions on voting system performance. I think they will be valuable.

COMMISSIONER HILLMAN:

Just a quick follow-up. So the issue of a six to nine month lag time before those items are reported from when they allegedly happened isn't a concern to the community?

MS. GOODMAN:

No, because I think that's why you give the survey to election officials ahead of time, I mean, because it's not -- you have to -- they know it's coming. I mean this is how -- and, again, I would leave this to the people that are professionals.

COMMISSIONER HILLMAN:

No, I meant for the people receiving the information. What I'm saying is...

MS. LYNN-DYSON:

The data.

MS. GOODMAN:

Right.

COMMISSIONER HILLMAN:

...the incident happens November 4th but people don't find out about it until September of 2009 because that's when the report comes out.

MS. GOODMAN:

Okay, that's right.

COMMISSIONER HILLMAN:

So the value of reporting nine months after the incident happened, I hear the other community that's saying, "What good is that? If EAC has the data, it's supposed to release it right away."

MS. GOODMAN:

Right.

COMMISSIONER HILLMAN:

So I'm a little bit -- and it may get to how we release the data...

MS. GOODMAN:

Yes.

COMMISSIONER HILLMAN:

...and what the process is that EAC has to go through, but at the very least we're still talking about four months, because the states don't have to report that data to us until March. So we've got four months in which anything could have happened with the alleged problem. That's what I'm trying to deal with.

MS. GOODMAN:

Right. Well, I guess I do think that, you know, number one, for example, Maricopa County and other states have that, you know, on Election Day, you know, their -- problems happen and they get resolved quickly or whatever. I mean, there's enormous troubleshooting, you all know this, on Election Day if there are

problems. And many times there are not problems. So it's likely that many of the problems would have been resolved, but not all of them or we wouldn't have this issue here today, we wouldn't have hearings at the D.C. city council, we wouldn't have this issue. Some of these issues -- I mean, we had this ongoing thing with Congressional hearings with, was it ballot design, or was it some programming error with Florida 13, you know. So, some issues go on. I think there's both -- there are hotlines and election administrators that are figuring out and have figured out how to troubleshoot on Election Day, which is, I think, your question, you know, is that going to be the EAC's job to, sort of, intervene in the running of an election.

COMMISSIONER HILLMAN:

No, no, I'm talking about the length of time it takes for us to make the information available.

MS. GOODMAN:

Right.

COMMISSIONER HILLMAN:

What you just raised is a different issue. The Election Day Survey collects data about November 4, 2008. States don't have to give it to us until March 2009 and it typically takes us until sometime between July and September to be able to release the data. So, we are releasing the data nine months after the incident happened and five to six months after received it, just because the way the wheels turn and we're a small agency with limited resources and do the best we can. And there may be a question or observation about the timing of this. Some is prescribed by law. I don't think

we'd ever get punished for releasing anything early. We certainly have deadlines by which we release information.

MS. GOODMAN:

Uh-huh, I understand.

COMMISSIONER HILLMAN:

So, the question is about the usefulness of this information being reported nine months after the incident happened.

MS. GOODMAN:

I'll be quick. I think it's very valuable. I would absolutely think it's valuable. I don't know if my colleagues want to comment on that.

COMMISSIONER HILLMAN:

Dr. Hogan, I would just ask you what your experience has been about the usefulness of data like this, in terms of when it's reported and how useful it is, and how we would manage that. I'm just asking the questions and trying to think about how something like this would unfold.

DR. HOGAN:

You would be able to observe trend data over the course of several elections to see the nature and the quantity of malfunctions.

COMMISSIONER HILLMAN:

Uh-huh.

DR. HOGAN:

But I don't think that it would be actionable the day of.

MS. GOODMAN:

Uh-huh.

COMMISSIONER HILLMAN;

Right. So, it wouldn't help a jurisdiction using that system to prepare for its 2009 elections, because they wouldn't see the data before then. I mean it's a long-term look at something.

MS. GOODMAN:

It is. And I think there's a place for that, absolutely.

CHAIR RODRIGUEZ:

Commissioner Davidson.

VICE-CHAIR DAVIDSON:

A couple of things. I mean, I think what Commissioner Hillman was trying to get to is, with our manual that we have for manufacturers they have to report it and that has to be timely, and that would go up on our web immediately. That's one of the reasons why we thought putting the responsibility there, and we have authority to put it there, I guess, is where I want to start. We don't have authority to mandate. You mentioned the GAO report. In there, it suggested that Congress give us the authority. Right now we do not have the authority to collect it, so it would be up to the states whether they give it to us or not. And that was one of the problems we had in collecting it before. Very few gave any information.

So, leading in to that, the other problem that we saw, Susan, is how to format the questions that the citizens are interested in knowing. What is a machine error and how different that is in one person's thinking than in another. So, like on Election Day, in Virginia, the ballots wouldn't go through the machines because it was raining outside and people were putting them up against their chest and then the reader wouldn't take it. Is that an anomaly that you see? Or is that just a problem that happened because of the

weather? And, you know, there is safeguards what a machine will take and what -- for instance, I was in Colorado and we had people try, because they didn't like the scanning device type of equipment, they tried to feed it tea bags, wet tea bags. If that had taken it, it wouldn't have survived and then it would have taken down that voting counting system for elections. So, how can we format questions where -- is that a problem when they put the ballot up against themselves and it got wet and damp and wouldn't go through? Do you think that's a machine error?

MS. GOODMAN:

You know, I don't know. And I think that's the kind of thing that the folks at RTI and EDS, you know, battle out. And that's why you have pilot programs and that's why you have, you know, that's why, you know, Toby Moore was -- we talked about this idea of states that do a good job asking these questions, because I'm not going to sit here today and tell you, yes, that's definitely machine error. I mean, is it a user? You're right, there's enormous complexity involved and we want to get it right. That's why I think this hearing was an excellent idea because we don't want to rush this. But I do think there's a way to ask these questions in an informed way.

I'm not an expert, and I think other people and getting the feedback, the kind of feedback that you got on the survey, I know it's a tremendous, tremendous undertaking and that you had lots of conference calls and there was a lot of feedback. And I understand that in the future there will be a lot of transparency with that process, and I think that will be terrific. And nobody is going to be totally happy with the survey, I get that. But I do think it's going to

be -- I think it will be an important part going forward. And I'm not brilliant at, you know, today coming up with -- I mean, I heard about the soggy ballots and I felt terrible for the election workers, you know.

VICE-CHAIR DAVIDSON:

On the radio like we did.

MS. GOODMAN:

I mean, what a terrible -- and I think they were innovative in how they were trying to solve the problem. I mean, you do the best you can. And so, you know, I think, you know, the new EAC certification process is going to be robust, but there -- let me ask, there are no machines out there that have been certified to it right now?

VICE-CHAIR DAVIDSON:

That is correct.

MS. GOODMAN:

Yes. So that's the problem, I mean, and I just don't know -- it's going to be awhile before this incredibly robust certification process is in place and all these great feedback loops are occurring. And we really need to do the best we can with what we've got.

VICE-CHAIR DAVIDSON:

I guess the other question I want to ask you is, you said you'd be of assistance and go to Congress to try to assist us. In reports that we get, obviously there's -- I saw by yours, nearly everything that you listed was not from election officials where you got your information. And to find out whether these are accurate or not, like

you mentioned other agencies that go out and really look into collecting data and really investigating, that takes money.

MS. GOODMAN:

Uh-huh.

VICE-CHAIR DAVIDSON:

They may have a few incidents. I mean, I think about airlines have a few incidents that they really investigate and it's a long, lengthy investigation. That does take money to do that. We do not have that kind of money now. Or is there areas that you see in our probably 11 to 12 million budget after we pay NIST for their work? Where would we cut to be able to do that? Do you have suggestions?

MS. GOODMAN:

I don't have your budget. I don't know, you know, but I'd be happy to, you know, work with what we have and work towards an EAC survey in the future that informs, you know -- that can show us these kinds of trends and things. And I understand that. I mean, I know the Consumer Product Safety Commission just, they finally got legislation passed to have a really, really terrific database and they had support to get a \$20 million appropriation. And, you know, that -- I know times are -- money is hard to come by and I understand that. But, you know, I think that this is critical. This is our democracy, and when the mechanics of it don't function, we all lose. And we can't tell the rest of the world how to runs theirs, you know. We really lose face. And I think this is a very critical function and I think, you know, that is our job, you know. Like I said, Common Cause, we're an advocacy organization and that's what

we will be telling folks; that this is something that, you know, we've got -- it's up there with GM and, you know, the banks.

COMMISSIONER HILLMAN:

So we should apply for some of that money that's available.

MS. GOODMAN:

Exactly, I think you should. Definitely.

COMMISSIONER HILLMAN:

Just on a serious note, when you say "it's up there with GM and the banks," what's the "it's"?

MS. GOODMAN:

I mean getting an appropriation for this agency -- for the Commission to do this work because it's that -- I think it's that important.

VICE-CHAIR DAVIDSON:

I think the last thing that I would like to -- and you can comment on it if you would like -- one of the biggest things when we were going through doing this survey trying to format questions and working with election officials in doing, time after time, telephone conferences, the questions came up of how we get correct information and it's the same for everybody, I mean, you know, all the states. And what one states sees one thing -- that's the reason why we're going through this effort this year of getting their laws/regulations -- how do they define a provisional ballot, you know. Getting more information to help us, because in getting data, it really doesn't serve us well unless we get it and it's the same for everybody. I believe if we went back out to do something like this, we'd have to go through the public comment again, am I correct in

that, doing public comment where we have the information? Did you give public comment on these issues?

MS. GOODMAN:

I think what I recommended in my testimony is, really, that we go forward here. I mean the Election Day Survey is out and election officials are working with what they've got. So, I'm not talking about -- the only question, at this point, that I would have election officials try to answer is, you know, do you have something like Maricopa County? Do you have currently a robust way of tracking the data? And that's a starting place. I do think that these questions take time, and I'm aware of the extraordinary time that you put into crafting the data. And I think having the new process in place where, you know, the comments -- I think that was just part of the problem was that there wasn't the transparency that is, you know, usually done with rulemaking and I think going forward that process is you've adopted it. It's going to be there.

VICE-CHAIR DAVIDSON:

You're aware of our Quick Starts that we do on different issues about election?

MS. GOODMAN:

No.

VICE-CHAIR DAVIDSON:

We've done, I don't know, 14, 16 of them. All different security, new systems...

MS. GOODMAN:

Okay, right. Oh, those? Yes.

VICE-CHAIR DAVIDSON:

...poll workers, all those, little booklets. Would that help if we could gather information from states and say, "Here's a project that a state utilizes" and we suggest this to other states?

MS. GOODMAN:

It may. Again, I will go look at all the Quick Starts and I'll get back to you in writing on that one.

VICE-CHAIR DAVIDSON:

All right.

MS. GOODMAN:

Absolutely.

VICE-CHAIR DAVIDSON:

Thank you.

CHAIR RODRIGUEZ:

Thank you. Commissioner Beach?

COMMISSIONER BEACH:

In your testimony, you cite, when you were talking about voting system performance and anomalies and things, you talk about vote flipping.

MS. GOODMAN:

Right.

COMMISSIONER BEACH:

And I wanted to get a better sense of what vote flipping is and what do you mean by that. And, you know, is it something that -- and who's held responsible? Is it the programmer? Is it the election official? Is it the manufacturer? I wonder if you can elaborate on that for me.

MS. GOODMAN:

You know, I think vote flipping, from what I've talked to engineers, you know, that it's understood that it's really a calibration issue and a mechanical problem, but the voter doesn't know that. And the voter says, "It took my -- it switched it on me." And, you know, there's a sort of, you know -- oh, actually this happened with Oprah I think where she went to vote for President and she didn't press it hard enough and she, you know, she was on The View, or whatever, I don't know. She had this whole thing about, "It didn't take my vote." But, you know, she had a poll worker who could sit down with her and say, "Look, just do it again. Press here," you know. And there's, sort of, ballot design ways to deal with calibration, and I think that's what we talk about. But again, when it gets reported in the press, it gets this spooky, "What bug is in there? Someone put a malicious code in there to do that." I think from all the mechanical experts that I've talked to, there's, you know, I don't know who's drilled down on all of this, but the consensus, broadly, from who I've talked to, again, this is my personal study, has been that it's calibration.

COMMISSIONER BEACH:

Okay. The jurisdictions that you cite in your testimony where this had occurred, do you know if they did any pre-election testing and if during that testing they discovered that this was a problem or it resulted in what you describe as a calibration issue?

MS. GOODMAN:

I think they all do the logic and accuracy testing I think, you know. So, you know, I don't know the answer to that. And I can look into that. And I think, you know, that it was Texas and West Virginia,

where the news organizations cited the examples. And so -- but it's a good question. I don't know the answer.

COMMISSIONER BEACH:

Thank you.

CHAIR RODRIGUEZ:

I've just got a couple of points, because I do want to bring Secretary Browning up right away, so he can make his next meeting.

We do have, now, a better way of reporting what we do with public comment.

MS. GOODMAN:

Right.

CHAIR RODRIGUEZ:

And so, in the future, I think we'll be better about explaining why we make the decisions that we make. If you had seen me on some of the calls about this issue, I was blue in the face pushing the testing and certification program. But I know there's a breach and I know that between now and the first system that we certify there's always unknowns that GAO has chimed in on and Commissioners have raised from time to time. So, I appreciate your interest in going forward. I'm glad that you don't want us to amend the 2008 survey, because I think there would be a lot of states very upset with the EAC and probably justifiably if we were to tell them now post-election, "Oh, yes, we need 17 to 23 more questions answered."

Congressman Holt was invited to be on this panel today and he submitted written testimony along with his initial letter to the Commission from May, which we'll have available for folks here.

And I guess that the drumbeat for this data from GAO, from at least individual members of Congress, from a number of election officials who signed a letter that they sent to us, I mean it's -- the crescendo is rising and so it's up to us to figure out how to appropriately, and it's got to be in conversation with our stakeholders, arrive at this information. And to me, real time is better than waiting months and months to get the information, and that's why I'm so encouraged by the requirements in our certification program. But, again, I recognize that there's a breach and we've got to cross that.

Okay, I would hope that you're going to be here for the next hour or so and then ask Secretary Browning, Mr. Douglas Kellner, Christopher Thomas and Candice Hoke to come up with the understanding that Secretary Browning gets to go first because...

VICE-CHAIR DAVIDSON:

Can we ask him a couple of questions after he testifies, if he has time?

CHAIR RODRIGUEZ:

Commissioner Davidson just asked if there are questions for Secretary Browning if we can take them...

SECRETARY BROWNING:

Absolutely.

CHAIR RODRIGUEZ:

...before we go to the other panelists. And that's okay?

SECRETARY BROWNING:

My schedule is fine, I can get a quick cab. I'm good.

CHAIR RODRIGUEZ:

You're always so generous with us. We appreciate it.

I'll start with the introduction of Secretary of State Kurt S. Browning. Mr. Browning was named Florida's Secretary of State by Governor Charlie Crist in December 2006. Before this appointment, Secretary Browning spent 26 years serving as the Supervisor of Elections for Pasco County. During his tenure as Supervisor of Elections, Secretary Browning was involved in Florida's elections community through service as the President of the Florida State Association of Supervisors of Elections, as a member of Governor Jeb Bush's Task Force on Election Procedures, Standards and Technology and as a member of the State Planning Committee for the Help America Vote Act.

Secretary Browning is a native Floridian, and received a bachelor's degree in Political Science and a master's degree in Public Administration from the University of South Florida. And his extensive community involvement includes service as President of Downtown Dade City Main Street, Inc., and involvement with organizations including the Boy Scouts of America and the Pasco County United Way. And he also can boast in 2008 of not being sued as a result of this election.

Secretary Browning.

SECRETARY BROWNING:

It was a miracle. Thank you, Madam Chair and Commissioners. I'm honored to be here today to testify about Florida's efforts to track voting system performance.

I believe Florida has one of the toughest certification programs in the nation, but certification is only the first step in this process. We monitor performance of the equipment to ensure that

the product that we certify is the product that's delivered to the counties and that's used by our voters.

Our Bureau of Voting System Certification, led by Bureau Chief David Drury, is responsible for establishing and implementing standards for voting system certification, to provide technical assistance to county Supervisors of Elections and to track voting system performance in the field. The Bureau is also developing in-house expertise for security assessment to promote a preventive philosophy towards security vulnerabilities.

As background, Florida became an all optical scan state on July 1 of 2008. 15, many of our largest counties, representing over half the registered voters, and that's 11.2 million registered voters in our state, made the transition from touchscreen to optical scan voting systems. In the year preceding the transition, the Bureau tested and certified 15 different systems or upgrades to voting systems, including Ballot on Demand. In addition, the Bureau conducted functional testing and source code review for the Okaloosa Distance Balloting Project. This project established a secure distance balloting environment for approximately 100 overseas voters.

I've been asked to cover three areas for evaluating system performance: Proactive measures taken by the Florida Department of State, Election Day monitoring, and reporting. I'll speak first to the proactive measures that we've taken.

In recent years, the nature of elections administration has become very reactive. It's been my goal this election cycle to be very deliberative and proactive in our preparations for the 2008

election cycle. The efforts of the Florida Department of State and the 67 Supervisors of Elections paid off. We planned and prepared for every eventuality, checked and rechecked those plans and most importantly we never assumed anything. As part of our planning and preparations, the Department took a number of proactive steps to ensure our state was ready. These steps helped us assess the performance of the voting systems in the field and their readiness for the anticipated large turnout.

My staff and I held monthly conference calls with the 67 Supervisors of Elections during the year preceding the general election to track the preparations for our statewide primary and the general election. Likewise, we held regular conference calls with voting system vendors on certification and equipment deployment issues.

My staff and I traveled to the 15 transition counties to offer assistance and assess the performance of the new equipment during this implementation phase.

The Bureau of Voting Systems Certification typically attends the voting systems vendors' user group meetings, which are held regularly throughout the state. These meetings provide a forum for county officials to discuss the performance of both new and older technology with the vendors and the state.

The Bureau of Voting Systems Certification is in constant communication with each county's IT staff. In July of this year, the Bureau hosted a voting systems roundtable discussion for county IT personnel. For the first time, this group was able to exchange ideas and share their observations in a large group setting

regardless of which vendors they used. This provided extremely valuable information for my staff to assess systems.

The Bureau of Voting Systems Certification analyzes the security procedures for all 67 counties in Florida, which they are required, by law, to file with us 45 days before any election they're going to be used in. And they provide recommendations -- we will provide recommendations for improvements and enhancements, as well as periodically releasing technical advisories to the counties.

Let me speak briefly about Election Day monitoring. Election Day monitoring is a bit of a misnomer. In Florida, the Bureau of Voting Systems Certification staff monitors Election Day preparations, early voting, Election Day, recounts and post-election audits as needed. The objective is to observe and examine the registration and elections processes and the condition, custody and operation of voting systems and equipment.

The Bureau of Voting Systems Certification deployed its personnel across the state for observation and support of the Presidential Preference Primary, our August primary and general election. During the past two years, the Division of Elections has traveled to and maintained a presence in 34 of the 67 counties during logic and accuracy tests, 32 counties during early voting and eight counties on Election Day. Typically, for each Election day, personnel are assigned to four geographic areas, and obviously those would be East, West, Central and South Florida.

In addition to the voting system personnel in the field, the 67 Supervisors of Elections are assigned a staff member from the Division of Elections and Office of the Secretary of State in

Tallahassee. During early voting and Election Day, these staff members contact their assigned counties to assess how the voting process is going. Voting systems issues reported by the counties are tracked by vendor and by equipment type. The issues are assigned to the Bureau for follow-up and coordination with the voting systems vendor to resolve them. This process has been extremely helpful in quickly assessing whether issues are isolated/county specific or if they're on a statewide basis.

Let me speak briefly to the reporting issues. The Florida Election Code mandates, I'll underline the word "mandates," a number of reports that the counties must file with the state. These reports have been a valuable tool for the Bureau of Voting Systems Certification to track voting systems performance. The primary objective is to promote continuous improvement in the voting process.

The Bureau is responsible for acquiring, analyzing and categorizing the various problems that occurred during an election. Typically, these issues can be grouped into four general categories: man, machine, materials and methods. Analysis of apparent systemic problems may reveal root cause or causes and offer the potential for developing mitigating strategies that can be applied statewide.

County Canvassing Boards are required to file a Conduct of Election Report with official certification for that election. This year we revised the form at my insistence to gather very specific information on the number of machines deployed, by type, the number that were removed or malfunctioned, and the reasons for

that removal. Counties also report to us issues with ballot printing, Ballot on Demand, any elections definitions issues, shortages of poll workers or procedural violations, and insufficient staffing for equipment at polling places.

Florida implemented post-election audits this past election cycle. Reports are filed by the counties detailing any discrepancies encountered, the likely cause of those discrepancies and the recommended corrective action to mitigate it in the future. The Bureau of Voting Systems Certifications examines these audit reports for concerns with the precinct and central count voting devices.

Finally, an overvote and undervote report is filed with the state. The objective is to analyze the over and undervotes from each general election, to ascertain the suitability and effectiveness of voting system technology. This analysis has sometimes been erroneously referred to as an error rate assessment of voting systems and has inappropriately been used to indicate the degree of tabulation uncertainty for each type of voting device. The actual intent of the over and undervote analysis relative to voting systems is in fact to assess the suitability and effectiveness of voting methods, voter education, voting processes, and procedures towards reducing inadvertent voter actions that result in an undervoted or overvoted ballot. However, the analysis is confounded by such problems as aggregated data from different voting methods and voter intent, such as voter apathy and possibly the protest vote.

In closing, let me share with you our preparations for the 2010 elections. Through our tracking efforts in 2008, we have suggestions for enhancements and improvements to both new and older systems. Voting systems are a constantly evolving product and it's the responsibility of state officials for testing and certification, observation in the field and analysis of reported data to ensure that these products not only perform as advertised, but continue to do so. I use the analogy of voting equipment needing to be a lot like an airplane, and I know that we used the FAA analogy already today, or the example. You know, it has to start up on time, it has to taxi down the runway, it has to get off the ground and fly as specified and it needs to stay in the air through the duration of that flight and then land safely with all of its components intact. With certainty -- with a very, very high level of certainty we know that the plane will take off, stay in the air and land safely. If not, no one in this room would ever get on another airplane.

The same cannot be said about voting systems. Voting system vendors must be held accountable for the equipment they produce, but it has been my policy to treat vendors as partners and not adversaries. We have had great success working together to improve the systems certified in Florida. To that end, I am hosting our three certified vendors next month to discuss my expectations for the 2010 election cycle and to build on those successes. I often use the analogy that elections are a lot like a three-legged stool. The state, the local elections official and the voting system vendors all must work together or the stool will fall over. If one fails, we all fail.

I thank you for the opportunity to speak with you today. I would be more than happy to answer any of your questions.

CHAIR RODRIGUEZ:

Thank you, Secretary Browning. And as prearranged, we'll allow questions now for Secretary Browning.

VICE-CHAIR DAVIDSON:

I could go first.

CHAIR RODRIGUEZ:

Commissioner Davidson.

VICE-CHAIR DAVIDSON:

Well, I think you indicated that you had the law behind you to require the locals to provide you this information. And I believe you also indicated that they give that throughout the year, as well as Election Day. Am I correct on that?

SECRETARY BROWNING:

Commissioner, there are reports that are statutorily required to be filed after the general election.

VICE-CHAIR DAVIDSON:

After, okay.

SECRETARY BROWNING:

Specifically, after the general election. However, the Conduct of Election Report is filed after every election. Whether it's a municipal election, special election, a regularly scheduled primary or general, that Conduct of Election Report is filed with the certificate by the County Canvassing Board. In my comments I made the note that I, at my request, specifically request that that Conduct of Election Report be expanded. Quite honestly, prior to

this election cycle the Conduct of Election Report was nothing more than checking a “yes” box or a “no” box through a series of questions and maybe you might get further information from the local elections officials if they wanted to give it to you. I wanted to get down into the weeds, if you will, as to the performance of voting systems and I wanted to know how many systems, actually, were deployed, and of those systems deployed how many were having to be removed from the polling place that day because of malfunction.

And I used the analogy of the airplane. This is my crusade for '09, and I will tell you that, and I make no bones about it and the vendors will hear about it when we meet next month, but I do not understand, I cannot fathom how you can produce automobiles, you can produce airplanes, you can produce washing machines, you can produce refrigerators, name the product, and you know that when you plug in it it's going to work. But with voting systems, there's just something systemically wrong that the products that are coming off the line are not dependable.

My goal in Florida, is that when we open the polls in 2010, that we have a very high level of confidence that when those Supervisors of Elections in the county plug those things in and turn them on it's like turning on your TV. We don't have to hold our breath to see if those things are going to come up, if they're going to work, and more importantly, if they're going to get through the day.

VICE-CHAIR DAVIDSON:

I know you do accuracy and logic tests, and I was there before your primary in one of your counties. With your certification program, whenever firmware has to be changed it has to go back through your certification. I know with the new system there was some changes in different manufacturers that you found that maybe it wasn't really providing what Florida law had to have on it to -- on the first that came out. I am giving the right information, aren't I? My understanding is correct that you have to certify every time there's a new firmware?

SECRETARY BROWNING:

Every time.

VICE-CHAIR DAVIDSON:

Every time.

SECRETARY BROWNING:

Every time.

VICE-CHAIR DAVIDSON:

And is the whole system ran through when you do that? Or is only the component of that firmware?

SECRETARY BROWNING:

It really depends on the magnitude of the change.

VICE-CHAIR DAVIDSON:

Of the change.

SECRETARY BROWNING:

And, again, if my staff were here they would probably be cringing be at this point, because I'm going some place where I should not be going.

VICE-CHAIR DAVIDSON:

Some of us only have enough information to be dangerous. Is that what the...

SECRETARY BROWNING:

Pretty much. What happens is, depending on the severity of the change or the magnitude of the change, we will make the change. If it's a minor change, we will make the change within that component and we will test it to make sure that it does -- fixes the problem or addresses the issue at hand. If my staff believes that it goes out into other pieces of the certification system or the tabulation system, then we, in fact, will do a full-blown certification. Anytime someone brings a system into Florida to have certified, we will, in fact, run that through our certification process top to bottom, including mass ballot counts.

VICE-CHAIR DAVIDSON:

Okay. All right, I'll share the time.

CHAIR RODRIGUEZ:

Thanks, we're running low. Commissioner Hillman.

COMMISSIONER HILLMAN:

Secretary Browning, the various reports from the ones you receive from the locals, through the analysis and the reports you issue, and whoever, how are they made public?

SECRETARY BROWNING:

Public records request. We generally -- I'm not sure we post those on our website. That's probably something that we probably need to do. But, certainly, folks in Florida know that the Conduct of Election Reports are there. They can get them from their local official or they can get them from the state. We get public records

requests all the time, voluminous public records requests for copies of those reports.

The overvote/undervote report, which I'm required to compile and present to the Governor and president of the Senate and Speaker of the House in January, we will be compiling that this month, obviously, and so they have an idea of the overvotes and undervotes. And then we do an analysis of those to see what kind of percentages were overvoted or undervoted based on the type of voting system or the type of manufacturer of that system.

COMMISSIONER HILLMAN:

So, currently Florida does not have any kind of a clearinghouse where it posts the reports?

SECRETARY BROWNING:

We do not. We do not. If there would be a clearinghouse, Commissioner, it would probably be in the Division of Elections in Tallahassee.

Let me just add that in Florida we are very decentralized state. Although I'm the state's chief elections official, I have very little authority, if you will, to mandate or require supervisors to do things. So, that is unlike other states. But there are certain things that they're required to do to us, but if there's something that I think that isn't complete in a report, I have no authority to go back to them and force them to give me information that I believe may need to be in that report.

COMMISSIONER HILLMAN:

Welcome to our world.

SECRETARY BROWNING:

My tune has changed since I've become the Secretary, as opposed to a local elections official.

COMMISSIONER HILLMAN:

That's a good segue to my next question, because I was going to ask about who has the responsibility for the care and custody of the machines. I mean, I understood it to be the counties. So, what is the interface between your authority to require the vendors to step up to the plate and the ongoing care and custody of the machines?

SECRETARY BROWNING:

That's a great question. As I said, we have the three-legged stool. We have the state, we have vendors and then we have the local elections officials/supervisors. In our law and in our administrative rule, it states that a county, a jurisdiction cannot buy a voting system unless it's been certified by the state Bureau of Voting Systems Certification. So we are the gatekeeper. If ES&S, Premier, Sequoia want to come in, or any other vendor, want to come in to Florida to do business, they must first come through the Division of Elections. They cannot even approach a local official about a voting system until that system has been certified through our Bureau.

When you have issues with certification issues, as far as anomalies in the system that need to be addressed, the states will convey that to us. They're getting better about letting us know about those things, typically, simultaneously with the manufacturer, so that we will work in concert with one another not wasting a lot of time duplicating our efforts. But there are three seats at that table. There is the state, there are the vendors and there are the local

election officials. So, that's the way that that process is governed. The equipment is, in fact, housed and maintained by the local Supervisors of Elections in each of the 67 counties.

COMMISSIONER HILLMAN:

And my final question and point that you touched on, I have been talking for the past couple of years as to what is the Federal Government's responsibility, or at the very least, what can the Federal Government do to motivate, I guess, is the word I'd have to use, the manufacturers to invest in research and development that will produce the type of voting system that's going to withstand what it is a voting system goes through; long periods of storage, different users, different people setting it up, different people being trained on it, climate conditions, whatever it is. I mean there are a lot of things that go into it, and I've always said, to get to calibration issues, I ought to be able to hang the voting system upside down from the ceiling and vote on it and it would give me an accurate vote. So, I don't like this sensitive calibration stuff, because unlike if the ATM machine did that I'd be overdrawing on a weekly basis. So, I'm wondering what Florida does to motivate the vendors to step up to the plate.

SECRETARY BROWNING:

Well, I think that this Secretary is a little different than Secretaries in the past, because I am much more in the weeds on elections issues than other Secretaries. I know what goes on in the field. And, quite honestly, the comment was already made this afternoon about the amounts of money, both county, state and federal money being spent on voting systems, and do we have any assurances

that on Election Day that those systems are going to perform as they were designed and certified to perform? I will answer that. No. That may be a very harsh criticism, but I just don't have the confidence to the point -- I know that those systems work and I'm very committed to the systems that we have certified in Florida. My concern is the sustainability of those systems; that why are they not manufactured to the level that you would automobiles or washing machines or refrigerators that when you plug it in you know it's going to work? I do not understand it.

And what we can do in Florida is, we can call the vendors to Tallahassee around the table and say, "We're going to decertify your system if you don't step up to the plate." We have a situation in Florida with one of our vendors, older technology, and we're not quite sure what they're going to do with it. And they've already certified a new version. Now the counties are toying with, "Well, why do I really need to buy the new version when I have the old version, even though there's this problem with it?" I'm at the point, and I've actually entertained the idea with my staff, of decertifying the old version forcing the counties to go out and buy new ones. That's a pretty extreme position to take.

But, you know, it frustrates me, because as an elections official we continue to get bombarded with -- and you read the reports from all different groups about equipment failures, equipment malfunctions and equipment doing this. And some of that is true. I think a great deal of it is not true. It's rumor or innuendo or "we heard." Regardless, we want to make sure, just in the manufacturing arena of voting systems, that we are getting a

high caliber, high quality piece of equipment that these counties through the state and the Federal Government are paying for. And I don't think we're there yet.

COMMISSIONER HILLMAN:

Thank you.

CHAIR RODRIGUEZ:

Thank you. Commissioner Beach doesn't have questions. Mr. Wilkey?

EXECUTIVE DIRECTOR WILKEY:

Thank you, Madam Chair. Just a fast comment and a question.

Being as I am very familiar with the State of Florida, for a number of reasons, I think that Florida has gotten a bad wrap in the past few years for a number of issues. And this is an excellent presentation and something which I hope gets shared with other states around the country, because I think what you're doing is marvelous and I commend you for it.

I just have one question. On your Conduct of Election Reports that are filed with the Division, are they all put into a big statewide report or compendium or a comprehensive report that the state would publish? Or are they all kept individually?

SECRETARY BROWNING:

They're all kept individually because -- now I say that, but my staff may, in fact, compile certain pieces of that information. I have a copy of our newly revised Conduct of Election Report that I will leave for you. You can take a look at it. Again that's for 2008. I'm sure by the time I have a chance to look at it again we're going to even make it more beefy for the 2010 election.

There's a lot of data, a lot of information out there that we need in order to make sure -- and have our voters have confidence and assurances that when they vote their ballot will count. And that's why we get this information. That's why we want to look at this information. And I think it goes beyond voting systems. It goes back to voter education. Do voters know? That's one of the things I stressed in 2008 on these 15 counties that moved from a touchscreen to optical scan, "Don't sit there supervisors, and assume that voters know how to darken in an oval. Don't assume that." And your voter education program does not stop the day before the election. As a matter of fact, the bulk of your voter education occurs on Election Day. I am confident there were people that went to the polls to vote on November 4th in Florida that had never seen an optical scan ballot and they were going -- they haven't read newspapers, they haven't seen anything in Florida, they go and they're looking for touchscreen voting systems in these counties and they just weren't there. So you have to educate that voter on how to darken in that oval.

So there's the equipment piece, but there's also this process that surrounds it that really needs to be looked at, and how do we go about doing our jobs to ensure that voters know that their ballot is cast properly and counted properly.

EXECUTIVE DIRECTOR WILKEY:

Thank you.

SECRETARY BROWNING:

Thank you.

CHAIR RODRIGUEZ:

Very good. I have one question and that is, you're going to meet with your vendors next month. Is it possible for the EAC to send a staff person to that meeting?

SECRETARY BROWNING:

Surely, I think it is. I don't know why it wouldn't be. Give us a call. My division director, Donald Palmer, is here today. Give him a call and we'll certainly see what we can do. I'm not sure if it's going to be one of those meetings where it's like what I call a woodshed or if it's going to be...

CHAIR RODRIGUEZ:

Been there. Been there.

SECRETARY BROWNING:

Yes, I've been in the woodshed a number of times. You know, basically the purpose of my meeting next month, if you'll pardon this phraseology, but I want to share my heart with them and I really want to put aside all of the technical stuff. They need to understand, when they have a piece of equipment, primarily, that rolls off their manufacturing lines, that it works and there's no holding your breath on Election Day. None. Doesn't need to be.

CHAIR RODRIGUEZ:

Okay. And Commissioner Davidson has a final question.

VICE-CHAIR DAVIDSON:

I just wanted to ask you, the report that you're leaving with us, would you mind if we put it up on our EAC website?

SECRETARY BROWNING:

Not at all.

VICE-CHAIR DAVIDSON:

And we might have you sign something so -- but this may be good enough, just, we're vocal. Thank you.

CHAIR RODRIGUEZ:

And these are the requirements for those reports, right?

SECRETARY BROWNING:

This is the report.

CHAIR RODRIGUEZ:

Oh, that actual report.

SECRETARY BROWNING:

This is the report that they have to complete and get back to us. I believe it's on our website, so that they can interactively fill it out. But it's there for you.

VICE-CHAIR DAVIDSON:

Very good, thank you.

CHAIR RODRIGUEZ:

Very good, thank you.

SECRETARY BROWNING:

Thank you so much.

CHAIR RODRIGUEZ:

Thank you for joining us.

SECRETARY BROWNING:

I'm going to stick around for a couple of minutes before I have to leave.

CHAIR RODRIGUEZ:

Okay. All right, I'm going to go in order of the agenda, if that's okay. I don't want to get in trouble with anybody, being a frequent visitor to that woodshed.

Douglas A. Kellner is our first speaker now. He has served as Co-Chair of the New York State Board of Elections since 2005. Before moving to the New York State Board, Mr. Kellner served as a Commissioner on the New York City Board of Elections from 1993 to 2005.

And in an abbreviated introduction, he's been an outspoken advocate for improving the voting process in New York, while insisting on transparency, verifiability, accuracy and uniformity in voting processes.

Thank you, Mr. Kellner.

MR. KELLNER:

Thank you Commissioners and Executive Director Wilkey. I really appreciate the fact that you are holding these hearings today. And I also applaud the EAC for its efforts to bring about transparency and also what I perceive, anyway, to be a real change in policy with respect to certification of voting equipment and taking that task very seriously and acting in a very responsible manner in the way EAC is proceeding with certification.

Transparency, when it comes to voting equipment, reminds me of an old Henny Youngman joke where the patient is in the doctor's office and the patient is saying to the doctor, "I don't know which is worse, the operation or paying for it." And the doctor turns to him and says, "Well, if that's a problem we can touch up the X-rays."

We have problems with our voting equipment. I certainly share Secretary Browning's frustration in dealing with vendors and getting the message that voting equipment needs to work. And I

think it's very important for us to promote transparency as part of the process not just for the consumers of election equipment, which are the local jurisdictions that purchase the equipment and have to operate it on Election Day, but also for the public that ultimately has to pay for it; that the more we get the message out as to what the issues are with voting equipment it's going to be easier to deal with the very real and substantial financial costs to address this problem.

To me, one of the important issues that I don't think is repeated enough is that right now there is no voting equipment on the market that complies with all of the current federal standards. And one of the important things as part of that message is that every local jurisdiction that's using the equipment ought to know in what ways their equipment does not comply with the current federal standards. And I think that relatively few election officials can answer that question and say, "Yes, we're using the ES&S DS200 and we're aware that the EAC has not yet certified that equipment, and we're aware that these are the several hundred discrepancies from the current federal guidelines that are involved with that equipment that the vendor still has not yet addressed." And the fact that that discussion doesn't seem to be going on on a routine basis is very troubling to me.

But I do applaud the fact that the EAC has not jumped to just certify equipment even though it has known discrepancies with the federal standards, but instead has been encouraging the vendors to go back to the drawing board and get their equipment up to standard.

That has also been the case in New York, where I think we have the most rigorous certification program in the country. We were the first state to incorporate the 2005 Voluntary Voting System Guidelines into our own regulations. And we have used our own technical experts, the New York State Technical Enterprise Corporation, to review the accredited independent testing authority to actually make sure that the testing authority is looking at each and every standard that is contained in their tests. What did we find early this year? Was that the testing authority was only looking at about 30 percent or so of the standards, and we immediately brought that information to the attention of the EAC and the EAC to its credit immediately responded to that by both reviewing the independent testing authority and also making sure that its own tests were actually testing to each and every one of its own standards. And that's an excellent process.

Now as my printed remarks indicated, I don't think there's any doubt that the EAC has jurisdiction to fully carry out its mandate as a clearinghouse and to analyze and to make investigations and reports on equipment. And with that authority it is not limited to just looking at reports on equipment that it has certified. And indeed since one hundred percent of the equipment in use in the country today is equipment that hasn't been certified by the EAC, it's really important that the EAC not just have narrow blinders and say, "We're only going to deal with equipment we've certified," but get the message out to the consumers of that equipment, the local election authorities who have to purchase it, on what the discrepancies are with that equipment. And when

there are major issues that come to the attention to the EAC, the EAC should use its authority to make reports, to distribute those reports to election officials in real time so that election officials can take remedial action when it's necessary.

My printed remarks talk about using the National Transportation Safety Board or the Consumer Product Safety Commission or the FDA as models of how to gather information, of how to do investigations and send reports. And Commissioner Davidson, you're absolutely right, it's an expensive process. We at the state level have to get the message out to Congress that this is an important federal function and that it's worth paying for because it's silly for 54 state jurisdictions to be doing the same investigatory work. It is silly for the states to be repeating the same certification work. That should be done on a national basis. And the only reason we have to do it in the states now is because we can't rely on what's been done at the national level in the past. So I think that's a very important message that certainly I am prepared to support the EAC's request for additional funding to go into this.

And then the second thing is the Paperwork Reduction Act. I certainly endorse getting an exemption for the EAC from the Paperwork Reduction Act. We at the state level need this information from the EAC and the EAC should not have to go through a bureaucratic rigmarole to provide that information to us.

And finally I wanted to address Commissioner Hillman's question, before, of saying, well, how do we motivate the manufacturers? And this is an extraordinarily difficult problem. We have the same problem in New York now, where we are in

certification testing for two vendors; the ES&S DS200 and the Sequoia Dominion Image Cast 200. And neither one of those systems complies with the current guidelines, complies with the current regulations, and so, neither one of them is eligible for certification today. Now, the problem is that the vendors have this attitude that they'll make corrections as needed to address problems that come up during the certification process, instead of testing the equipment themselves in advance. And the way we need to address that is by publicizing these deficiencies, so that the vendors realize that there's a downside. And the other side of the coin is that when the vendors finally do achieve certification, then that's going to be the Good Housekeeping Seal of Approval that really should give the vendors a competitive advantage in the market.

So again, I thank you for holding these hearings, and I hope that you will expand your information gathering and clearinghouse functions so that it includes uncertified equipment as well as the certified equipment.

CHAIR RODRIGUEZ:

Thank you, Mr. Kellner.

Our next speaker is Christopher Thomas. Mr. Thomas is employed by the Michigan Secretary of State as the Director of Elections and has served in this capacity since 1981. He administers the Michigan Election Law, Campaign Finance Act and Lobbyist Disclosure Law. He began his election administration career in 1974 in Washington, D.C. with the House of Representatives and the Federal Election Commission. Mr.

Thomas earned a bachelor of arts degree in political science from Michigan State University and a masters in urban affairs from St. Louis University in Missouri and graduated from Thomas Cooley Law School in Lansing. Mr. Thomas is actually also the Chairman of the Board of Advisors to the U.S. Election Assistance Commission.

Thank you for joining us today.

MR. THOMAS:

Thank you very much. I appreciate the invitation to come see you all again, and I bring greetings from Secretary of State Land.

I was asked to testify on a couple of issues, the first being the addition of questions to the Election Day Survey for 2008, and then the second is the manner in which Michigan handles voting system malfunctions.

And I'd like to note from the onset that I think the 2008 election was run extremely well. It was a long, arduous primary season followed by record breaking turnout in November and that thoroughly tested our election system. By all accounts, our election system performed well without valid documentation of any widespread problems or malfunctions. Of course, there are certainly room for improvements that can be made and systems can be better designed. Many of us are here this week in Washington to work with PEW and others to explore innovations in election administration. I believe that election officials across this nation feel extremely positive about the conduct of the 2008 election. We face the future coming off of a success. I cannot

imagine opposition to a properly constructed survey on voting system performance in 2008.

Now the issue of whether it should be on the Election Day Survey is something I'd like to revisit with you concerning NASED's, the National Association of State Election Directors, position on this survey. We have been interested in this for years, of course, and are interested in providing the data that you seek. In the past, our concern had been on how late the surveys came out. What we are finding that as states have developed their statewide voter registration databases is that many of the answers, the data, can be pre-programmed into those systems, which takes time and effort to do. So we have been pushing all along that it's important to nail down the survey as early as possible, so that states will be encouraged to incur the expenses and efforts that it takes to really pull this data from existing databases.

EAC, we appreciate the work that you've done with NASED in moving this process along to get these surveys done earlier. Frankly, we've asked that they be locked down two years in advance, and we think we ought to be working on the 2010 survey at this point, not the 2008 survey. So, I would not recommend that you use the current survey to collect these issues.

It's already been noted about the Paperwork Reduction Act and those problems, and also that the previous questions on the survey dealing with voting system issues, apparently, elicited a fairly low response. And I would think that you're dealing with a little bit of apples and oranges there. Most of the Election Day Survey is really quantitative and really getting into voting system

issues becomes a qualitative process that takes more investigation. So, again, I would not recommend that you put that question in here.

Now if the EAC wishes to gather a nationwide survey on voting systems performance issues, I would recommend a separate instrument be designed to achieve this goal. And I do believe that extreme care must be exercised in constructing the questions that will be asked of states and local jurisdictions. An inartfully drafted survey may produce results that improperly undercut the high credibility voters have in our election system.

I've been reviewing voting system issues for more than 27 years and rarely have found a clear-cut case where the voting system technology is the sole problem. There is usually a human element involved nearly every time. I've seen software coding issues where all the testing was completed but the error was not found until after Election Day. Investigation demonstrated that the pre-election reports were indeed performed, but never reviewed. So they served no real purpose.

On the EAC website you have a letter from the Oakland County Clerk in Michigan concerning an issue that was discovered by pre-election logic and accuracy testing. By the time you received the letter the issue was resolved. And this is a clear-cut case of a system working just as it's supposed to. The manufacturer working diligently with election officials found that the settings on the digital analog converter, or the DAC, required adjustment. Further, in some instances we found that the clerks were actually not properly preparing the test decks. Contrary to the

conclusion stated in the letter, any dust and debris build-up on the read-heads really was not the cause of the problem. And our consternation with that letter being posted was not that the letter was posted. If you want to post those kinds of letters, that's fine with us. Our consternation is that it was done the day before the election, which really didn't give anybody an opportunity to respond. And I'm amazed that you can post things at 5 o'clock on a Monday and it's on drive-time radio this morning. So you do have an impact out there. But again the issues are fine. When you want to post these letters, post them. Frankly, I don't think there's a lot of value to that letter and would, frankly, again encourage you to take it down. It was a problem that really wasn't a problem and it was resolved, as it's supposed to be.

In Michigan we maintain a close working relationship with our local officials, much like Secretary Browning and I won't repeat a lot of the same things that we do there, but we do maintain a separate email system that keeps us in constant contact with Michigan officials. We commit significant resources to training election officials on all aspects of election administration, including the pre-election testing that needs to be done in every single election. And Sue McRill from my office was here in September and talked to you in some detail about what we do in that regard.

In our regular interaction with election officials, I would like to note that Michigan did purchase the voting systems. And this was the first time that our state really was a party to contracts of actually buying systems. In the past that was always done by local jurisdictions, even though a vendor must go through us to get

approval of a system before they can purchase. So we negotiated the contracts with three optical scan voting system manufacturers and then we granted the ownership to the local jurisdictions after they selected their preferred manufacturer. Again, this was our first involvement there and it put us square in the middle of working with the manufacturer and the local election officials. We take this role very seriously and we basically have become advocates for our local election officials. If they're experiencing any serious problems with a voting system and are not getting results under the contract as they're supposed to, we're involved immediately.

Voting system issues typically come from the election officials that are seeking guidance on how to proceed with the issue. Even though the contract relationship is between the election official and the manufacturer, we routinely do the troubleshooting on problems that come up. I would not, however, characterize this as a real high volume practice. We also pay for the statewide Election Day support on all three of the manufacturers. So we do receive those logs that they maintain after each election for us to do follow-up.

So, if you do move forward with a survey, I would very much encourage that you involve election officials in the process of drafting these questions. I think the way the questions are drafted is critical and that one must make sure that we're sorting out serious system issues, from training issues, from people just sort of making dumb mistakes that turn into big issues on Election Day. We've seen the brush has been too broadly used over the years,

and so, we would like to see it focused down to delineating what the issues are and how they can be repaired.

So, again thank you very much. It's a pleasure to be here.

CHAIR RODRIGUEZ:

Thank you, Mr. Thomas.

Our final speaker is Candice Hoke. Professor Hoke is the founding Director of the Center for Election Integrity at Cleveland State University and an Associate Professor of Law. She was a Yale Law Journal editor, a judicial clerk for the U.S. Court of Appeals for the First Circuit in Boston and a staff member of the North Carolina Governor's Office before becoming a law professor. And again in an abbreviated introduction, she proposed and led the first post-election audit in Ohio, Cuyahoga, in November of 2006 and has served as an onsite consultant for post-election auditing in another of Ohio's major counties in March of 2008. Professor Hoke has testified to Congress on the need for independent election auditing as a critical component for rebuilding public trust in the election system. And she's a previous contributor to one of EAC's research projects.

Thank you for joining us.

DR. HOKE:

Thank you so much for inviting me. Good afternoon Commissioners, Director Wilkey and all staff. Thank you so much for inviting me for being here.

As your Chair just mentioned, our Center was the contract recipient for the College Poll worker Guidebook and also for the state law compendium governing poll workers. So we have a long

history of working with you and we have enjoyed it and learned a great deal from it.

I also admire, greatly, the new certification program and I know -- I have great confidence that the machinery that comes through that program will be enormously improved over what is in the field now. But this hearing, that I am also grateful that you are holding, is really designed, it seems to me, to ask what do we do given that our new certification system didn't produce the technology that is now being used to tabulate votes? And as has already been mentioned, it's unlikely, in my estimation as well, that we're going to have the public monies to buy the new technology for awhile. So there is a gap, a time gap. And it seems to me that this Commission is charged, not only in statute, but also given your expertise, to deal with this significant problem. You have the economies of scale, you have the leadership and you have enormous experience.

So with that, you asked me to tell you a little bit about the Public Monitor program in Cuyahoga County. And I'm happy to do that. And then I'll turn to a few other ideas about the voting system tracking inventory that you might create and other activities to try to bridge this gap between where you want the voting technology to be and where it is right now in the nation.

The Public Monitor came into existence after probably one of the worst election debacles on record. I was actually scheduled to come up here for an EAC hearing when we had this election, and every single system, every single task, it seemed, sustained some major problem. It caused the Cuyahoga Board of Election, which is

a bipartisan entity, to name basically a study group, an investigatory panel of three, of whom I was one, to get to the bottom of what had happened, what the causes of the problems were and also chart remedies. So we did that and we had a 60-day period, so I lost a great deal of weight during that period. But we had a massive report and the public entities also wanted to make sure it was implemented, so they had asked for a recommendation for a "monitor." So we produced that recommendation without recommending anyone. My Center was approached about becoming the Public Monitor and so we agreed.

Our primary responsibilities were to prepare the Board of Election for the fall of 2006 election. Because of our experience in poll worker matters, we chose -- we knew how significant the poll worker and polling place issues were. That was one of our foci. The other was the technical systems, because there had been problems with the -- the county was using the Diebold DREs in the polling locations for the first time in the May primary and then had used the central count scanning system for the absentee ballots. The absentee ballot scanning system never worked for the May primary. So it was assessed. We used one of your ITAs, in fact, to do the reassessment and it was reconfigured for the fall general election. So, we were looking primarily at the voting systems, as far as the technical team, but also the voter registration database focusing only on the voting technology here.

I had two prominent software engineers, who are law students, as well as an additional data professional who worked with me. I'm happy to say, I learned a great deal from these

individuals. We identified a number of risks to the election that had to do with the, and it's in my written statement in more detail, the JET engine, which is basically the inside mechanism on which the GEMS -- Diebold GEMS software sits. And it can only perform as well as its underlying software will allow. Well, this was an antiquated and is an antiquated kind of engine. And it has some documented problems that its own manufacturer/producer, Microsoft, had identified and placed on the website in 2005. And these concern, some of them, concurrency problems and the two gigabyte limit in the database.

In particular, Microsoft specified that this was not a product to be used for any application where high accuracy and high security were goals, which should have meant it not be used or it disclosed. Neither occurred. So my software engineers immediately identified this and said, "We have to bring this to the attention of the Board of Elections and to the vendor." And the vendor had technical people present. Long story short, the vendor denied that it was a problem, that it could be a problem, that it had ever affected elections. And so, we still insisted that in case it did we needed to have procedures that were already written out, contingency plans. You've held a number of important meetings about contingency planning. And that is a norm in the software industry. So Diebold did provide some plans. I'm sad to say that when the server crashed and froze, two different events, they didn't follow their own plans. They told the election officials to do something different.

To skip to the end point here, we asked for a database review with great difficulty. We were allowed to conduct a preliminary review and we found some significant indicators of database corruption. No further database review occurred. This was the unofficial database. The Board of Elections at that point was on notice to take care with regard to the JET aspects of the database. So we don't know what happened with the official database.

The important point it would seem for the EAC is that none of this information was made available nationally. We did produce a report, but there was no mechanism for the EAC to be able to try to gather this kind of information and to make it available elsewhere. The vendor did not disclose it and act on it in a product advisory for 18 months after we brought it to its attention. And then another piece of it it didn't bring to its customers' attention until August. Note, we brought all of this to their attention in October of 2006. And it wasn't just that we were so smart. This was information posted on Microsoft's website since 2005.

So, there is a gap and it would seem that this is the agency to remedy that gap to help empower election officials to conduct the most accurate, careful and accountable elections for the good of its people. And I believe that you can do that through the inventory, the voting system performance clearinghouse. Some of the concerns that have been expressed, I recognize these are valid concerns. We don't want false information to worry the public. But there are a variety of mechanisms that you could put into this inventory to balance the need for transparency, as you have all

stressed, and the need for collecting this information and not worrying the public. And that would be, I listed a number of these in my testimony, my written statement, that if election officials have a column the local officials can respond to the report. Even the state officials could respond. For instance, Mr. Thomas being able to say, "This didn't have anything to do with the problem, but it might be that the dust is a problem for another jurisdiction." They would know to ask the question. They might need to clean the optical scanning eye.

I believe that the more information that's out there the better. And you can place a disclaimer on this body, you're not checking, all you're doing is making this collection apparatus available. And then you're providing these columns for different responses and then all the jurisdictions can do with it as they wish. And it seems to me that that does then allow this body and your excellent staff to possibly look for constellations of problems, maybe help work with vendors, with state officials and start solving some of these problems. You don't have to have mandatory power in order to provide leadership. There are a number of people who think that mandatory/regulatory authority is the only way to go. Well, this agency has a leadership role and I think you can fill it in this area in a very significant way.

I don't want to take more time now. I'm sure you have some questions for this panel. There are a number of ways that I think that the EAC can serve the public and help to remedy the flaws in the voting systems now. And everyone on this panel, I'm sure, is

willing to work with you and there are hundreds, if not thousands, of people nationwide.

Thank you.

CHAIR RODRIGUEZ:

Thank you, Professor Hoke. I'll open it up for questions, and I'm going to ask one very brief one, using prerogative from my very last day as Chair, and ask Mr. Thomas are there -- it sounds like there are contract clauses that you can rely on in assuring the performance of your voting equipment in your state. We have talked at the EAC about putting, maybe, model contract language such as the ABA's model election code, which I learned about from the professor the other day, sort of a model type language that really works that's enforceable and make that available to all states that may not have it. And I just wonder what your impression of that kind of information would be, if you think that would be helpful.

MR. THOMAS:

Yes, it would be helpful. Essentially, what you've got is, each state or each jurisdiction sort of making their own up as they go along. You have this issue with the manufacturers, on what they're willing to do by way of changing any contract clause and that becomes contentious in itself.

When we did the statewide contract, I mean, we basically had to write the ITV and we wrote it as a contract. Those are basically contract provisions, performance provisions that these systems had to meet. So, we had the force of the state behind us, in terms of our management and budget department had gotten involved. Most local units don't have that level. So, anything that

you would do by way of model contract clauses or language, I think, would be very helpful.

MR. KELLNER:

Commissioner Rodriguez, could I just also endorse that? That that's another area of efficiency where, if there were staff devoted towards putting those kinds of model clauses together on a national level, that would save all of the state and local governments from that expenditure.

And then, wearing my other hat, I should let you know that Professor Joseph Hall of the Accurate Voting Foundation has had a project for the last few years of trying to collect all of the various contracts around the country. And so, he has a huge database, already, of contracts that would be a good place to start, if you're going to undertake that project.

CHAIR RODRIGUEZ:

Well, this is what happens when we talk to each other. We learn about those things.

I'll ask which Commissioner wants to go first.

COMMISSIONER HILLMAN:

I'll go, sure.

CHAIR RODRIGUEZ:

Commissioner Hillman.

COMMISSIONER HILLMAN:

I'm not shy. My question has a few layers, but it all revolves around the EAC's authority or not to review reports that are sent to us. And before I get to my question, I want to ask Mr. Kellner for clarification, because in your testimony you said that there's

nothing in HAVA that restricts EAC from collecting information and issuing the reports, but I thought I heard you say you didn't see anything that restricted EAC from investigating the reports or looking into the reports. So I'm wondering if you...

MR. KELLNER:

Section 241 is really the main authority I look to for that proposition, that you have the authority to investigate reports, if you decide that that's what you want to do.

COMMISSIONER HILLMAN:

Okay. So getting to the issue of a problem that's not a problem, providing the reports to EAC is voluntary. So maybe we get reports and maybe we don't and, you know, I don't know what the motivation be. So, my question for you Chris Thomas would be, what NASED's response would be to a request, or an invitation from EAC for regular real time reporting of anomalies that have encountered, and getting to your question about reporting a problem that's not a problem. Who makes the determination that it's not a problem before it gets reported? Obviously, if we were to agree with Mr. Kellner, you know, we'd investigate and try to make an independent determination, but that could take a few months. So...

MR. THOMAS:

It could take a few years.

COMMISSIONER HILLMAN:

Yes.

MR. THOMAS:

Seriously, I mean, if everything got set up here and if anytime you have an issue, you write a letter to the EAC and they'll put it up on the website and then you all are going to investigate that, you'd be chasing your tails for a long, long time. I don't have any problem with it going up but what I would ask for is, you know -- I understand you don't have authority to investigate it, but you have the ability to contact a state election official and you could get a sense, and you could go ahead and you'd have two letters up there. A second one would be nicer than what's up there now in the sense of saying, "Okay, this issue was reported and here's how it was resolved and, yes, we do take a different view as to what the resolution was." So you, basically, are just putting up a billboard right now, for people to put up there whatever they want, and you've got a disclaimer on there that you don't do anything to verify its accuracy.

Our only contention with it was when it was done. I mean the fact that it's up there is fine, if you want to put that up there. I don't know that it's your role to go investigate on some sort of real time basis, you know, two weeks before the election to see if something was fixed. That seems to me what the state ought to be doing and you could contact us and say, "Are you aware of this letter that we received? You're not cc'd on it. What's going on"? Now the other side of it is, it seems to me if there's value in the substance of these letters, does it have an impact on your voter certification program, in terms of something that is being shown from this vendor, that is a problem that perhaps your testing has not taken into account?

Now if you ask NASED for some sort of real time reporting, I'm not sure how that would work. I mean that pre-supposes that every state's got some sort of real time system, that every time someone has a problem, they're sending it in to us. Usually, what's happening is, it's telephone calls and it's problem solving, in fairly close proximity to an election of getting the issue resolved, making sure the vendors are there, making sure that the testing demonstrates that the problem has been resolved. I'm not sure where the federal role is in that, in terms of pre-election or Election Day. Now, if it has some value to you for the certification, we are more than willing to provide this information. That's not an issue for us. I don't see how we'd set up a real time process for doing that though.

COMMISSIONER HILLMAN:

And I think you answered my second question, was whether you agreed that HAVA gave EAC the authority to look into reports of anomalies.

MR. THOMAS:

Yes, I don't know. I've not looked at the law to see whether you have that authority from my perspective. I'd be happy to, but I -- it depends by what you mean by "look into" you know. If it's to pick the phone up and call the state election official and say, "Hey, we received this letter from one of your election officials, which seems to suggest that there's been some anomalies of the pre-election accuracy test. What's going on?" I don't see that as an investigation.

COMMISSIONER HILLMAN:

And a quick question for you, Ms. Hoke. Considering that the reporting of these things is voluntary, you know, EAC can issue an invitation, states and locals may or may not be interested in accepting the invitation, what would you suggest as things that might create the environment that would motivate states and locals to want to report? I mean there's two ways. One is, as was indicated earlier, trends. You're collecting data. You can see whether this appears to be a bigger problem than individual localities may appreciate. Logic and accuracy fixed this problem over here. We don't know if 500 other jurisdictions had the same problem. But the flip side of that is, not wanting to cause undue concern that there are all these problems out here and who's fixing them. If 7,000 jurisdictions were to report every anomaly, I mean, I couldn't even begin to imagine what the public would be thinking in hearing something like, you know, 10,000 problems were reported from the 2008 election for these following reasons. So, I just wondered if you have any thoughts on that.

DR. HOKE:

Some preliminary thoughts. That's a very important question and it might be to start the process and then to try to create some parameters. The goal here, it seems, is to promote the most accurate, accountable election possible. And so, the first order of business might be to find out what's going on out there, so that election officials can learn from one another, in particular, how to solve the problems; that there are some problems that might need to be solved.

I come from one of the largest election jurisdictions in the nation, but there are many, many more that don't have an IT staff whatsoever. And they may need to learn some of this and it could lead to additional kinds of projects then, particularly since vendor documentation is not very good, of some supplementary instructions. For instance, perhaps for new L&A testing, for some maintenance activities that would be better and other kinds of what in the field are called mitigations. But I think, at this point, it's a question of just trying to encourage the sharing, for the good of the election system, and to be able to solve the problems.

If we are also educating the public, in that all of us know technical equipment needs maintenance work, right, and that we have to go through different kinds of testing, but we have to identify problems in order to solve them and this is one of our mechanisms to do it, I think that you would find that the advocacy community would stand behind you, that we would work very hard as professors and advocates and election officials to help educate the media and the voting public, that this has to be part of a mature electorate. We have to maintain our equipment. We have to identify problems going forward, and that includes your new certification system.

The idea that -- I'm sure you have a goal for perfection. I doubt that we're going to achieve perfection this next go around. I think that we're going to have to just assume that, as in the general IT world, it's going to be a series of generations and it's going to be a series of lessons learned and mitigations and then new generations. And it's not a happy thought that way, but we're a lot

better off right now than we were with the Model "T" and we will be better I'm sure with the election equipment.

COMMISSIONER HILLMAN:

Thank you.

CHAIR RODRIGUEZ:

Thank you. Commissioner Hillman pulled the trigger for me, and that's the whole voluntary notion of the guidelines and how do we compel compliance with this investigation program. It's more than a slippery slope; that's almost a cliff in my head and I just can't get over it.

Commissioner Beach, do you have anything?

MR. KELLNER:

I think it should be voluntary.

DR. HOKE:

Yes.

MR. KELLNER:

I think it should be voluntary. But, you see, you can make disclosure. And, you know, as I said before, right now one hundred percent of the equipment that's used in the country doesn't comply with the guidelines. But do the election officials know why? Well in some states they do. In California after the top to bottom study, or in Ohio, I believe that those officials actually do know what the deficiencies are in their equipment. But there ought to be a central place where the elections commissioner from a small county who is buying equipment can find out just what the issues are, with respect to each equipment. And that's something that the EAC could perform a very valuable function.

CHAIR RODRIGUEZ:

Thank you. Commissioner Beach.

COMMISSIONER BEACH:

I think we can all agree that it's important to have preventative measures in place, you know, going into an election, particularly, you know, with the machines and also preventative measures such as poll worker training and preventative maintenance. And I know, Mr. Kellner, you talked about this in your testimony, and I wanted to ask you and Mr. Thomas if you can share with us kind of the preventative measures or preventative maintenance you have in place, such as any logic and accuracy testing or any audit procedures that you have.

MR. KELLNER:

Well, in New York City, you know, we established all of those in the 1990s. And I might add that in an election in New York City, you're talking about thousands of issues that come up on every Election Day. But cataloging those thousands and then going back and subdividing them is very important. And I wish that more resources were put into actually analyzing that data and then following up on them, because that's where you identify where additional poll worker training is needed.

Similarly, the same process, we try to encourage the counties in New York to do with the provisional ballots, which is to look at the reasons why provisional ballots were rejected and then to try to address those as well in their programs. New York law requires logic and accuracy testing for all of the scanning equipment, and that has been in place. Director Wilkey put that in

place when he was in charge of the New York State process and actually drafted those regulations.

CHAIR RODRIGUEZ:

Mr. Thomas.

MR. THOMAS:

I would just, by context, note that, you know, we have a very centralized system. We have over 1,500 cities and townships. They're the ones who own the systems and are required to maintain it. A few of them have any semblance of an IT department. 900 of the 1,500 are single precinct jurisdictions, so that means they have one tabulator. Now we have maintained warranties on those. They do their pre-election logic and accuracy tests. We monitor them to make sure that they get systems in and repaired. And we are currently drafting a contract to purchase preventative maintenance as we move forward.

One of the issues that I would add to Secretary Browning's comments, is, the longevity of these systems and they're not what they used to be, you know. There were -- the old Eagle optical scan systems used to be around for over ten years. I had one of the vendors tell me that he'd be surprised if they last seven years. So we looked at buying systems back in 2004. Seven years disappears quite quickly. And every state is now moving into the financial crisis that Michigan has been in for quite some time and I dare say, there's not going to be the money sitting there to do a lot of new purchasing. And all of this costs money. Whether it's maintenance contracts, the analysis that people want to do, it takes staff and time to do all of that.

COMMISSIONER BEACH:

Thank you.

CHAIR RODRIGUEZ:

Commissioner Davidson.

VICE-CHAIR DAVIDSON:

One is, I'm not quite sure that you realize we have a policy in effect currently that allows election officials and, what do I want to say, county officials to post a study that has been done. So your study could be up on our website if the Commissioners, or Commissioner, one Commissioner would even indicate that they wanted to put up there.

CHAIR RODRIGUEZ:

I think it is. Isn't it, Jeannie?

VICE-CHAIR DAVIDSON:

Is it up there?

CHAIR RODRIGUEZ:

Cuyahoga?

VICE-CHAIR DAVIDSON:

Does Cuyahoga have it up there? So...

CHAIR RODRIGUEZ:

I think it is.

VICE-CHAIR DAVIDSON:

I think it is. I think that that one's up there.

COMMISSIONER BEACH:

The EVEREST report is up there.

VICE-CHAIR DAVIDSON:

I'm pretty sure that California's is up there. So...

COMMISSIONER BEACH:

The EVEREST is.

DR. HOKE:

Yes. Ohio's is, yes

VICE-CHAIR DAVIDSON:

So the top to bottom is up there. States have been producing those to us and other people. I wasn't sure if you were completely aware that that could happen.

But we don't have any studies, I don't believe, from New York currently. Are you...

MR. KELLNER:

I think you have more from us than any other jurisdiction.

VICE-CHAIR DAVIDSON:

Well just lately you have done some, if I remember right. But do you -- we still have some people out there with lever machines. Do you have anything on lever machines that would be usable? Because we have a state that didn't choose to take the money and they're still continuing to use lever machines. So if you have a study on lever machines, that would be helpful.

MR. KELLNER:

Who is that Commissioner, besides New York?

VICE-CHAIR DAVIDSON:

Is it...

MR. KELLNER:

In New York we're still a hundred percent level machines, although...

VICE-CHAIR DAVIDSON:

You're moving, obviously.

MR. KELLNER:

...we very much want to replace them but only with certified equipment.

VICE-CHAIR DAVIDSON:

Well, I may be incorrect. Maybe it's...

CHAIR RODRIGUEZ:

Punch card.

VICE-CHAIR DAVIDSON:

It's punch card.

COMMISSIONER BEACH:

Punch cards.

EXECUTIVE DIRECTOR WILKEY:

Punch cards.

VICE-CHAIR DAVIDSON:

We have one state that didn't take money and they're punch card.

MR. KELLNER:

Well, Idaho still has punch cards.

VICE-CHAIR DAVIDSON:

Yes, so that may be what I was thinking about. But obviously anything that we can gather is very helpful to us as we talk about that process.

You know, you gave us a lot of suggestions of things that we can look at and different groups that are actually doing investigation, and obviously that will be information that we can look at in the future. But how deep we get involved with it is going to be

very much of how much we receive obviously the help to support that.

But I do want to say to each and every one of you, we really feel -- or I feel the election went very smoothly this year. The states put in contingency plans that really, really helped this process. And I think that was one of the things that really made for the election to run as smoothly as it did, plus the training that they have done with their poll workers and everything else. I commend you all for the work you've done and I do appreciate you being here today.

CHAIR RODRIGUEZ:

Mr. Gilmour, do you have any questions?

GENERAL COUNSEL GILMOUR:

No.

CHAIR RODRIGUEZ:

Mr. Wilkey?

EXECUTIVE DIRECTOR WILKEY:

I just have a comment. And again, I want to thank you for being here.

I didn't have an opportunity in the last segment to ask a question or comment, but I think Ms. Goodman made a very good suggestion in her testimony, in that we explore, perhaps, doing a pilot program. I've always been a big believer in doing something like that, because I think it helps you grow your program, establish what your parameters are going to be. And, in our particular case, it gives us an avenue to go to our authorities to get the resources that we need to be able to carry it out.

We have, as Commissioner Hillman has proposed, a whole policy on using working groups. And I can tell you that we have successfully used working groups in a number of areas in the past several years and they have been -- we've had some excellent people working with us on a variety of issues I think. Candice you've been with us on one. And I certainly would like to explore this a little bit further, perhaps make some recommendations back to the Commissioners about using a working group in this area to talk about -- to go through all of this testimony, take a look at perhaps what we could do within, I'm looking at my budget director back there, within the resources that we have and begin a process of perhaps, you know, looking at towards a modest program.

Certainly, I think we could get some assistance from NASED in working with us to see where we go, how far we go, what we have to collect and what we're going to do with it when we get it, because that's the most important point. We can collect all the data in the world, but we need to do the triage. What's not important? What's a training issue? What's a voter issue? What's a technical issue? And, you know, kind of put them into categories and then go from there.

So, I certainly, because of my long-term interest in this, would be glad to explore this with staff, make a recommendation to the Commissioners, and hopefully that will be one of our first working groups when we get the policy established. I think that that has triggered, at least in my mind, something that we can do to move forward on this issue.

COMMISSIONER HILLMAN:

Madam Chair, if I might, Mr. Wilkey, you know you hit on a sensitive subject for me because I have been, at every opportunity...

EXECUTIVE DIRECTOR WILKEY:

You've been noodling.

COMMISSIONER HILLMAN:

No, at every opportunity, promoting that Congress should appropriate some monies to the authorized line items that we can do pilot projects on this issue, you know. Congress asked states to embrace new equipment and new technology, authorized in the law, up to I think \$30 million for pilot projects and grants, to research and study this, but never appropriated the monies. And though, I think we could do a little something under our research and study or under our testing and certification, our real authority to engage and embrace this has gone unappropriated.

EXECUTIVE DIRECTOR WILKEY:

Yes, that's a good point Commissioner.

CHAIR RODRIGUEZ:

Very good.

EXECUTIVE DIRECTOR WILKEY:

We'll noodle that, too.

COMMISSIONER HILLMAN:

We'll noodle that, yes.

CHAIR RODRIGUEZ:

Make pasta.

Okay, we have on the web at www.eac.gov the statement of Representative Rush Holt on today's subject, as well as 19 other statements submitted by interested individuals and groups.

Now is the section for Commissioners' closing remarks before we move to a closed session. And so, I'm just going to thank, particularly, the staff for their support in the last year that I was the Chair, Jeannie Layson and Emily Jones for helping me coordinate the series of workshops in anticipation of Election Day and then, today, to sort of finish out that series. It's something that I would encourage future Chairs to continue. I know there is a lot of interest in the states in watching these, in some cases on the Monday morning following the meeting, watching the webcast of these presentations.

So, thank you to the staff and to my fellow Commissioners for indulging me in this series, and I hope it becomes institutionalized. And offer closing remarks to any other Commissioner.

EXECUTIVE DIRECTOR WILKEY:

Madam Chair?

CHAIR RODRIGUEZ:

Mr. Wilkey?

EXECUTIVE DIRECTOR WILKEY:

Before I forget, Commissioner Hillman had posed the question following my report this morning, and staff immediately was able to give me the information, so I want to include that for the record. And this was on the requirements payments that we issued out of the '08 money.

So far, we have North Dakota, Colorado, Montana and South Dakota, in which we have dispersed their funds. We understand that on Friday, the State of Oregon will be dispersed

also. Kentucky and Oklahoma have put their certification in. We need some additional information from them on their banking information. Georgia and Minnesota, they need to give us some further information on their 5 percent match. Indiana and Wisconsin certifications were not accepted because their state plans needs to be adjusted. And Pennsylvania and Louisiana both submitted their certifications prematurely. They have to let their 30-day publication run and then come back to us with their certification. So, those are the states that have either received the funding or are in the process of getting those certifications done.

COMMISSIONER HILLMAN:

Might I just ask, for our meetings, until we disperse all the '08 payments, could you include that in your report, just so that we can update at our monthly meetings?

EXECUTIVE DIRECTOR WILKEY:

Absolutely.

COMMISSIONER HILLMAN:

Thank you.

EXECUTIVE DIRECTOR WILKEY:

Thank you. Thank you, Madam Chair.

CHAIR RODRIGUEZ:

There's one more poll worker in the room and that is our gentleman who helps us with our meeting minutes and transcription, and that's Mr. Diaz informed me in the break that he was a poll worker in Pennsylvania. So, you know, we gave a lot of accolades to the ones who joined us today and we had one very quiet one here right in the room.

COMMISSIONER HILLMAN:

He couldn't help himself. He's been a part of our meetings for so long, he knew it was his obligation.

CHAIR RODRIGUEZ:

He's hooked. Any other closing remarks from Commissioners?
Commissioner Davidson?

VICE-CHAIR DAVIDSON:

Madam Chair, I just have an announcement. And I first want to say how much I appreciate all the work that the Commissioners have done prior to myself, in doing an MOE, and I just want to announce that I put up one for comments. And, obviously, I was trying to look at it in several different ways, making sure that we devote the insurance, the responsibility/use of taxpayer dollars is put into place, along with giving states some options. So, I'd love to have people look at that, give comments. This is just the first step. And, obviously, as we move forward, whether it's with any of the three that is up there and how we move forward, is very vital, so your comments are very important to myself and all the other Commissioners, I do feel.

Thank you.

CHAIR RODRIGUEZ:

Commissioner Beach? Commissioner Hillman? All right, then, we will go to a closed session. The purpose of the closed session is to discuss the recruitment for the Election Assistance Commission General Counsel position.

Thank you very much.

[The public meeting of the Election Assistance Commission adjourned at 3:37
p.m. EDT.]

add/bw