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UNITED STATES ELECTION ASSISTANCE COMMISSION

PUBLIC MEETING

Hyatt Regency Hotel, Yorktown Room
400 New Jersey Avenue, Northwest
WASHINGTON, D.C.

Taken on the date of:
THURSDAY, FEBRUARY 2, 2006

Start time: 10:00 o'clock, a.m.
Taken before: Belinda Lomax, a court reporter

1 P-R-O-C-E-E-D-I-N-G-S

2 (Start time: 10:00 o'clock, a.m.)

3 * * * * *

4 MR. DEGREGORIO: Good morning. My
5 name is Paul DeGregorio. I am the Chairman of the
6 U.S. Election Assistance Commission. I'm calling
7 this public meeting to order.

8 Our first order of business is the
9 Pledge of Allegiance. Before we do that, I'm going
10 to ask everybody in the room or remind them to turn
11 off your cell phones, if you may, so we can have an
12 uninterrupted meeting. I ask for all of you to
13 stand and join me in saying the Pledge of
14 Allegiance.

15 (The Pledge of Allegiance was
16 recited.)

17 MR. DEGREGORIO: We welcome you to
18 this meeting. We have our meetings in Washington
19 but normally at our offices on New York Avenue. We
20 are here today at this locale because you know that
21 the National Association of Secretaries of State
22 and the National Association of State Elections

1 Directors will be meeting, and we know that some of
2 you here are here for that meeting, also. So we
3 welcome you to this meeting.

4 I'd like to ask for the roll call
5 and for our legal counsel, Juliet Thompson
6 Hodgkins, to proceed with the roll call.

7 MS. THOMPSON HODGKINS: Thank you,
8 Mr. Chairman. Members, please respond by saying
9 present or here after I call your name. Paul
10 DeGregorio, Chairman.

11 MR. DEGREGORIO: Present.

12 MS. THOMPSON HODGKINS: Ray
13 Martinez, Vice-Chairman.

14 MR. MARTINEZ: Present.

15 MS. THOMPSON HODGKINS: Donetta
16 Davidson, Commissioner.

17 MS. DAVIDSON: Present.

18 MS. THOMPSON HODGKINS: Gracia
19 Hillman, Commissioner.

20 MS. HILLMAN: Present.

21 MS. THOMPSON HODGKINS: Mr.
22 Chairman, there are four members and all are

1 present.

2 MR. DEGREGORIO: Thank you. You
3 all have seen the agenda before you for today's
4 meeting. I assume you have reviewed it, and I'd
5 like a motion to adopt the agenda as submitted.

6 MR. MARTINEZ: Motion to adopt.

7 MS. HILLMAN: Second. I have a
8 question. I'm sorry. It is my understanding that
9 there are presentations and we're going to have an
10 additional perspective that will be shared in
11 writing. Is that correct?

12 MR. DEGREGORIO: That's correct.
13 Brian Hancock from our staff will be reading the
14 testimony of Brad King, who was unable to attend
15 due to illness.

16 MS. HILLMAN: That will be on Panel
17 2?

18 MR. DEGREGORIO: That will be on
19 Panel 2. With that, there will be that additional
20 change to the written agenda. So all those in
21 favor.

22 MS. HILLMAN: Aye.
5

1 MR. DEGREGORIO: Opposed? Thank

2 you.

3 MR. DEGREGORIO: You have before
4 you the minutes of the December 13th, 2005 Public
5 Meeting. That was a very important meeting that
6 our previous Chair, Gracia Hillman, presided over.
7 We adopted our Voluntary Voting System Guidelines.
8 You have seen the minutes from that meeting. Do
9 you have any comments or changes to make to the
10 minutes?

11 MS. DAVIDSON: Move that we approve
12 the minutes as written.

13 MS. HILLMAN: Second.

14 MR. DEGREGORIO: We have a motion
15 and a second. All those in favor reply by aye.

16 ALL COMMISSIONERS: Aye.

17 MR. DEGREGORIO: All those opposed?
18 The ayes have it. The minutes are approved as
19 submitted.

20 (Motion carried.)

21 MR. DEGREGORIO: Our first report
22 today is a report that we receive at every one of

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1 our meetings, but this report is, I believe, going
2 to be significant. It's on the required Title II
3 requirements payments that we required under the

4 Help America Vote Act to pay and distribute to the
5 states and territories. Margaret Sims, Peggy Sims,
6 our Election Research Specialist, will give that
7 report. Peggy.

8 MS. SIMS: Thank you, Mr.
9 Chairman. Good morning, everyone. I am delighted
10 to report that last month's payment of over \$18
11 million was disbursed, all of the over \$2.3 billion
12 of the HAVA requirements payments.

13 The funds disbursed are composed of
14 \$830 million in HAVA Requirements payments
15 appropriated for Fiscal Year 2003 and almost \$1.5
16 billion have been appropriated for Fiscal Year
17 2004. The funds remain available to the states
18 until expended.

19 All 55 of the jurisdictions eligible
20 to receive requirements payments have received
21 their share and four eligible territories have
22 received their full share of the funds appropriated

7

1 for this purpose.

2 Although we have completed the
3 responsibility, we are not done with related
4 activities. First, we need to continue reminding

5 the states of their annual reporting
6 responsibilities regarding requirements payments
7 and the Title I funds that EAC oversees.

8 The next report for the Title I and
9 Section 101 and 102 funds are due at the end of
10 this month, February 28th, and will cover activity
11 that is carried in the 2005 calendar year. The
12 next report is the Title 2 requirements payments
13 are due March 30th and will cover activity from
14 October 1, 2004 through September 30, 2005. We
15 also need to review these reports using uniformity
16 in procedures and to pursue clarifications and
17 corrections where necessary.

18 We need to continue replying to the
19 many inquiries from the states that use HAVA funds,
20 the inquiries regarding the state single audits
21 that are including a review of HAVA funds. States
22 will continue to file material changes to their

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1 state plans for publication in the Federal
2 Register.

3 Many state election offices are
4 undergoing their first state single audit of HAVA
5 funds, and these audits can raise questions that
6 will require states to amend their state plans.

7 EAC must continue to respond to advise states on
8 submission of these material changes and to publish
9 the changes in the Federal Register in a timely
10 manner. In addition, five states have submitted
11 indirect cost proposals relating to the HAVA funds
12 that we oversee. Other states indicated an
13 interest in doing so.

14 EAC has obtained the services of
15 KPMG to devise the position on direct cost
16 proposals submitted by the states related to HAVA
17 funds received and to conduct up to two one-day
18 training sessions in the states in the proper
19 preparation and submission of such proposals.
20 Currently KPMG is reviewing proposals submitted by
21 the states and sought additional information where
22 necessary.

9

1 Furthermore, EAC coordinated with
2 the National Association of Secretaries of State
3 and the National Association of State Election
4 Directors to conduct the first training session on
5 the preparation of direct cost proposals. That is
6 scheduled for this coming Sunday in conjunction
7 with the midwinter meeting in D.C. with these two

8 organizations. As of yesterday, 25 from 19 states
9 have signed up for the session.

10 Finally, although we have disbursed
11 all of the funds that have been appropriated for
12 requirements payments, we may have further
13 requirements. HAVA Section 104(c)1 provides that
14 Section 102 funds must be returned when states fail
15 to replace all punch card legal machine voting
16 systems by the deadline applicable to them. Those
17 funds would be transferred to EAC (inaudible
18 phrase) make requirements payments.

19 We know of at least one state who
20 will have to return some of its 102 funds. As we
21 proceed to the 2006 primary election schedule,
22 there may be others that will hit the deadline. We

10

1 need to work out the procedures by which to
2 determine how much of the 102 funds are to be
3 returned and the process by which those funds are
4 to be returned.

5 It is likely that we won't begin
6 disbursing these returned funds as requirements
7 payments until 2007 because certainly we cannot
8 accurately calculate how much each state is
9 eligible for until we know the total available in

10 payments. That's because of the formula that we
11 need to use and, two, because we won't know the
12 total amount of 102 funds to be returned until
13 after the fall primaries. So, it appears that we
14 still have plenty to do in relation to the
15 requirements payments in 2006.

16 Are there any questions?

17 MR. DEGREGORIO: Peggy, first of
18 all, let me thank you for that comprehensive report
19 and indeed the good news. You couldn't see her.
20 Commissioner Hillman is clapping.

21 I can't believe we have distributed
22 \$2.3 billion. That is certainly a significant

11

1 event. I know that you have worked hard as our
2 staff. You worked with myself and Vice-Chairman
3 Martinez on a committee to look over the issues as
4 we disburse these funds.

5 You certainly have articulated this
6 morning this is a continuing process, and that we
7 and Commissioner Hillman now and Commissioner
8 Davidson will take over the role, the Vice-Chairman
9 and I the first year and a half. You have
10 identified significant issues that continue with

11 the distribution of this money and other issues
12 that will come up because of that. So, I
13 appreciate the work that you have done personally
14 and our staff on this issue.

15 I'd like to ask the Commissioners if
16 you have any questions of Peggy on this issue.

17 MS. HILLMAN: I don't have a
18 question but I do have a comment. I want to say
19 that we all know that the process through the 18
20 months went very smoothly with respect to getting
21 the requirements payments out the door.

22 I want to make certain that we are
12

1 on record for thanking the General Services
2 Administration for their cooperation because they
3 were the agency that actually processed the
4 payments directly to the states.

5 MR. DEGREGORIO: Thank you,
6 Commissioner Hillman. Perhaps we should send them
7 a letter.

8 MS. HILLMAN: That would be good.

9 MR. DEGREGORIO: For that, we will
10 ask counsel to draft a letter to the General
11 Services Administration complimenting them for
12 their service in this process.

13 Any further questions or comments?

14 Thank you, Peggy.

15 MS. SIMS: Thank you.

16 MR. DEGREGORIO: Today we are going
17 to focus on a very important issue, one that we
18 have characterized at the EAC as our top priority
19 right now. That is the national certification
20 testing process and program that we will be taking
21 over from the National Association of State
22 Election Directors.

13

1 As you will recall, back in the
2 September meeting we adopted a process on how we're
3 going to accomplish this transition. I know that
4 our staff has worked very closely with NASED and
5 worked very closely with NIST on this transition
6 process.

7 Today we have two panels of people
8 who will give us testimony on what this may mean to
9 them, and perhaps most importantly, the implication
10 of our adoption in December of the Voluntary Voting
11 System Guidelines and the two year effective date
12 for that and how this is all going to play into
13 this process of certification of election

14 equipment.

15 Let me just take a moment just to
16 read actually from the VVSG, which talks about this
17 certification testing process, to give us all a
18 reminder of the details that are involved in this.

19 The certification testing
20 encompasses the examination and testing of
21 software, tests of hardware under conditions
22 simulating the intended storage, operation,

14

1 transportation and maintenance environment,
2 inspection and evaluation of system documentation,
3 and operational tests to validate system
4 performance when functioning under normal and
5 abnormal conditions.

6 The testing will also evaluate the
7 completeness of the vendor's development test
8 program, including the sufficiency of vendor tests
9 conducted to demonstrate compliance with stated
10 system design and performance specifications, and
11 the vendor's documented quality assurance and
12 configuration management practices. The tests will
13 address individual system components or elements as
14 well as the integrated system as a whole.

15 So, it's a very important process

16 that we know that the National Association of State
17 Election Directors took on in the early '90s and
18 provided leadership in the United States to have a
19 program in place. Of course, the Help America Vote
20 Act now mandates that the EAC take over the
21 responsibility of overseeing this process itself,
22 and we are working with the National Standards

15

1 Board to continue to do that.

2 We have two panels. Let me
3 introduce our first panel to you, the people on the
4 first panel. These are two people of national
5 significance.

6 The first comments will come from
7 Sandy Steinbach, who is president of the National
8 Association of State Election Directors. Sandy is
9 a leader in her own right. She's head of the
10 certification programs, not the president of NASED,
11 but you have been an important part of the process.

12 I have known Sandy for over 20
13 years. We met when I was the director of elections
14 for St. Louis County. Sandy has been the director
15 of elections for the State of Iowa for 20 years.

16 We have worked together over those

17 20 years, and she takes her job and the process of
18 elections very seriously. And not just for the
19 State of Iowa, but she also supports efforts to
20 help the whole nation improve the process of the
21 certification of voting systems.

22 She's going to bring her perspective
16

1 and share with the committee that's overseeing this
2 transition and overseeing this process that NASED
3 has right now for the certification of election
4 systems.

5 Our other presenter on Panel 1 is
6 Stephen Berger. Stephen Berger is a gentleman who
7 is chair of the Institute for Electrical and
8 Electronic Engineers. That's the I triple E, the
9 EMC Society Standard Development Committee. He has
10 been involved in setting standards and particularly
11 involved in the voting systems for many years and
12 received awards from the community for his work in
13 that area, but also understanding the whole concept
14 of certification, and will give us a presentation.

15 Before our two panelists on Panel 1
16 begin their presentation, I'm going to ask Tom
17 Wilkey, our Executive Director, if he will spend a
18 moment to give his overall perspective on this

19 because Tom is a person who has had many, many
20 years of experience in this area, perhaps more than
21 anybody else in the country, in fact, if you look
22 back to the leadership that he provided when he was

17

1 with NASED in this area.

2 Tom, I'm going to ask you, before
3 our panelists speak, to say a few remarks about
4 that.

5 MR. WILKEY: Thank you, Mr.
6 Chairman. First of all, I want to acknowledge the
7 remarks that you will be hearing from Sandy
8 Steinbach as chair of voting system boards. Having
9 walked a few 800 miles in her shoes in that
10 capacity, I know the work that goes into that.

11 We appreciate so much what you have
12 done. I hope that someday you will forgive me for
13 leaving you to hold the reigns for a while longer.

14 Certainly we are moving forward. We
15 continue to work with our partners at NIST in the
16 NVLAP program. I see Mark Skull in the audience
17 and Lynn Rosenthal. We're glad to have you here
18 today.

19 In working towards the accreditation

20 of laboratories and the NVLAP program, we are
21 working closely with some consultants who have been
22 particularly active in the voting certification

18

1 program up to now to work with us to do a temporary
2 certification on the ITAs that are currently
3 working with NASED so there is a flawless movement
4 to transition from NASED to EAC.

5 Certainly we want to have this job
6 done. I think in the weeks ahead you will see
7 further developments as we move along.

8 One thing that I am learning since
9 coming to the federal government after serving in
10 state government so long and having been here now a
11 little over six months, I am continually
12 overwhelmed by the level of red tape and federal
13 regulations that you have to go through to get a
14 program like this up and running.

15 We simply cannot assume this. We
16 must have every single bit of our procedures and
17 policies in place before we officially begin to
18 take the procedures over. We are working closely
19 with Steve Berger. He's helping us development
20 those procedures.

21 Certainly we want to make sure that

22 the laboratories that are now doing the work are up
19

1 to speed and will be able to take on the additional
2 role as we move along in the 2005 Voting Systems
3 standards. So, I'm pleased to say we are making
4 progress.

5 I know, Sandy, you would like to
6 relinquish this role as soon as possible. I assure
7 you that in the weeks ahead, you will see further
8 developments as we move along. We're not going to
9 let you out of the hot seat, however, because we
10 need to have certainly your guidance and the
11 guidance of the NASED Voting System Committee and
12 those who have been so actively involved over the
13 past ten years or so to continue work with us to
14 make sure that this transition is as easy as
15 possible.

16 So, Mr. Chairman, I wanted to
17 acknowledge the role that NASED has played in this
18 and continues to play in this, but I know that the
19 staff is working diligently to move this process as
20 quickly as we can in the weeks ahead.

21 MR. DEGREGORIO: Thank you, Tom.
22 Sandy, you have the floor.

1 MS. STEINBACH: Thank you. I'm
2 honored to be here. When I was invited to take on
3 the leadership of the NASED Voting Systems Board, I
4 continually asked Mr. Wilkey what it was that I
5 would be doing. He told me, "If I knew that, I
6 wouldn't take the job." He was correct, but I
7 didn't ask enough pointed questions at the
8 beginning.

9 It's been a long journey to get to
10 where we are today. I really am honored to be here
11 with you, the members of the Election Assistance
12 Commission, discussing the process for an agency of
13 the U.S. government to take charge of the
14 certification and testing of voting equipment.
15 This is an important duty and your help is sorely
16 needed.

17 As long as there have been
18 elections, there have been concerns about the
19 integrity of the process. This did not change when
20 computers came into use to make vote counting
21 easier, faster and more accurate. The process for
22 achieving a federally supported and funded voting

1 system and testing program has been anything but
2 fast.

3 Over 30 years ago, in 1975, Roy
4 Saltman of the National Bureau of Standards, the
5 predecessor to the current NIST, issued a report to
6 the Clearinghouse on Election Administration at the
7 Office of Federal Elections. Those two agencies
8 are the bureaucratic ancestors of the EAC. His
9 report, called the "Effective Use of Computing
10 Technology in Vote Tallying," raised many questions
11 that are still of concern.

12 Saltman reported that "increasing
13 computerization of election related functions may
14 result in the loss of effective control over these
15 functions by their responsible authorities and that
16 this loss of control may increase the possibilities
17 of vote fraud."

18 Saltman's conclusion was that a
19 basic cause of computer related election problems
20 was the lack of appropriate technical skills at the
21 state and local level to develop or implement
22 sophisticated standards against which voting

1 equipment can be tested. This is still true now.

2 Nine years after the Saltman report,
3 Congress finally appropriated money for the
4 development of the first Federal Election
5 Commission Voting Systems Standards. Those
6 standards were published six years later in 1990.

7 The FEC issued a separate document
8 at that time explaining the need for a national
9 testing program, but that program was neither
10 adopted nor funded. Indeed, until the adoption of
11 the National Help America Vote Act in 2000, no
12 agency of the federal government has been entrusted
13 with this responsibility.

14 When the initial Standards were
15 issued, there was no provision for the
16 accreditation of test laboratories or for any
17 authoritative way to verify that a voting system
18 claiming to comply with the Voting System Standards
19 actually did. To fill this void, the National
20 Association of State Election Directors developed
21 the accreditation program and began in 1992.

22 The mission of this program was, and

23

1 still is, to assure that any laboratories

2 performing qualification tests of voting systems
3 had the ability to do the necessary testing.
4 Working with technical advisor Bob Naegele, NASED
5 developed and published the "NASED Program
6 Handbook: Accreditation of Independent Testing
7 Authorities for Voting System Qualification
8 Testing."

9 The handbook describes the
10 accreditation process and requirements for
11 laboratories to achieve it. Then the Board
12 recruited and accredited ITAs to do the testing.
13 This was not a simple or fast process. Over the
14 next six years, seven vendors submitted a dozen
15 voting systems to this process.

16 In February of 1997, NASED
17 president, Christopher Thomas, and Voting Systems
18 Board Chairman Wilkey asked the FEC to update the
19 now dated Voting System Standards. Five years
20 later, after another long and painful process, the
21 FEC issued the 2002 Voting System Standards.

22 Since then, the NASED Voting Systems

1 Board issued two Technical Guides to clarify issues
2 published in the Standards, and we are now working
3 on a third one to deal with the growing

4 complexities of having a software ITA and a
5 hardware ITA responsible for testing a single
6 system.

7 This most recent Technical Guide
8 was -- the necessity for this was revealed as
9 questions arose about the testing of the Diebold
10 memory card. That is, as far as I know, still in
11 testing with NITA. The NASED board also has an
12 appeal policy to describe the process for resolving
13 conflicts between vendors and ITAs.

14 You have specifically asked me to
15 address what NASED did in response to the issuance
16 of the 2002 Voting System Standards. The testing
17 program was already underway. Volume II to the '02
18 Standards provides guidance to the ITAs for
19 testing and report preparation. The largest part
20 of the process continued as it had before.

21 At first, the testing simply
22 continued against the 1990 standards. Gradually,

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1 as vendors had systems or parts of systems ready,
2 the ITAs began to test against the '02 Voting
3 System Standards. It was two full years before the
4 adoption of 2002 standards before a voting system

5 came through the process fully qualified under the
6 2002 standards.

7 On a policy level, NASED adopted a
8 formal testing policy to define the time period for
9 continuing to test under the old standards. The
10 policy was adopted in February of 2003, and
11 established the schedule for continuation of
12 testing under the 1990 Voting Standards and a
13 deadline after which no additional testing would be
14 done in the NASED program against the original 1990
15 Voting System Standards.

16 In 2005, NASED issued an addendum to
17 this policy permitting testing of components under
18 the 2002 Voting System Standards to permit their
19 use with the 1990 standards. This was basically to
20 allow the addition of HAVA compliant accessible
21 devices to 1990 voting systems.

22 The NASED voting system testing
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1 program has no budget. The ITAs are paid for work
2 they do by the vendor, but the committee members,
3 and especially our technical committee, work on a
4 volunteer basis. Collectively, members of our
5 committee and our technical advisors have donated
6 thousands of hours to provide meaningful testing of

7 voting equipment.

8 Those of us that participate do so
9 because we know it is essential to the election
10 process. Some of us have day jobs that usually
11 fund our travel and give us time away from our
12 other duties to work on this. At one time or
13 another, all of us have spent our own money to
14 attend meetings.

15 The technical committee consists of
16 three consultants who perform their services
17 without any compensation. Brit Williams, Paul
18 Craft and Steve Freeman are my heroes. These three
19 men are the heart and soul of the voting system
20 testing program and they do this work for free.

21 None of them has a salaried
22 position. They work as consultants and their time

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1 is valuable. Brit Williams, Paul Craft and Steve
2 Freeman do the lion's share of the work and make a
3 big sacrifice to do it.

4 The Help America Vote Act requires
5 the Election Assistance Commission to "provide for
6 the testing, certification, decertification and
7 recertification of voting system hardware and

8 software by accredited laboratories." Those of us
9 at NASED understand what an awesome responsibility
10 that is. We have been doing this program with no
11 official legal duty and no money since 1992.

12 The Commission's Fiscal Year 2004
13 Annual Report, issued one year ago, states that in
14 2005, NIST would assume the responsibilities for
15 test lab certification. At this time, however,
16 NASED continues to provide oversight of the
17 existing testing labs. The same annual report also
18 anticipates that full transition of the voting
19 system qualification process from NASED to the EAC
20 would be complete in 2005, Fiscal Year 2005, and we
21 aren't there yet.

22 Anyone watching the progress of
28

1 voting system testing knows that the federal
2 government has been slow to take on the
3 responsibility. The time between significant
4 events is measured in years. The prolonged time
5 for the current transition has left us quite
6 uncomfortable.

7 The program needs improvements. We
8 are uncertain whether it is beneficial to expend
9 the effort to make them when our tenure is so

10 short. However, the end of the transition process
11 is a frequently adjusted target and, so far, it
12 never gets closer.

13 This is a huge responsibility.
14 NASED started this program to accredit and oversee
15 independent test authorities 14 years ago because
16 no one else would. The responsibility weighs
17 heavier on us now, knowing that the EAC has the
18 duty, the authority, and a budget to do it. But
19 we're still running this program on a shoestring.

20 We hope you will be able to relieve us
21 of this immense burden very soon. Thank you for
22 the opportunity to talk to you today.

29

1 MR. DEGREGORIO: Thank you, Sandy.
2 We're going to, after Mr. Berger's testimony, we
3 will ask for questions, but I would like to submit
4 an initial comment. I hope so, too. We all hope
5 so, too, to take over this burden from you very
6 soon.

7 Now we would like to hear from Steve
8 Berger, who is really an expert and a technician in
9 this area. Mr. Berger, I understand you have a
10 Power Point to go along with the presentation.

11 MR. BERGER: Yes, Mr. Chairman.

12 MR. DEGREGORIO: Where you are, the
13 Power Point will be here to my right. Proceed.

14 MR. BERGER: Mr. Chairman,
15 Commissioners, I'd like to thank you for this
16 opportunity to address you. It truly is an honor
17 to have this chance to share some thoughts and
18 observations about the certification system.

19 I would like to start by saying that
20 the system as we have it today is certainly the
21 product of long work, dedication, as Sandy said,
22 often entirely voluntary out of dedication to our

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1 country by some very outstanding individuals. I
2 think we all have a lot to be grateful for.

3 I also would commend the EAC. As
4 the transition has been planned and certification
5 to the EAC has been constructed, it has been
6 designed very cautiously to follow international
7 recommended standards, particularly ISO 1711 and
8 other related documents that are used by the Food
9 and Drug Administration, the Federal Communications
10 Commission and a number of other agencies to ensure
11 that products and services meet specifications,
12 that problems are avoided and that vulnerabilities

13 are addressed.

14 I think that's a pack that should be
15 continued. The international standards give us a
16 structure, has a lot of experience and a lot of use
17 around the world.

18 We go to the first slide. In this
19 presentation, I'd like to make some general
20 observations about the voting equipment to perform
21 the assessment systems and provide some conclusions
22 about how further improvements might best be made.

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1 While I'm a strong advocate of
2 following international standards, as you review
3 those, you will find they provide a great
4 flexibility to accommodate a specific system to the
5 needs of the arena that it's being implemented.

6 Next slide, please.

7 So, as I have had an opportunity to
8 look over the U.S. voting equipment conformity
9 assessment systems, by that I mean the entire
10 process by which we ensure that the equipment that
11 voters use on election day, the election officials
12 use to perform tallies and produce audits meets
13 specifications, are free of defects, are accurate

14 and reliable and secure.

15 The system, first of all, I think to
16 any of our eyes, is under resourced. I'm sure
17 that's no surprise to the Commission. I think
18 Sandy's comments went to that end and apparently
19 Dr. Saltman came to the same conclusion many years
20 ago. It simply is not a large industry segment,
21 and what we do needs to be designed very carefully
22 with the few resource limitations that exist.

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1 It's a distributed system.
2 Responsibility is shared between federal, state and
3 local responsibilities. That is a characteristic
4 that is sure to continue into the future.

5 It's more periodic than routine.
6 There tends to be periods of high activity and then
7 other lulls and then renewed activity. That gives
8 the flavor of what we do more of a project as
9 opposed to a production type of a process.

10 Local jurisdictions are diverse.
11 It's a problem. What's right for one location may
12 not fit another. There is a great deal of
13 variability from jurisdiction to jurisdiction.

14 There is a need to balance real
15 experience problems. Many election officials tell

16 me that in every election there is human errors.
17 There are things that could be done better. We
18 must guard against hypothetical problems that may
19 never occur. We need to make sure that they never
20 do occur.

21 Problems must be prevented. This is
22 an area where, if significant problems arise, the
33

1 consequences could be immense. So, unlike some
2 areas where if problems arise there is time to
3 bring in remedies and correct the situation, in
4 elections we have to do everything possible to
5 prevent problems. Those are some observations that
6 I think guide where we may go. To the next slide,
7 please.

8 So, from the characteristic the
9 system is resource limited, the conclusion is that
10 every use of resources will take from another place
11 where it is needed. It's better to make conscious
12 decisions about priorities as opposed to let them
13 happen unconsciously. Next slide, please.

14 So, as one example, the VVSG
15 requires that vendors have a quality and change
16 management process. States are expected to confirm

17 that their vendors system is adequate, assuring
18 that the vendor will deliver products that are
19 within tolerance of those that are qualified at the
20 national level and also certified at state levels.

21 Some call for vendors to have ISO
22 9001 compliance. Here were we starting to get into

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1 an area that requires the study of detail. ISO is
2 an excellent system, but it only certifies that a
3 vendor will follow their on written procedures. It
4 does not raise a question of if these procedures
5 are adequate for the products that vendors
6 deliver. Others have to determine that.

7 In our case, the question is what
8 best practices and procedures needs to be
9 identified so that we can be assured that vendors
10 follow them and we have high confidence that the
11 products delivered are within tolerance of those
12 that are certified.

13 Once those best practices are
14 identified, I think there is a very real question
15 of is the additional cost of requiring a
16 certification worth it. As I said, it will take
17 resources from other areas.

18 The recommendation of this is that,

19 realizing how that system works, the first step
20 should be to identify the best practices that would
21 assure that a vendor has control of their own
22 production and change control systems. At that

35

1 point, I think there is a worthwhile debate as to
2 whether ISO requirements is worth the expense or
3 not. Next slide, please.

4 Observing that the U.S. system is
5 distributed, and further I would observe what most
6 tests professionals know, you cannot test and
7 certify quality into a system. You don't create
8 quality by testing and certification. You simply
9 reveal that it already exists.

10 More testing will not increase
11 quality. It may reveal more flaws, and that's
12 important. However, if you want to increase
13 quality, and we certainly all do, creating a
14 culture of quality shared by vendors, federal,
15 state and local officials is essential.

16 I think as we think about going
17 forward in this system, efforts that would go
18 towards creating a shared culture of quality, to
19 shared values of what that means in the specific

20 arena are one area we want to spend some resources.

21 Next slide, please.

22 An illustration of that application
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1 might be the escrowing of software in the NIST
2 National Software Records Library. I'm personally
3 quite a fan of this. I think a number of us are.
4 However, states need to know how to check those
5 HASH codes to verify that the software they are
6 using on election day is in fact identical to those
7 of the NIST National Software Research Library.

8 Currently I believe there is only
9 one vendor where there is available a self-booting
10 CD that goes out and checks the HASH codes on the
11 software on the management system. Those sorts of
12 independently developed tools I believe could be
13 very advantageous to have in the hands of state
14 officials for all vendors.

15 Equally, there is no means for
16 checking HASH codes after they are loaded on voting
17 terminals. That's another target that is going
18 further toward a shared culture of quality. We
19 certainly would want means by which we go in and
20 check the HASH codes to certify and verify that the
21 software that's on escrow is exactly the same as

22 what's being used in elections on election day.

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1 Next slide, please.

2 This slide depicts part of the
3 process of certification. I simply want to
4 highlight the two independent channels that it
5 identifies. After the EAC certifies the system, we
6 deliver that certification to the vendor. They
7 then take control of their own manufacturing.

8 There is a real need to have an
9 assured way that others, specifically state
10 officials in this slide and the next slide, please.

11 Later, those who receive equipment, put it in and
12 deploy it for elections, can verify independently
13 that that equipment is unchanged from what was
14 certified. Next slide, please.

15 I just blew up some external photos.
16 Next slide. This is standard practice in the
17 telecommunications industry, to take detailed
18 photos of equipment for certification, that it can
19 be verified that it is unchanged from what was
20 approved. In this case, an FEC equipment brand.

21 Next slide.

22 The characteristics being resource

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1 limited and more periodic than routine, believing
2 that the mistakes are actually likely. It is very
3 possible that in perhaps a couple of years, between
4 one certification to the next, there will be a
5 change of personnel.

6 Therefore, an evaluation should be
7 redundant on critical elements, but perhaps save
8 resources on elements that have, while not
9 unimportant, less importance. Next slide.

10 I would speculate that perhaps for
11 some issues such as temperature and humidity, a
12 Supplier Declaration of Conformance might be a
13 means of saving resources, allowing redundant
14 checking on high priority items such as security
15 and accuracy. Next slide.

16 A more periodic than routine system,
17 which appears to be what we have, and the fact that
18 problems are to be prevented rather than remedied
19 means having vendors focused during development on
20 the right issues is a more effective means of
21 revealing deficiencies than having them appear
22 during certification. Next slide.

1 That means that the more we can
2 communicate with vendors and clearly have them
3 focused on the items that need to be focused on on
4 the certification, the more robust the system is
5 likely to be. Next slide.

6 Local jurisdictions are diverse, and
7 we must balance real and hypothetical problems.
8 For many issues solutions must be in election
9 management practices or in equipment
10 specifications. Next slide.

11 Since we need a remedy in one place
12 and what we want to avoid is a situation where a
13 party believes someone else has done that job, it
14 may be that ITA reports need to specifically cite
15 places where the equipment covers an area
16 adequately or alternately, where an election
17 management practice needs to cover it, such as
18 changing a password on a periodic basis.

19 The equipment can prompt you to do
20 that periodically. If it doesn't, a management
21 practice can cover that issue. At least one place
22 needs to continue to cover it. Next slide.

1 This slide simply makes a point
2 there is a lot of important players in the system.
3 Communications is vital. I certainly believe that
4 ongoing efforts, communications like we're
5 experiencing here today are vital to assuring
6 quality of the system. Next slide.

7 In this slide I point to resource
8 limitation and the fact that we have a rather
9 periodic trend to the system where we tend to get
10 groups of new systems on a periodic basis. The ITA
11 process should be added to add maximum value to the
12 efforts of state and local officials. Next slide.

13 The question I would pose is should
14 the ITA reports have specific provisions passing on
15 information that would be useful to state officials
16 in their state certification efforts, trying to
17 figure out how we can maximize the value of each
18 other's efforts and minimize time by saving
19 efforts.

20 I will close my remarks there.
21 Those are just some of the characteristics I see in
22 the current system. I applaud the EAC in the

1 direction it's going. I think there is a solid

2 base to build from and certainly much more work to
3 be done.

4 MR. DEGREGORIO: Thank you, Mr.
5 Berger and thank you, Ms. Steinbach. Now I'd like
6 to turn to my fellow commissioners and see if there
7 are some questions.

8 I know Commissioner Davidson, you,
9 and perhaps all of us, have had considerable
10 experience in this area as the secretary of state
11 of Colorado for many years. I know that you were
12 involved in the process of certification of
13 election systems, and also when you were with
14 NASED. Perhaps you can lead us on with some
15 questions for the panelists today.

16 MS. DAVIDSON: One of the things,
17 as I listened to both presentations, that it makes
18 you aware and concerns you that we do meet
19 everything and there is a lot of --

20 Mr. Berger, in your presentation, it
21 seems like there is a lot we need to do, we need to
22 do in the future to improve the process and getting

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1 to that process to really improve it. What do you
2 think is the first step that should be taken?

3 MR. BERGER: I think the work plan

4 that's underway is an excellent one. We have a
5 clear standard that you approved in December. The
6 ITAs are being brought into the system and they are
7 being reviewed under NVLAP procedures for
8 competence, both in terms of management practice as
9 well as their specific domain knowledge of voting
10 systems and preparation to test to those
11 specifications.

12 I think we need to pay particular
13 attention to the quality of the lab certification
14 process. That's really critical to what we do.

15 I have tried to be forward looking
16 and that's why my comments are as they are. I
17 personally think the system is going in the right
18 direction. The next step, in my view, is to make
19 sure that those labs are fully prepared to test to
20 the new requirements, specifically the new
21 requirements in the 2005 EAC standards. We, of
22 course, want to double check because they continue

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1 to have competence due to proprietary interests to
2 the 2002 FEC standards.

3 MS. DAVIDSON: Thank you. Ms.
4 Thompson, in knowing that we're going to be taking

5 this process over very shortly, can you go through
6 some of the steps that we have to make sure that we
7 meet federally?

8 It was alluded to in the testimony
9 that there is other things in the federal arena
10 that we have to consider other than what NASED had
11 to consider when they were actually doing the
12 program.

13 MS. THOMPSON HODGKINS: Sure,
14 Commissioner Davidson. I think I would start with
15 the accreditation of laboratories. That is an
16 essential portion of being able to conduct our
17 certification program. We have received
18 applications that we need to review and then the
19 Commission will need to issue certificates for
20 accreditation on a temporary basis until those last
21 ultimately get through the NVLAP process.

22 In addition to certainly the
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1 yeoman's work that will have to be done in
2 developing processes of how the certification
3 program will work, including the information flow
4 into the agency, then information flow out to the
5 testing labs, et cetera, all of that process needs
6 to be published in the Federal Register so

7 stakeholders, members of the public will have the
8 opportunity to be advised of what that process is,
9 comment on that process, and give us the
10 opportunity to take into account their comments in
11 finalizing our process.

12 MS. DAVIDSON: I have one
13 additional question. I know we're concerned with
14 some of those areas of the Open Records Act in
15 areas of giving out pertinent information that we
16 feel that we're okay in that area. Can you explain
17 that a little bit to the audience?

18 MS. THOMPSON HODGKINS: Sure.
19 Unlike the National Association of State Elections,
20 the federal government is subject to a federal act,
21 the Freedom of Information Act, which requires
22 disclosure of information that is deemed

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1 appropriate for disclosure under that act.

2 Certainly there will be some
3 information that comes to us in this process that
4 is considered to be business or trade secrets that
5 will have to be withheld, but we would like to
6 engage in the process early so that we can make
7 available to the public as much information on the

8 front end as we possibly can, and that way make it
9 easier for them to have information that they are
10 interested in and be aware of the process.

11 MS. DAVISON: Thank you. I
12 appreciate that. In the time frames that obviously
13 that NASED has had this program, you have done an
14 excellent job. As we know, there is no money
15 involved with it. I was even involved with it at
16 times.

17 I think that the efforts that went
18 out was above and beyond. I really feel that it
19 shows the community that the efforts that's been
20 put into place in the past definitely shows that.
21 Who else would have conferences over the weekends
22 other than election officials so they can be in

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1 their offices more than ever, and the loyalty that
2 you had to the election process through this
3 program I think really needs to be given credit to
4 all of you and I do want to say thank you.

5 In moving forward, I know that it's
6 an issue that you want to be able to remove the
7 NASED from this responsibility as soon as possible
8 in moving forward. One of the questions I have
9 besides moving forward in that direction is once we

10 know we have the VVSG and we know that they are put
11 into place, I think there is some questions in our
12 minds as to the time frames.

13 There is a two-year period that
14 everybody has to meet where there are state laws in
15 place. Some of them say they have to have
16 up-to-date equipment and everything has to meet the
17 standards as it is in place at the federal level.

18 So we're trying really to look at time frames.

19 You have got a two-year window there
20 with our 2005, in December. So 2005, December, to
21 December of '07, all standards have to be met. Is
22 there a time frame that the states need to be able

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1 to address from that period on before you really
2 feel that you're up and you meet all the standards
3 of the 2005 knowing that what you have in place now
4 hopefully meets the 2002 standards?

5 MS. STEINBACH: Each state has its
6 own process for adopting or not adopting the VVSG.
7 The first words in that phrase is still voluntary.
8 But there is another factor in that. That is when
9 will the vendors have equipment that, a) can be
10 tested and, b) meets the VVSG?

11 So, if a state says, "By X date
12 every voting system in our state has to meet the
13 EAC's 2002 VVSG and there is no equipment
14 available," then that's not a realistic approach.
15 I think it will take some time to actually achieve
16 having replacement involved voting equipment to the
17 more recent standards.

18 But the existence of a new standard
19 does not mean that existing voting equipment is
20 inadequate to the job that its assigned to do.
21 There are many jurisdictions in the country that
22 are still using voting equipment that was certified

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1 under the 1990 standards and that voting equipment
2 has been reliable, trouble free, and functions as
3 required by state law.

4 The addition of the accessibility
5 requirements in HAVA has led many states to adopt
6 accessibility requirements for their voting
7 equipment that, in some cases, works well with the
8 old 1990 system. So, it's difficult to set a time
9 line on something that is terribly amorphous and
10 realize a great deal on being able to predict the
11 future of technology and resources in so many
12 different players.

13 MS. DAVIDSON: In other words, you
14 feel like you're a moving target?

15 MS. STEINBACH: Absolutely.

16 MS. DAVIDSON: Thank you. No
17 further questions.

18 MR. DEGREGORIO: Thank you,
19 Commissioner Davidson. Commissioner Hillman, I
20 think you had a question.

21 MS. HILLMAN: Well, I do. I have a
22 couple questions but one may not be so much a

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1 question as it is a comment. In her testimony Ms.
2 Steinbach reminded us and chided us, if you will,
3 about how grossly we missed our own deadlines with
4 respect to the transition of the certification
5 process.

6 I think it points to our being both
7 wildly optimistic about what we could get done as
8 well as perhaps naive about what would be involved
9 in going through this process and how long it would
10 take and the resources that we have to commit from
11 our budget to do this. But I feel like we have to
12 respond in some way to her concerns, especially
13 where she says that the transition process is an

14 adjusted target and it seems to never get closer
15 and it's leaving NASED uncomfortable.

16 So, I'm wondering if, Mr. Executive
17 Director, we have some kind of a response for NASED
18 about their discomfort and what we see happening
19 over the next few weeks?

20 MR. WILKEY: Well, I feel like I'm
21 split down the middle here in having sat on that
22 side of the aisle for such a long time and having
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1 been so heavily involved in the process. So I
2 certainly understand their frustrations.

3 But I think they understand, and
4 certainly our conversations with Sandy Steinbach
5 and the president of NASED and others, we're going
6 to have an opportunity to talk about it with them.
7 They understand that in order to do this, as the
8 counsel pointed out, we have to meet a whole lot of
9 regulation that a voluntary program like NASED
10 never had to do.

11 As I indicated earlier, I am
12 overwhelmed by the level of federal requirements,
13 regulations and procedures that we have to file to
14 get any program up and running of this magnitude.
15 We certainly want to make sure that every I is

16 dotted and every T is crossed before we do that and
17 before we get to the requisite set of procedures
18 into the Federal Register for everyone to see and
19 for everyone to comment on. So, we have been
20 working diligently and I think everybody
21 understands that we had so many other irons in the
22 fire.

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1 When I walked in the door last June,
2 you know, we were faced with not only trying to get
3 this on its way, but certainly getting a number.
4 If you look at the number of research projects that
5 we have in the pipeline, there is hundreds of
6 thousands of dollars of research that is ongoing
7 right now and being reported out there.

8 It has been overwhelming,
9 particularly with the resources in terms of
10 staffing we have available to us, but I'm confident
11 that over the next few weeks, we will be continuing
12 to work with NASED and Steve and others who have
13 been willing to give their time at length and who
14 will be working with us that we can get this thing
15 moving as quickly as we can. We will certainly be
16 working with them on a time frame to do that.

17 MS. HILLMAN: Thank you. Ms.
18 Steinbach, I think what you hear is our commitment
19 to move forward as quickly as we can, but to make
20 certain that when we take the process over, we are
21 fully ready and able to do that. I wish that we
22 could have done it sooner.

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1 My next question is for Mr. Berger
2 but, Ms. Steinbach, if you have a comment to add to
3 it, I welcome your input as well. I feel like I'm
4 going to quarrel with the belly of the beast a
5 little bit on this because I'm not sure where it
6 will go.

7 Public perception right now is that
8 the source code of the software for voting systems
9 is vulnerable right now and EAC is being asked to
10 make certain that that is taken care of and that
11 security is addressed as fully as it can possibly
12 be done. I'm wondering what the certification
13 process addresses in that regard and then what
14 comes after that to assure the security of source
15 codes.

16 It may be more technical than the
17 average voter might think about on a day-to-day
18 basis, but it speaks to the level of confidence

19 that people have that voting systems are not
20 rigged, that they are not vulnerable, that they are
21 secure and accurate and reliable. I know a lot of
22 it goes to the security of equipment, but I'm
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1 wondering what part of the certification process
2 plays in that.

3 MR. BERGER: I would be glad to
4 comment on that. That's a question that we need to
5 really discuss on two levels. One is technical and
6 the other is public perception. Those don't always
7 go to the same end.

8 On the technical level, this is an
9 area that the FEC 2000 Standards looked at and the
10 VVSGs went further with, that source codes is
11 reviewed as a requirement, and then compiled under
12 the supervision of the independent test authority
13 staff, and then testing in actual use on the
14 machines.

15 One of the areas that have got the
16 most work on VVSG is the whole set of security
17 requirements. So, I believe we can all be assured
18 that the requirements that exist today in the VVSG
19 have received a lot of work, have received a lot of

20 expert input.

21 Going beyond, I think it's important

22 to continually ask where is the best technical work

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1 in this field. Certainly the need to have secure
2 software goes far beyond voting. The banking
3 industry certainly has that same concern. The
4 aviation industry, the software used to fly planes
5 more and more have that concern.

6 There is a lot of work in this area
7 and we certainly want to make sure that together we
8 continue to use the best tools and methods
9 available. I'm assured that with NIST involvement,
10 that in fact will happen.

11 Then I think the issue becomes one
12 of public perception, how can the public be assured
13 that people are really looking through this,
14 checking it out, doing a careful source code review
15 and compiling the codes and doing thorough testing.
16 I think that's a considerable communication
17 challenge. My own belief is that there is good
18 data to communicate to them.

19 MS. HILLMAN: Thank you. Any
20 comments, Ms. Steinbach?

21 MS. STEINBACH: The public

22 perception issue is very a large one. We have many
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1 people who are simply afraid of what they don't
2 understand. Certainly the inner workings of
3 anything that is computerized is generally beyond
4 the understanding of the average human being.

5 I use my computer everyday. I have
6 no idea how it works. So I think it's easy to
7 mistrust something that you can't understand.

8 Certainly 100 years ago people could
9 take apart and repair their own cars or their own
10 typewriters, but a computer is something that is
11 not readily understood unless you have a
12 significant amount of understanding of how it
13 works. Well, the public relations issue is to
14 explain it in a way that the average person can
15 understand and feel confident that someone is
16 protecting the integrity of the process.

17 That's what this is really all
18 about. How we achieve that is difficult because we
19 are an association of individuals, state members,
20 and don't really have our own public relations.
21 EAC has the advantage of speaking for election
22 officials across the nation, but it is certainly

1 something I encourage you to do.

2 MS. HILLMAN: Thank you.

3 MR. DEGREGORIO: Thank you,
4 Commissioner Hillman. Vice-Chair Martinez.

5 MR. MARTINEZ: Thank you, Mr.
6 Chairman. I think I will start also with just a
7 general comment. I want to pick up on, I think, a
8 very good opening point that Commissioner Hillman
9 made. I think it is very relevant. I think it's
10 very important for us to talk very openly about
11 where we're at in the transition of the process.

12 Ms. Steinbach, I appreciate your
13 testimony and the candor of your testimony. I
14 think it's an important point to make.

15 As I reflect back over the last two
16 fiscal years, I think our executive directors did a
17 very good job of explaining our intent and where
18 we're going with this, and that we intend to
19 fulfill our statutory obligations in the transition
20 and certification process as expeditiously and
21 reasonably as possible. As we look back over the
22 last two fiscal years, I think about, and obviously

1 the three of us here, three of the four
2 Commissioners have been with this agency since its
3 very inception.

4 I look back on the first fiscal year
5 we were here, and although we had to say this
6 before and we're trying hard not to say it too
7 often, I think it is relevant to say that back in
8 the first fiscal year we had as an agency, we were
9 resource challenged and we found ourselves in a
10 similar situation to what my five-year-old daughter
11 finds herself in when she has 50 cents in her
12 piggy-bank and looking at the doll that she really
13 wants to buy and somebody has to fill in that gap.
14 She wants to get it. She's not going to get to it
15 with what she's got available in her own resources.

16 We all, as Commissioners, look very
17 longingly at major challenges of HAVA and say, "We
18 have to get there. It is imperative for us to get
19 there as quickly as possible." Yet at least for
20 the first fiscal year we were around, it was a near
21 impossible challenge. I know that you are fully
22 aware of that. Yet we have.

1 That's not to complain about support
2 from Congress. I think we had plenty of support,
3 and certainly in the last two fiscal years, we were
4 fully funded by Congress. So we found ourselves,
5 at the beginning of the FY 2005 fiscal year, saying
6 this is the year to achieve, and this is the year
7 to take a look at what are those major, significant
8 deliverables that HAVA requires as an agency and
9 let us deliver.

10 I think when we wrote the 2005
11 Annual Report that reflected back on 2004 and
12 talked about our expected accomplishments for 2005,
13 we thought the certification process and VVSG
14 deliverable, that updating the present voting
15 system standards would be doable.

16 I think as we moved into the bulk of
17 FY 2005, Ms. Steinbach, what we found is that the
18 deliverable of updating voting system standards,
19 which is a very key first step to ensuring we have
20 adequate certification and adequate lab
21 accreditation, et cetera, turned out to be quite a
22 challenge. It turned out to be a very significant

1 endeavor.

2 We ended up updating in very
3 significant fashion many gaps that existed in the
4 2002 Voting System Standards. We had tremendous
5 help. NASED has been a great partner, and from
6 Congress in giving us the financial support that
7 was necessary.

8 But I think what has happened in
9 Fiscal Year 2005, we suddenly realized, as an
10 agency of roughly \$10 million with no more than 22
11 full-time employees, four of which are
12 Commissioners that you see at the podium, at this
13 head table now. We were still, in a sense,
14 resource challenged. We find ourselves now, as we
15 open this hearing, with our Chair saying our number
16 one priority for FY 2006 is absolutely the
17 transition of the certification process.

18 So, I know you appreciate all those
19 comments. I know you have had this conversation in
20 person on many occasions. I think it simple to put
21 it on the record and make sure you understand it is
22 still our priority and has been from day one.

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1 Toward that end, I also wanted in a
2 comment sense, and Tom Wilkey, our Executive
3 Director will correct me if I am wrong. We are

4 essentially a two-track process. The first is lab
5 qualification and accreditation.

6 NIST is our partner, once again,
7 ensuring that we are able to qualify and the EAC
8 eventually accredits the labs that do this work in
9 a very thorough and vigorous manner similar to
10 other industries, Mr. Berger, like the FCC that
11 has a certifying function of a certain product. So
12 we are on that track. I think that track is moving
13 very aggressively.

14 In the meantime, before we can get
15 to full accreditation and qualification of testing
16 labs, we are also proposing an interim period for
17 our existing labs that currently serve as ITAs can
18 also continue to function as a certifying entity
19 even though we they have not met the more rigorous
20 lab qualification and certification or
21 accreditation requirements that we will impose upon
22 them.

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1 Does that square with your
2 understanding, Mr. Berger?

3 MR. BERGER: You are right, to my
4 understanding.

5 MR. MARTINEZ: That's the one
6 track. The second track, of course, is the actual
7 EAC putting their arms around the certification
8 process, which is what NASED does now. In other
9 words, the yeoman's work that's done by Mr.
10 Freeman, Paul Craft and Brit Williams.

11 Having that kind of a staff where
12 there is three of them helps us to do the same
13 thing in a different frame work that we would
14 propose having the EAC actually turn around and put
15 their arms around that certification process.

16 That's where we're headed. That's
17 the challenge in front of us. That's where we're
18 headed. So I think that's important for us to put
19 on the record.

20 My specific question though, Mr.
21 Berger, and you testified in front of us before. I
22 may be a bit repetitive in one of my questions.

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1 I'm wondering if the FCC scheme of certification of
2 I suppose cell phone technology, is there something
3 comparable?

4 In other words, for voting system
5 certification, there is certification at a national
6 level, there is certification, in most cases, at

7 the state level, and even another level of
8 certification done at the local level. Is there
9 anything comparable to other industries that have
10 the responsibility of certifying product, anything
11 comparable to that multi-level type of
12 certification?

13 MR. BERGER: There is certainly
14 uniqueness to the voting system certification in
15 your arena. There are some parallels.

16 For example, cell phones. You
17 cannot legally sell a cell phone in the U.S. that
18 does not have the FCC equipment brand. They look
19 very carefully at a set of specifications and tests
20 to assure that.

21 The network providers have gotten
22 together, under CTI, Cellular Telephone and

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1 Internet Association, an industry certification
2 that assures certain additional concerns of the
3 network providers before they sell a cell phone or
4 a network.

5 The parallel might be that, beyond
6 EAC certification, the states may want to jointly
7 say, "We have certain additional requirements and

8 concerns that we want to see satisfied." So that
9 might be a parallel.

10 In the sense of a cell phone
11 technology getting certified by the FCC, once it is
12 certified nationally, it doesn't go through another
13 similar type of certification process.

14 No, there is not state certification
15 beyond that for cell phones. Other concerns may
16 have other regulatory requirements. For example,
17 for safety, almost all manufacturers will get a UL
18 certification for safety, but that's a different
19 area of concern.

20 MR. MARTINEZ: Certainly there are
21 reasons why you would have this multi-level
22 certification. I'm not arguing one way or the

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1 other. I'm trying to get a grasp of the challenge
2 that's in front of us in terms of what we're
3 dealing with.

4 Is there a road map? I assume that
5 you have experience with the FCC in its
6 certification process. You testified about that
7 before.

8 MR. BERGER: Yes.

9 MR. MARTINEZ: Is there a road map

10 from the FCC in helping us to deal with issues
11 pertaining to, for example, disclosure of vendor
12 specific proprietary information or trademark
13 information?

14 MR. BERGER: Yes. In fact, there
15 are very specific federal guidelines on what can be
16 considered vendor proprietary information and what
17 is not and, therefore, open under Freedom of
18 Information. So those guidelines I think are
19 reliable and have stood the test of time.

20 MR. MARTINEZ: I know that you're
21 helping us in putting our arms, in my words, around
22 the certification process. I assume we're looking

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1 to the FCC and other regulatory agencies at the
2 federal level that guide us in terms of trying to
3 make the appropriate decision about disclosure of
4 proprietary information or nondisclosure.

5 MR. BERGER: That's a very
6 conscious effort. Probably all of us are big fans
7 of not reinventing the wheel. The FCC is an agency
8 that has a lot of credibility in ensuring healthy
9 telecommunications systems.

10 We have worked with them to the

11 level of sitting down with their IT staff and
12 looking specifically at their web based tools to
13 facilitate the certification process, and asking
14 specific questions "what language have you used to
15 develop that web tool, that level of detail."

16 MR. MARTINEZ: Given the fact that
17 states have modeled in many instances their own
18 state specific FOYA and public disclosure
19 requirements on the federal FOYA scheme, I assume
20 that there is a great deal of instruction for even
21 the states to have their own certification practice
22 as what is disclosed or not disclosed under the

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1 guise of trademark and proprietary information.

2 MR. BERGER: I agree. I want to
3 add the comment that on many of the concerns we
4 have, these are not diametrically opposed to vendor
5 concerns to protect their trade secrets and
6 proprietary information.

7 What we want is a high level of
8 assurance that the equipment that the ITA certifies
9 is the same equipment a state certification body
10 might be looking at and they can validate that.
11 Equally, on election day that is the same equipment
12 that the local officials put down before the voter.

13 We don't really want to know all the
14 trade secrets. We just want a way that gives an
15 extremely high confidence that that equipment is
16 exactly the same and won't change.

17 MR. MARTINEZ: Thank you for your
18 time, Mr. Chairman.

19 MR. DEGREGORIO: Thank you, Mr.
20 Vice-Chairman. I have just a quick question to Ms.
21 Steinbach actually. Sandy, most states look to
22 federal and look to the federal government and the

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1 FEC standards in the use of their voting systems
2 and most states have looked to NASED's leadership
3 in the certification process and certifying
4 election equipment in the states.

5 But we also know that there are some
6 states that have an independent certification
7 process and they are informed by what goes on at
8 NASED but they have their own independent system.
9 We are seeing some states moving in that direction
10 right now and doing their own.

11 Do you see, when the EAC takes over
12 this process -- and I will actually put some
13 federal money into it. We have all done a great

14 job doing it on a volunteer basis working with NIST
15 to do that. Do you see the states benefit from
16 this process more than they have in the past with
17 the process you have established?

18 MS. STEINBACH: I would certainly
19 hope so. One of the things that I can't predict,
20 however, is the reaction of the 50 and more
21 agencies, legislature, elected officials and other
22 bodies that have the authority to make those

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1 decisions.

2 Every state legislature has its own
3 set of priorities. So it's a very different local
4 culture from one state to another, from one side of
5 the country to another. So it is almost impossible
6 to predict what any of them will do.

7 So, all I can say is that I hope
8 that the resources the EAC is able to put into this
9 as well as including your ability to promote the
10 availability of this resource will help encourage
11 the states to adopt it.

12 MR. DEGREGORIO: Thank you. I'm
13 going to ask Tom Wilkey if he has any questions to
14 ask of our panelists.

15 MR. WILKEY: I just have one

16 question for Steve because I think it's important
17 for both the Commissioners and the audience to
18 understand that you will be assisting us in
19 developing these procedures and what kind of time
20 frame you see that we can help Ms. Steinbach feel a
21 little better in terms of where are we, what is our
22 time frame.

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1 I know we recently signed a contract
2 with you to do that sort of thing for us. What do
3 you see down the road and perhaps a little bit
4 about what you see as a participant of that
5 process?

6 MR. BERGER: Why did the
7 temperature just suddenly go up? Well, the old
8 saying in product development is as you go from
9 storm to normal, it's going to be a bit of a storm.
10 I frankly think the saving grace is there really
11 are very good people involved, very dedicated
12 people and we will get this job done.

13 I tend to answer questions from a
14 technical basis. On that, knowing the dedication
15 of the people involved, I believe the process is
16 going to go rather quickly. I actually think,

17 having surveyed it, what is probably going to set
18 the schedule is the procedural requirements.
19 There are certainly time frames required for NVLAP
20 to accredit labs and processing groups.

21 While we want that to be an
22 expeditious process, we want it to be a fair

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1 process. I think that's one of the critical
2 elements. We want to take every pain to ensure the
3 labs are fully competent to do the job that needs
4 to be done.

5 As Julie said, there is federal
6 requirements for publication in the Federal
7 Register and so forth. My own expectation is
8 that's what's going to set the time frame.

9 MR. WILKEY: Thank you.

10 MR. DEGREGORIO: Ms. Thompson, do
11 you have any question to ask the panel?

12 MR. WILKEY: I do not. Thank you.

13 MR. DEGREGORIO: Thank you very
14 much. I'd like to again take this opportunity to
15 thank Ms. Steinbach and Mr. Berger for your
16 excellent testimony and for being responsive to our
17 questions.

18 As I indicated, this is a top

19 priority. You bring a very important perspective.
20 We have a panel coming up that will bring an
21 additional perspective at the state, local and
22 vendor level. We appreciate your comments today.

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1 Now we ask our second panel to come
2 up and get prepared to give testimony. I think we
3 will take a short, five-minute break while you are
4 coming up to get prepared. Thank you very much.

5 (A recess was taken.)

6 MR. DEGREGORIO: We all know that
7 this certification process for election systems
8 certainly touches many people in the country. But
9 the stakeholders involved on the front line include
10 state and local election officials and vendors. So
11 our next panel is going to give us their
12 perspective on this.

13 Our first panelist is someone I have
14 known for many, many years. She is from my home
15 state of Missouri. I am proud to have her on this
16 panel. Wendy Noren has been involved in elections
17 for 28 years, since she was in high school.

18 MS. NOREN: That's sweet.

19 MR. DEGREGORIO: I have known her

20 for many years. When I became an election official
21 in 1985, she was very helpful to me in educating me
22 on many things. We served on many committees

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1 together over the years. She represents the
2 National Association of Counties on our advisory
3 board. She and I got involved together in 1997.
4 She has a great deal of perspective.

5 When it comes to the technical
6 aspects of elections and the software and hardware,
7 there is really nobody in my state, in this country
8 who really knows better than Wendy Noren. So we
9 are appreciative that she has taken the time to
10 come today to speak to us.

11 We also will receive testimony from
12 John Groh. John Groh is a senior vice-president
13 with one of the leading vendors in this country,
14 ES&S. More importantly, he's going to speak in
15 behalf of the Information Technology Association of
16 America, also known as ITAA, and its Election
17 Technology Council, of which he now represents. I
18 know that he has attended many of our meetings and
19 certainly understands the work of the EAC in this
20 process.

21 Lastly, we're going to have

22 testimony read, and the testimony was prepared by

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1 Brad King. Brad King is the Director of Elections
2 in the State of Indiana, which has a good
3 certification program of its own.

4 Unfortunately, Mr. King has come
5 down with pneumonia and can't be here to give
6 testimony in person. So Brian Hancock, our
7 election research specialist in our office, will
8 summarize the comments that Mr. King has submitted.

9 So, let's begin with Ms. Noren from
10 Boone County, Missouri, which is also the home of
11 the University of Missouri Tigers.

12 MS. NOREN: Thank you to the
13 Commission. I want to thank you for the
14 opportunity to provide testimony on the
15 implementation of the Voluntary Voting System
16 Guidelines, the VVSG, but more importantly for your
17 ongoing commitment to reach out to local officials
18 for input during your decision making process. You
19 are incredible at that.

20 It has been over four years since
21 the drafting of the Help America Vote Act, and if
22 any section of that law had consensus support, it

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1 was the development of a set of national criteria
2 for the manufacture and testing of voting
3 equipment.

4 Few were willing to contend that the
5 unfunded, volunteer-designed standards and testing
6 process in place at that time met the needs of the
7 voter, the election official or the industry.

8 That's not criticizing the work that they did. I
9 worked under them when we had no standard at all.

10 For all of us who worked on election
11 reform, it was envisioned that equipment would be
12 manufactured and tested to a set of comprehensive
13 guidelines prior to the 2006 deadline for meeting
14 accessibility and second chance voting provisions
15 of HAVA.

16 That, as we all know, did not
17 happen. The domino effect that followed the early
18 delays in your appointment as a Commission has now
19 left local jurisdictions in the enviable position
20 of purchasing HAVA compliant equipment without the
21 benefit of your extensive efforts to craft a set of
22 minimum guidelines and design a coherent, reliable

1 testing process.

2 In addition, the resulting time
3 squeeze for the 2005 VVSG to be updated to the 2002
4 guidelines. They were designed to address the most
5 critical issues such as accessibility, security and
6 state imposed requirements for paper trails. The
7 ink was barely dry on the draft sent to you last
8 May by NIST and the VVSG Technical Committee when
9 they started work on the next version which will
10 tackle a full review of the 2002 guidelines for
11 software, hardware, and usability.

12 Although these guidelines are
13 voluntary in HAVA, the reality for most local
14 officials is that they are anything but voluntary.
15 As you move toward implementation, you are wise to
16 consider the various scenarios that the voluntary
17 guidelines create.

18 First, because HAVA did not fully
19 define accessible, these guidelines are the only
20 benchmark for meeting our requirement in HAVA to
21 provide disabled voters with the ability to vote
22 independently without assistance. In addition,

1 state legal mandates in many areas require all
2 voting equipment used by local jurisdictions be
3 tested to meet the most recent federal guidelines.

4 For these jurisdictions, current
5 equipment will need to be retooled, tested and
6 certified by January of 2008. In most cases, the
7 cost for doing so fall on local governments already
8 reeling from the failure to fully fund HAVA at the
9 federal and state level.

10 In some states, the chief election
11 official independently chooses to incorporate these
12 guidelines prior to certifying equipment for use or
13 purchase. Some may or may not choose to require
14 upgrades to the current equipment that was tested
15 only to the 2002 guidelines or 1990 guidelines.

16 In addition, some states are
17 requiring additional retooling and testing in
18 reaction to reports of real and/or perceived
19 failures in the current federal guidelines and
20 testing process.

21 They are jurisdictions who, on the
22 face of it, are not forced by their state to follow

1 the guidelines will end up paying for some of the

2 ongoing costs of the voluntary guidelines. Vendors
3 who are required to retool and retest equipment
4 across multiple guidelines in multiple layers, will
5 spread the cost of that process throughout the
6 election food chain -- we're at the bottom of that
7 food chain -- increasing costs for purchase,
8 upgrades, and ongoing maintenance of equipment.

9 The turmoil that surrounds a local
10 election official at this point cannot be
11 overemphasized. Little did we know that the simple
12 hope to bring order to the manufacture and testing
13 of voter equipment would spawn the anarchy that we
14 see right now.

15 As I looked at a lot of the data of
16 the last few weeks in preparing for this, the
17 equipment issues, the writing about them, the Bob
18 Seger line, "I wish I didn't know now what I didn't
19 know then," kept running through my mind.

20 The volume of conflicting,
21 disturbing, vague, accurate, inaccurate and
22 inequitable data and testing makes it impossible

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1 for even the most diligent and informed election
2 official to make a sound judgment on equipment
3 purchase and administration. The ability for local

4 government to plan for the future costs of our
5 operations is at best chaotic.

6 On the one hand, no issue begs for a
7 greater sense of finality than the issue of
8 equipment standards, and certainly that is an
9 argument for you, as members of the Commission, to
10 take a hard line on the implementation date for the
11 2005 VVSG. But the fact that they are voluntary,
12 as we all wanted, complicates this issue.

13 We must also recognize that many of
14 the components of the equipment to be utilized over
15 the next 12 months, although tested to the 2002
16 criteria, have never been field tested on a large
17 scale. We need only to look to the experience of
18 election officials in the early stages of previous
19 equipment rollouts to know that this is critical to
20 identifying the gaps in our guidelines and it will
21 certainly bring to light new areas of concern.

22 Because of this, the impact of not
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1 having a phase in period will force some
2 jurisdictions to expend large sums shortly after
3 their initial investment in equipment. At this
4 point, we don't know which equipment we have

5 purchased will require significant retooling to
6 meet the 2005 VVSG. That won't be determinable
7 until the testing criteria is finalized and the
8 equipment moves through the testing process.

9 A phase in period may allow election
10 officials to spread cost over a long period and
11 better plan for these inevitable costs. In
12 addition, a phase in may allow an opportunity to
13 upgrade equipment not only to the 2005 VVSG
14 criteria, but also to some design elements that are
15 a result of the next version of the VVSG, any
16 state-defined criteria over and above these or
17 modifications to fix problems that may come to
18 light in the large scale field testing this year.

19 On the other hand, one final
20 implementation date will level the playing field
21 among those vendors who are trying to respond to
22 the requirements in a responsible fashion.

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1 Additionally, many of the new requirements, as well
2 as access to testing data, are critical to our
3 ability to effectively develop administrative
4 procedures that ensure this equipment works the way
5 it is tested.

6 A phase in period that allows for

7 delays in the development of these may not serve
8 our interests when problems inevitably occur and
9 the finger pointing starts. I would also hope that
10 any phase in period is not couched in language that
11 implies local jurisdictions must upgrade to these
12 guidelines. Nor can we afford to run the risk, by
13 implying we are delaying the process, of further
14 eroding the confidence of those voters who are
15 already bewildered by the multiple acquisitions
16 leveled at much of this equipment.

17 To further complicate the problem, I
18 ask that you be aware that many states and
19 jurisdictions have embedded into their equipment
20 purchase contracts the requirement that the
21 successful vendor upgrade, at no cost, to newer
22 versions of the VVSG during the contract period.

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1 Any action you take needs to be evaluated with the
2 various states to ensure that vendors don't have
3 wiggle room they need not to meet their contractual
4 obligations.

5 In another area, like you, I believe
6 the depositing of the testing code in the National
7 Software Reference Library has the potential for

8 providing the public with the much needed assurance
9 that the software used to count ballots is in fact
10 the version tested by accreditation labs. I do,
11 however, have grave concern that if not carefully
12 implemented, this could blow up in our face.

13 Even with my computer background, I
14 found the technical information posted on the NIST
15 site regarding documentation testing are very
16 daunting. The EAC, in conjunction with NIST, the
17 vendors, state and local election officials must
18 move quickly to develop policies and procedures for
19 this process and implement an extensive training
20 program around this.

21 In the end, we are going to have to
22 face the fact that the equipment and the underlying

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1 administrative procedures utilized for American
2 elections are a work in progress approximately for
3 the next five to seven years. Our ability to
4 effectively administer this and maintain voter
5 confidence will be dependent on everyone working
6 together to find effective, affordable solutions
7 rather than instilling fear to the point that there
8 is pressure to retreat back to inaccurate,
9 inefficient, or non-inclusive systems of the past.

10 I do know that the system and
11 administrative processes we use today are
12 exponentially better than when I started in 1978.
13 The systems and processes I will use after
14 implementation of the 2005 VVSG will be better
15 still.

16 If we all commit to the goal of a
17 perfect voting system, then we must understand that
18 its evolution will be a result of trial and, let me
19 emphasize this word, error. Reasoned responses,
20 problem identification and innovative solutions
21 will develop over time.

22 I want to thank you again for your

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1 ongoing efforts to improve the election
2 administration process and allowing us to talk with
3 you today.

4 MR. DEGREGORIO: Thank you, Ms.
5 Noren, for those comments. We will get to
6 questions after all three panelists have spoken.
7 Our next speaker is John Groh. Mr. Groh.

8 MR. GROH: Good morning. Good
9 morning, Chairman DeGregorio, and the rest of the
10 Commission.

11 My name is John Groh. I am a Senior
12 Vice-President with Election Systems & Software.
13 I'm here to provide some testimony on behalf of the
14 ITAA, which Paul has already given you a little
15 background on. The ITAA is one of the nation's
16 oldest and largest trade associations for the
17 information technology industry, representing
18 approximately 400 companies.

19 The ETC Council, or Election
20 Technology Council, consists of companies which
21 offer voting system technology hardware, products,
22 software and services to support the electoral

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1 process. These companies or this group of
2 companies and the ETC have organized an association
3 to work together to address the common issues
4 facing our industry.

5 Current members of the ETC are
6 Advance Voting Solutions, Danaher Guardian Voting
7 Systems, Diebold Election Systems, Election Systems
8 & Software, Hart InterCivic, Perfect Voting System,
9 Sequoia Voting Systems, and Unilect Corporation.
10 Membership is open to any and all companies in the
11 election systems marketplace.

12 The ETC is pleased to respond to

13 your request for vendor perspective on issues
14 surrounding the implementation of the new national
15 voting system certification process and its likely
16 impact on voting systems certified under previous
17 generations of voting systems standards.

18 Our member companies have a great
19 stake in the conduct and outcome of this process.
20 Indeed, voting solutions provided and supported by
21 our members account for over 90 percent of the
22 voting systems in the marketplace today. Our

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1 members employ over 2,000 dedicated citizen
2 employees who work hard everyday to support the
3 success of American elections.

4 Our members wish to thank the EAC,
5 the NIST organization, and the Technical Guidelines
6 Development Committee for the focus and urgency all
7 of them have individually placed and have moved
8 forward with both Voluntary Voting System
9 Guidelines and the transition to the voter
10 certification process. We commend the Commission,
11 your staff and NIST for opening the process to
12 input from all concerned parties.

13 If we correctly understand the

14 currently proposed implementation of the new
15 certification program as set out in the VVSG, the
16 EAC has provided the states and NIST a 24-month
17 transition window after adoption of the 2005 VVSG
18 on December 14th, 2005 to migrate to a new standard
19 of voting system guidelines and certification
20 process.

21 This migration has already begun
22 and, if the current rate of progress is maintained,

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1 should be an attainable goal. The EAC and NIST
2 will have the full support of the ETC and its
3 members in making the transition to the new
4 certification process.

5 However, it is anticipated from
6 communications we have had with our customers that
7 some state election agencies may require
8 certification to the VVSG sooner. To facilitate
9 federal independent test authority certification
10 before the December of 2007 deadline, the new
11 certification process will likely need to be in
12 place before the end of this year.

13 As the EAC and NIST move forward in
14 the design and implementation of a new
15 certification process, our members believe the EAC

16 should give serious consideration to the
17 fundamental issues of testing frequency and
18 repetition. State and county election officials
19 and their vendor partners face an ever increasing
20 volume of federal qualification and state level
21 testing activity.

22 Reducing the cost and delay imposed
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1 by continual and often repetitive testing should be
2 a primary consideration of the new certification
3 process. By combining the federal level ITA
4 certification testing and some basic state level
5 tests, the EAC would streamline the system
6 certification process, saving valuable time for
7 election officials and reducing redundant nonvalue
8 added costs for everyone.

9 Moving to the subjects specifically
10 identified in your invitation to participate on
11 this panel, the ETC members urge the EAC and NIST
12 to consider the very important implication of the
13 following issues in designing the new process and
14 setting out policy to treat systems certified under
15 the existing and the current 2002 Voluntary Voting
16 System Standards.

17 The commission and NIST should
18 recognize that preexisting NASED voting system
19 certification procedures and processes have good
20 elements that will be common to any certification
21 process. These elements are the application
22 process, the Technical Data Package submission,

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1 source code analysis, functional testing, and the
2 final assessment report that is available.

3 In addition, the creation of the
4 voting software repository within NIST's National
5 Software Reference Library has created a mechanism
6 for improving the security, accuracy, and
7 transparency of the voting system software. We
8 expect that the EAC certification process will
9 likely incorporate those elements. We would urge
10 you to keep them and maintain them.

11 One element of the current NASED
12 certification process that the EAC has indicated it
13 will carry forward is the discontinuation of
14 certifying voting system platforms that were
15 certified under a previous standard. It is
16 important that the EAC understand the economic and
17 the election performance impacts on state and
18 county election administrators, and more

19 importantly, the voters and the vendors.

20 We know that stopping any and all
21 certification of systems certified under the 2002
22 Voting Systems Standards, on a certain date,

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1 without an allowance for state required
2 enhancements or to fix errors found, will impose
3 major economic consequences on states or election
4 jurisdictions which have already recently purchased
5 voting systems under the old standards.

6 Due to the many meaningful changes
7 made under the 2005 VVSG, there may be no way to
8 economically retrofit some voting systems. Such
9 equipment may have to be discarded and a new
10 procurement undertaken with new purchase costs to
11 the election jurisdictions.

12 Most of the changes to the voting
13 system over its lifetime affect the firmware and
14 software on a voting system. Voting systems are
15 typically designed so that changes in functionality
16 can be implemented through firmware and software
17 upgrades. The cost of these upgrades may be
18 covered under software maintenance agreements.

19 Over the course of a product's life,

20 it is likely to receive a software upgrade at least
21 once every one to two years. The most beneficial
22 updates a product would ever require are to its

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1 firmware and software. It is reasonable to expect
2 that firmware and software modifications and
3 enhancements be certified to the current applicable
4 standard.

5 If the federal certification process
6 mandates that, for any voting system submission,
7 both software and the hardware must meet the new
8 standard to even be considered by a Voting System
9 Test Lab, then any new guideline requirements that
10 cause change to the hardware platforms will place a
11 financial burden on the voting system customers to
12 replace or retrofit voting systems before the
13 system components meet their expected service life.

14 If future changes to the guidelines
15 continue to affect the hardware platforms, then the
16 financial burden on the voting system customer
17 forced to replace or retrofit those systems will be
18 incurred yet again.

19 In addition to costs and other
20 economic impacts, the EAC should consider election
21 management and performance issues in setting the

1 2002 Voluntary Voting Systems Standards.

2 States and jurisdictions make voting
3 system acquisitions with an expectation of a 10 to
4 15 year service life. This time allows the
5 customer to refresh technology when it becomes
6 near-obsolete or to take advantage of technology
7 upgrades as they become available in the market.

8 As states and jurisdictions
9 introduce new technology, they must move along the
10 learning curves for system usage, support and
11 training. Changes to hardware platforms can impact
12 the training that the customer has invested in its
13 poll workers as well as the associated voter
14 education programs.

15 To mitigate the economic and
16 election performance risks identified above, the
17 membership of the ETC make the following
18 recommendations:

19 One, when the 2005 VVSG are made
20 effective in December of 2007, the EAC must set a
21 policy that allows for the ongoing certification of
22 software updates to those 2002 certified hardware

1 platforms without having to submit changes to the
2 existing hardware platform unless the hardware
3 change can be shown to be critical to the safety,
4 security, accuracy and reliability of voting
5 systems.

6 Secondly, when the 2005 VVSG are
7 made effective, there must be a provision made for
8 emergency action on software updates, allowing
9 election officials who require enhancements,
10 encounter voting law changes or identify software
11 anomalies in pre-election tests, to obtain
12 certified fixes for equipment certified under the
13 2002 or the 2005 standard.

14 Three, at the time that the 2005
15 VVSG are made effective in December of 2007, any
16 software updates submitted for certification should
17 meet the new or the current standard.

18 Fourth, the transition policy should
19 remain effective for future revisions to the VVSG
20 guidelines.

21 Five, the transition policy needs to
22 be documented and clearly communicated, allowing

1 all involved full knowledge and awareness so budget
2 planning can be managed. We also see a need for
3 this policy guidance as the planned continuous
4 process of developing and implementing
5 ever-improving new Voluntary Voting System
6 Guidelines takes place in the future.

7 Finally, the EAC must take into
8 consideration how the improvements required by the
9 VVSG will be funded.

10 In giving you some concluding
11 remarks, in providing testimony, our intention is
12 to give feedback to the EAC on the consequences to
13 the vendor community and, as we see it, to the
14 states and the election jurisdictions, who are our
15 valued customers whom we serve.

16 State adoption of the federal
17 Voluntary Voting System Guidelines is what makes
18 the standard effective. If the goal is to
19 encourage states to adopt the federal standard,
20 then the economic and the election performance
21 impacts to customers at the state and local level
22 needs to be considered and addressed.

1 The ETC and our members are
2 committed to working with the EAC, NIST, and our
3 customers to see the 2005 VVSG and a new
4 certification process through to successful
5 implementation. It is our belief that the
6 adherence to standards and the rigor of the
7 certification process is critical to maintaining
8 integrity of our elections in the USA.

9 Above all, we are responsive to
10 customer needs and are committed to providing safe,
11 secure, accurate, reliable and accessible voting
12 systems under any standard or certification
13 program. We only ask that the appropriate time be
14 allowed so it can be done right and that the
15 funding and costs of implementation be considered
16 when creating new guidelines and certification
17 processes.

18 We all recognize and accept that
19 with new voting system technology comes complexity
20 and need for changes in election administration,
21 poll worker skills, and increased voter education
22 and outreach. We are all involved in this process

1 together, and by working together we can improve

2 the process of voter access and participation.

3 Thank you.

4 MR. DEGREGORIO: Thank you, Mr.
5 Groh. Mr. Hancock is going to read the testimony
6 of Brad King.

7 MR. HANCOCK: Thank you, Mr.
8 Chairman. I am happy to read Mr. King's testimony.
9 I think we all send our best wishes to Brad for a
10 speedy recovery.

11 Mr. King first talks about some
12 background about voting systems in the State of
13 Indiana. In Indiana, in the year 2000, over 50
14 percent of our state's voters were casting ballots
15 on a punch card or lever voting equipment. In the
16 2004 elections, only ten percent of registered
17 voters would have voted on those same machines.

18 Throughout 2004 and 2005, counties
19 purchased new voting equipment to comply with
20 federal and state laws and reimbursements were made
21 to counties for those purchases. In the spring of
22 2005, the last lever machine county replaced its

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1 system with a Direct Record Electronic voting
2 system. In October of 2005, the last of the punch
3 card counties replaced its system.

4 In addition, with the leadership of
5 the Indiana Circuit Court Clerks, all counties
6 completed contracts for accessible voting equipment
7 for preparation for deployment in Indiana's May
8 2006 primary election. Today, Indiana has spent at
9 least 60 percent of its federally allocated HAVA
10 money for voting system replacements and upgrades.

11 Mr. King next talks about voting
12 system certification in the State of Indiana. In
13 Indiana, voting systems are certified for
14 marketing, sale and use by the Indiana Election
15 Commission, which is an administrative body that
16 consists of four members, two of each which are
17 nominated by the major political parties in Indiana
18 and appointed by the governor.

19 Many commission members through the
20 years have expressed their frustration with lacking
21 the technical advice and support necessary for them
22 to vote intelligently on a voting system

1 application pending before the commission. To
2 obtain certificate administration in Indiana, a
3 voting system vendor must submit an application
4 with extensive technical information about the

5 voting system and pay a fee.

6 As part of the application process,
7 the vendor must demonstrate to the commission that
8 its system has been examined by an Independent
9 Testing Authority. Indiana's definition of testing
10 authority was recently amended to include an entity
11 accredited under Section 231 of HAVA, and that it
12 meets the current 2002 Federal Election Commissions
13 Voting Systems Standards which were adopted as
14 Indiana law in July of 2003.

15 In addition, to obtain certification
16 a vendor must successfully demonstrate its system
17 to the commission and document the escrow of the
18 voting system's software, firmware, source codes,
19 and executable images with an escrow agent approved
20 by the Election Division.

21 The co-directors of the Election
22 Division, the body which provides daily

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1 administrative support to the election commission,
2 review materials submitted by voting system vendors
3 and make a recommendation regarding certification
4 to the commission members.

5 However, the individuals who
6 currently serve and that have previously served as

7 co-directors would, I think, candidly admit that
8 their training reflects a legal or administrative
9 background and not an extensive technology
10 background required to appropriately review
11 reports from an ITA. Increasingly, the
12 co-directors have had difficulty sorting through
13 more challenging technical issues.

14 For example, the issue of whether
15 changes to off-the-shelf software incorporated into
16 a certified voting system requires a vendor to
17 request recertification of its voting system when
18 changes are made to the off-the-shelf software by
19 the vendor of that particular software.

20 Mr. King next brings out some
21 recommendations. Certainly one area that we
22 address is communication. Indiana has experienced

1 difficulty due to the high turnover rate of the
2 person responsible for voting system certification
3 issues within the vendor's organization.

4 When turnover occurs, the newest
5 individual communicating with the state on behalf
6 of the vendor is often unfamiliar with Indiana
7 certification requirements and even federal voting

8 systems standards.

9 Turnover can lead to dire
10 consequences for the vendor and for the state. The
11 vendor loses the opportunity to effectively
12 complete the certification process and may lose
13 sales. The state runs the risk of that the vendor
14 will actually sell and deliver uncertified voting
15 equipment in Indiana. This has, in fact, occurred
16 in the State of Indiana.

17 Therefore, I would advocate that the
18 standards address that the vendor be responsible
19 for designating one individual within its
20 organization to be the point of contact with the
21 states on certification issues, and to develop
22 internal education programs within the vendor's
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1 organization to ensure ongoing monitoring of the
2 impact of the new federal voting system standards
3 on the products marketed by that company.

4 Of course, as you consider revised
5 voting systems standards, it is important to think
6 about the continued use and support of the systems
7 that are currently certified under existing
8 standards. Often, these systems are accurate,
9 reliable and easy to use.

10 Therefore, we have to ask whether
11 the new standards address some deficiency perceived
12 in existing systems. If not, then there would
13 appear to be no harm in the continued use of
14 systems certified under the current standards.

15 If the new standards do address some
16 deficiency in existing systems, we need to balance
17 those concerns with the costs imposed by buying new
18 systems and upgrading new systems to meet new
19 standards against the risks identified in the new
20 standards.

21 I would also urge you to consider
22 the change management aspects of adopting new

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1 standards and adopting change management as part of
2 the implementation of new standards. For example,
3 there must be a well developed plan for the
4 communication of new standards to ITAs, to state
5 election officials, and to vendors. Additionally,
6 there must be a well developed plan to train ITAs,
7 state election officials and vendors in the
8 interpretation and use of the standards.

9 A plan to implement new voting
10 system standards must recognize the reality of the

11 election cycle. The adoption and implementation of
12 voting system standards must be timed to reduce the
13 least possible disruption to what has become a
14 continuous election process.

15 Indiana was lucky in that it had no
16 elections of any significance during 2005, and as a
17 result, was able to focus more attention on the
18 enforcement of the 2002 standards. I recommend
19 that implementation of future standards avoid as
20 much as possible implementation during or shortly
21 before the start of a general election year.

22 Turnover among state and local
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1 election administrators also requires ongoing
2 training efforts. NASED and the Election Center
3 should continue to play an important role in
4 educating their own membership with regard to the
5 adoption of new voting system standards as well as
6 providing basic education to newcomers about the
7 fundamental principles embodied in the standards.

8 Mr. King next talks about a
9 relatively new program called the Voting System
10 Technical Oversight Program in Indiana.
11 Recognizing the voting system standards will
12 continue to evolve and that an institutionalized,

13 but not bureaucratized, source of technical support
14 is critically needed at the state level, Secretary
15 of State Rokita proposed the enactment of
16 legislation to establish The Voting System
17 Technical Oversight Program.

18 This legislation was enacted as
19 Public Law 221-2005. I understand that, although
20 many states have discussed creating a similar
21 program modeled on Georgia's relationship with
22 Kennesaw State University, Indiana may be the first

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1 state to have done so by statute.

2 Pursuant to that legislation, the
3 Secretary of State is directed to contract with an
4 entity to administer the program. The legislature
5 directed that the contract require that entity to
6 provide the following program services:

7 1) Develop and propose voting system
8 procedures and standards;

9 2) Compile an inventory of voting
10 equipment in Indiana;

11 3) Review ITA reports;

12 4) Recommend to the Indiana Election
13 Commission whether to approve a voting system

14 application;
15 5) Random voting system audits;
16 6) Review contracts for the purchase
17 of voting systems;
18 7) Assist with the development of
19 quality purchase agreements for voting systems.
20 A request for proposals was issued
21 pursuant to this legislation in the summer of 2005.
22 Several responses were submitted and an educational
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1 institution, Indiana University, was selected as
2 the potential vendor.

3 However, contract negotiations with
4 the university did not ultimately produce a
5 contract. The parties could not overcome difficult
6 issues with respect to the activities to be
7 conducted under the program.

8 Indiana does plan to issue a new RFP
9 by the end of March 2006, and anticipates the
10 successful establishment of a Voting System
11 Technical Oversight Program that will enable state
12 certification authorities to perform their
13 functions with more information and confidence and
14 provide assistance in making the implementation of
15 new federal voting systems standards more

16 successful in Indiana.

17 He concludes by saying he
18 appreciates the invitation and would be happy to
19 answer any questions. Thank you.

20 MR. DEGREGORIO: Thank you, Brian,
21 for reading that. We certainly heard now a state
22 perspective on what they are doing in Indiana, and
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1 they are taking it a little further. In fact, this
2 RFP that they have out to get a state university to
3 participate is similar to what they are doing in
4 the State of Georgia.

5 I'd like to begin the questions here
6 and start with asking Ms. Noren. Wendy, we know
7 that many large jurisdictions in the country each
8 have staffs, have technical support that they get
9 from their city or large county governments. I
10 know that Boone County is a mid-sized type of
11 county.

12 While you have your own staff
13 support, you also get support from the county in
14 these technical areas. But the vast majority of
15 election officials in the country represent small
16 jurisdictions that are very dependent on vendors.

17 You raised in your remarks on this issue of you
18 trying to understand what the National Software
19 Reference Library did and this HASH mark issue.

20 How do you think that the EAC can
21 provide a system to relatively small jurisdictions
22 who may not understand these small technicalities

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1 in this area, help them do the best job they can
2 within the confines of a certification process,
3 whether it's a state or whether that state has its
4 own or whether they have the EAC's process?

5 MS. NOREN: Thank you for asking
6 that because I hadn't put it down in what I
7 previously submitted to you. I thought of this
8 last night.

9 Well, certainly from the first time
10 I heard that the National Reference Software
11 Library is when NIST had that meeting back in
12 December of 2002 something, their first meeting on
13 the guidelines. I felt that this was a wonderful
14 idea. The way they explained it, it sounded so
15 easy.

16 The vendor puts the software out
17 there. You can check it any time. People can
18 check to make sure the software you're using is the

19 software that has been tested and accredited. I
20 thought that was a wonderful thing. People can
21 know what we have on there.

22 But as I said, you know, you all are
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1 really to be commended for incorporating that. I
2 think truly that is going to be one of the things
3 that really allows the public to have confidence in
4 the software. We're using a good program on that.

5 But as you said, Chairman
6 DeGregorio, the bulk of the people out in our
7 jurisdictions have no technical support available
8 to them. Worse, I dare to say there are probably
9 some people out there who the only PC they have in
10 their office, maybe even in the courthouse, is the
11 PC they get with this voting system. Payroll may
12 be running on it and other things.

13 We don't know what's out there.
14 This is why it's absolutely critical that this is
15 not going to blow up in our face. For example, we
16 don't want, at the 2008 election, people doing all
17 kinds of checking or requesting HASH marks testing
18 on the equipment that local election officials have
19 no concept of how to set this up, how to do it, how

20 to make sure nothing is added to these devices,
21 nothing is changed on those devices.

22 The types of things we're going to
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1 have to lay out, maybe your management guidelines.
2 I don't know, but I am very concerned in many of
3 these jurisdictions, particularly who -- what they
4 already put on some of this equipment and bought it
5 six months ago. I just don't know.

6 I think clearly NIST, the EAC, the
7 vendors, the state people and local people, we need
8 to start working on what are we going to test, what
9 are we going to HASH mark, how are we going to do
10 this, how is it going to be available, and how are
11 we going to train these people.

12 There may not be a technical person
13 in 15 counties surrounding some of our lower level
14 jurisdictions in the state. They do rely on the
15 vendor to do that, a subcontractor to the vendor in
16 some cases. So, saying this is a great thing is
17 wonderful on paper. Seeing what ends up happening
18 is going to take a lot of effort to get there.

19 MR. DEGREGORIO: Thank you. I
20 appreciate that. Mr. Groh, in your recommendations
21 you are suggesting that when the VVSG is made

22 effective in December of 2007, that we have a
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1 policy that allows the ongoing certification of the
2 software updates, but then you focus on the
3 hardware platforms also and suggest perhaps that
4 they only need to be tested to 2005.

5 Now, if your company has such things
6 as dials or plugs or devices for the disabled, to
7 serve the people in the disability community, and
8 then some may suggest that may not fall under your
9 category of safety, security, accuracy and
10 reliability. Are you suggesting that those
11 devices, that hardware should not be tested to the
12 2007?

13 MR. GROH: No, not all. I think
14 the point that our organization and our vendor
15 community would like to make is with any adoption
16 of something knew that we don't know really what it
17 really consists of today, we're all exploring how
18 we can solve some of the requirements that are in
19 it. We don't know how backward compatible it's
20 going to be.

21 In some cases, if it's an attachment
22 you can put on that piece of hardware that exists

1 out there, it may be fully right to have it all
2 tested under it. But if it is trying to retrofit
3 something to an old system that could meet the new
4 2005 hardware platform technology that is out
5 there, the piece of hardware as it exists today,
6 the component that you're going to bring could.

7 We're asking you to please consider
8 testing only the component to the new guidelines
9 because if you require the hardware to also be
10 brought forward and tested under the new, it's
11 qualified under the older standard and can still
12 continue to meet it, that could be the element that
13 would require it to be thrown away.

14 MR. DEGREGORIO: Thank you for that
15 clarification. I'm going to ask Vice-Chairman
16 Martinez if he has questions.

17 MR. MARTINEZ: Thank you, Mr.
18 Chairman. I will ask a couple quick questions. I
19 will start with Brian Hancock, even though I don't
20 think he expected to get questions.

21 Could you refresh my memory in terms
22 of -- and maybe Mr. Wilkey is better suited to

1 answer the question -- as to what the
2 implementation layout, if you will, was when the
3 2002 VSS was finally adopted by the EAC? In other
4 words, what kind of phase in period, if any, was
5 applicable to the new standard?

6 One day NASED was testing to the
7 1990 standards. The next, at some point they were
8 testing or NASED was testing to the 2002 VSS. If
9 you can refresh my memory on that.

10 MR. HANCOCK: Yes, Mr.
11 Vice-Chairman. Tom certainly can correct me if I
12 am wrong. The FEC came out with their standards
13 document in mid 2002. Once NASED looked at it and
14 got the ITAs familiar with it, they produced a
15 policy in early 2003 whereby there would be a
16 phased in approach. It allowed the current systems
17 to be tested up to a certain point.

18 At that point, anything new -- in
19 fact, what Mr. Groh is suggesting -- anything new
20 that came in would be tested to those 2002
21 standards. Finally there was a cut off date, I
22 believe, of 2005, where at that point, everything

1 that came in, no matter what, had to be tested

2 fully to those 2002 standards. Is that correct?

3 MR. MARTINEZ: Mr. Wilkey, anything

4 to add?

5 MR. WILKEY: Yes, Mr.

6 Vice-Chairman, just a clarification. Certainly we

7 took that position knowing full well that a

8 voluntary program, we really had no statutory

9 authority. That statutory authority rested with

10 the states. Certainly as we went into our own

11 certification process, we had the power and the

12 weight of the federal statute behind us where we

13 will have some increased oversight over the ITAs.

14 I think John made some good point

15 as to how we do that, but a lot of what he's

16 talking about is going to have to be done in

17 concert with not only the existing ITAs that we're

18 going to be using in the interim, but also those in

19 the future. I think that because we will have that

20 level of authority that certainly NASED didn't, we

21 will be able to do a much better job of moving that

22 stuff more smoothly than we have in the past.

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1 MR. MARTINEZ: Thank you for that.

2 Mr. Groh, first of all, thank you for your very
3 excellent testimony and for being here. Having a
4 great deal of insight, as both of you do, we will
5 be able to do the work we're trying to get done
6 here at the EAC.

7 Mr. Groh, have you had a chance,
8 either you or your specific company, perhaps the
9 ITAA -- we adopted in final form the 2005 VVSG in
10 mid December of last year. So it's been out there.
11 I know it took us a while to actually put the final
12 document on our web site and get public because of
13 a lot of rewrites and last minute technical edits
14 based upon our final vote.

15 But have you had a chance to assess
16 whether there are significant changes in
17 requirements dealing with software and firmware
18 from what currently or what existed in the 2002
19 scheme versus what we have now adopted to effect
20 the 2005 VVSG?

21 MR. GROH: I will speak only for my
22 company. Frankly speaking, no, we have not had the

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1 time do it in the way you're asking the question.
2 Have we looked at it? Of course we have. We
3 followed the process through the entire mechanism

4 so that we were hopeful and confident that we
5 wouldn't be surprised with something.

6 With it being available in January,
7 I think, 13th, was the date we got our hands on it,
8 our development staff is right now basically issued
9 a (inaudible phrase) going on. The May primaries
10 are staring us all in the face, and we have issues
11 with certification there to get through. I doubt
12 that we have a comprehensive view on that until
13 probably the middle part of April.

14 One of the things that we have
15 inquired about would be if there is a way we can
16 see a document where it is highlighted or marked
17 what has been the changes so we can go straight to
18 those as opposed to having to read the entire thing
19 to see if we can find it.

20 I know we put that request in. That
21 would be extremely helpful. It would cut down on
22 what I would call non-value added time of

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1 researching it and let us go right to the meat.

2 MR. MARTINEZ: I appreciate that.
3 I will note that you requested that be done, if we
4 can do that, to make it easier to do that analysis.

5 I guess my next question is sort of
6 a -- I will throw out a hypothetical so I can
7 better understand the decision that's in front of
8 us with regard to the phase in and the effective
9 date of the 2005 VVSG. Mr. Groh, if you will go
10 with me on this hypothetical, I will perhaps ask
11 you to comment along the way.

12 The local jurisdiction is out there.
13 They are currently using a 2002 certified voting
14 system. It's now January of 2008. So we are now
15 under the 2005 VVSG scheme. You have a piece of
16 equipment that was certified under the 2002
17 standard.

18 According to your testimony,
19 software and firmware upgrades are not uncommon
20 every one or two years. So it wouldn't be
21 unexpected that a jurisdiction with a 2002
22 certified system finds themselves, sometime in the

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1 calendar year of 2008, having some sort of software
2 or firmware upgrade to that 2002 certified system.

3 Under most state laws, I believe,
4 and correct me if I am wrong, because you probably
5 know this better than I know it, both you and Ms.
6 Noren, if that software upgrade is deemed to be a

7 material change to the system, then it has to go
8 back through national certification?

9 MR. GROH: That's correct.

10 MR. MARTINEZ: Is it safe to say
11 that essentially if there is a material change,
12 then it has to be taken back up to national
13 certification according to most state laws that
14 play into the voluntary national certification
15 system. So, at that point, that jurisdiction has
16 to submit that system that's only been certified in
17 2002 back to the national certification process.

18 What you are proposing is at that
19 time, that we allow recertification of that system,
20 to that specific component where the software was
21 upgraded and not -- so tests to that component to
22 the 2002 standard and not to, in this hypothetical,

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1 the 2005 VVSG. Am I understanding that correctly?

2 MR. GROH: No. I think all of us
3 are confident and comfortable with the fact that we
4 have something that is a change or an enhancement,
5 an improvement that needs to be made and it's after
6 the December 15 of 2007, that you could not issue
7 and enter a new system and say, "I want to have it

8 tested under 2002." Test labs will not do that.

9 We have an enhancement and
10 improvement that needs to be done in early '08. We
11 would ask that you consider allowing us to submit
12 the improvement to the new standards. But if you
13 require the hardware platform to also be brought up
14 to that and be tested under it, in case it may not
15 meet and be able to meet the 2006 because when it
16 was designed, built and tested, we couldn't
17 anticipate some of those things they were unknowns
18 to us in the future.

19 If that happens you could force a
20 jurisdiction who had made a HAVA purchase under a
21 2002, which is the only thing they knew to
22 purchase, to wholesale throw their system away and

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1 have to start all over. We think that that would
2 not be, 1) prudent.

3 We also think that timing on this --
4 Mr. King's testimony also pointed that out -- if
5 you do that and expose it in 2008, which will be an
6 election year, the change itself could cause major
7 failure in the election. Not the technology and
8 not the election official, but the amount of change
9 and the timing of it.

10 So, we're asking for a tail, some
11 type of procedure that you will allow tests of just
12 the improvements or enhancement to take place for
13 sometime afterward to be added back to those
14 systems.

15 MR. MARTINEZ: I understand. I
16 appreciate that clarification. Do you have any
17 hesitation or are you opposed to a similar scheme
18 for 2002 standards? In other words, at some point
19 at a date certain, everything is going to be tested
20 to the new standard and there will be no more
21 testing to the 2002 standards.

22 MR. GROH: We're not opposed to
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1 that as long as you have enough advance notice,
2 your awareness is there, and the time to do it, and
3 the certification process is in place so we
4 understand all the rules and can move through it.

5 MR. MARTINEZ: Right. Finally, Ms.
6 Noren, I get the sense that, even in Mr. King's
7 testimony, he sort of brought us around to the
8 issue of considering the cost versus the risk
9 concerning phase in.

10 I think your testimony, as always,

11 is excellent and very artfully crafted so that you
12 present the issue, both sides of it, without
13 necessarily saying one way is better than the
14 other. I think that's good. We're the ones that
15 have to make a decision.

16 But I think it was very insightful
17 that you say on the one hand, for example, a lot of
18 systems are not field testing. So that may be a
19 compelling reason to go ahead and move away from
20 any type of phase in, for example, to sort of get
21 them up to speed based upon the new standards.

22 Then on the other hand, you also
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1 talk about some of the purchase contracts that, if
2 you do allow a phase in period as well, that
3 perhaps may be a way that some of these elections
4 officials have of protecting themselves down the
5 road and may have an impact on the purchase
6 contracts.

7 So perhaps I am mischaracterizing
8 your testimony, but I think, again, it comes down
9 to assessing costs and risks and us trying to make
10 some informed decision about what is best for the
11 local election, for state and local election
12 administrators. Any additional comments?

13 MS. NOREN: Well, of course if we
14 all had all the money in the world, it wouldn't
15 matter too much. We are certainly reeling. As we
16 look down the next five years or so, we have got
17 multiple guidelines. We have multiple issues
18 coming out.

19 I would have to say, you know, I
20 don't want to jeopardize anything. My primary goal
21 here is we have got to do something to convince the
22 voters that the equipment out there is safe, their

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1 vote will be accurately accounted.

2 I don't want to go through more
3 elections where I'm getting calls from people about
4 a lot of these issues. We have got to provide that
5 mechanism and delaying that -- it is very difficult
6 for me to say anything that might delay having
7 everything set up to do that.

8 But the fact is I think we're going
9 to have to see what happens this year with some of
10 this equipment. There could be major changes in
11 the way we think about DVPAT and the way we think
12 about some of these other issues as it gets handled
13 through these big elections this year.

14 I really would advocate personally
15 we're probably going to have to have some kind of
16 phasing in for some of these jurisdictions,
17 particularly if the testing is not as complete and
18 the vendors are not through their process by, you
19 know, the middle of 2007, because the states then
20 have to start their certification process. As I
21 mentioned, some of them have -- and I know the
22 vendors know this. They have additional testing.

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1 So, the reality is I wanted it all
2 done yesterday. I didn't want to buy this
3 equipment without everything done. We're wasting
4 our money. What I do want to do is make sure we
5 don't waste any more. That's what I'm concerned
6 about. We wasted enough. Let's try and balance
7 this. I want the best equipment for my voters.
8 How do we get that?

9 MR. MARTINEZ: Thank you, Mr.
10 Chairman.

11 MR. DEGREGORIO: Thank you, Mr.
12 Vice-Chairman. Commissioner Hillman.

13 MS. HILLMAN: Thank you. Ms.
14 Noren, question for you. It's quite apparent that
15 people who are election officials today, whether on

16 the state or local level, have had real life
17 experiences over the past few years learning about
18 the development of technology and the voting
19 systems and certification processes as they go
20 along.

21 I know a statement that I have heard
22 frequently is, "I'm learning as I go along here."

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1 What I'm wondering is where does the new election
2 official get this information, education and
3 training?

4 MS. NOREN: Many of them don't, you
5 know, and that was why -- it depends again. Some
6 states provide a new election official training
7 session that is very good.

8 I have seen periods in my state
9 where, you know, they are just left on their own
10 for years, particularly if they were appointed in
11 the middle of a term, an election official in the
12 middle of a four-year term. They are just thrown
13 in there. They don't know what they are doing.

14 My first election, I didn't know
15 what I was doing. I had no idea. I never even
16 voted on a punch card machine. Here I was trying

17 to develop the stuff. There was no training. That
18 was back in '78.

19 I think we overestimate the
20 connection in some cases between the states and
21 some jurisdictions. There are some years at our
22 annual training for county clerks where maybe the

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1 election side has 45 minutes to go over 200 changes
2 in the state's election laws.

3 It is not the only thing we do,
4 elections. I have got state auditors, state tax
5 commission. You conduct a three-day training and
6 only have an hour or two dedicated to elections.
7 We have got to get a better way.

8 This is why certain things like this
9 scare me. I remember HASH marks and it would be
10 referenced up there. These people don't know how
11 to use it. They don't know how to be trained on
12 this stuff.

13 Some post election, we're going to
14 have people held up to this standard that none of
15 them know how to use, they didn't know existed.
16 How do we get this out? The only method you have
17 is through the state. The secretary of state or
18 chief election official has annual training.

19 Through that, some of the associations.

20 But the vast majority of our members
21 don't go to national meetings. There are 10 or 12
22 in my state who go to national meetings and get any
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1 of this information. It's a very difficult process
2 when it's decentralized.

3 MS. HILLMAN: Thank you. I'm sure
4 it's one we will bear in mind as we go forward
5 because that is where the rubber hits the road,
6 where the implementation happens.

7 Mr. Groh, question for you. In your
8 last paragraph of your testimony you asked that the
9 appropriate time be allowed "so it can be done
10 right." The it, I'm guessing, is the vendor's
11 being able to come up to speed for the guideline,
12 and that the funding and costs of implementation be
13 considered.

14 My question is does the Election
15 Technology Council feel that we didn't do that when
16 we were developing and passing the 2005 guidelines?

17 MR. GROH: You know, the thing is I
18 don't think it's an organization or group that we
19 can look to. It started with HAVA going into law,

20 which we all know is in October of 2002.

21 If the HAVA time line, the way they
22 laid it out in the law had been met, many of these
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1 things that Wendy talked about, that Brad
2 represented in his testimony, we would have been
3 past it. But the realities are that things don't
4 happen quite as fast as you would like them to
5 happen.

6 Sandy brought out in her testimony,
7 I think, a very historical context of Roy Saltman.
8 If you go back to 1975 and take each one of these
9 major changes that we have tried to implement in
10 the election environment, it took longer than
11 anybody would have anticipated. When you look at
12 it on paper from '75 to 1990, and when was the
13 first 1990 certification done? It was done in 1994
14 or 1995 because my company was in that.

15 The reality was the time we allowed
16 ourselves just wasn't ample. Then we have been
17 resource starved. The jurisdictions don't have the
18 money they would like. There needs to be that
19 awareness. That's what we're asking.

20 I don't think it was meant to lay
21 blame. I think everybody is to be congratulated

22 for their hard work. There is a certain amount
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1 of -- and I think this was mentioned today --
2 naiveness as people entered this who did not have
3 election experience.

4 All of you on the Commission have
5 gotten up to speed on that. Today you would be
6 good poster children for, on Day 1, what you
7 thought you could get done and get accomplished,
8 and now today, a few years later, knowing what you
9 know, what it takes.

10 I think also the recognition is
11 there of dedicated people. I am amazed at Paul
12 Craft, Brit Williams and Steve Freeman. Before
13 they did 12 certifications over a period of four,
14 five year's review. This last year, I would
15 imagine -- I don't know when these people slept. I
16 don't know when they had time to do anything.
17 That's the recognition that we have to have.

18 Everybody is trying to make this
19 work, but compressing down into tighter time frames
20 means you are going to cut corners, and you won't
21 find things that you would have found out through a
22 longer performance testing or being able to run a

1 test election in a single jurisdiction as opposed
2 to statewide implementation. All of that needs to
3 be brought into consideration.

4 I think my testimony or ETC's
5 testimony is not for you. You get it. It's not
6 for the election officials. I think it's partly
7 the public consumption and the others are getting
8 involved to help them pull along and let them
9 understand this isn't as easy as is said and talked
10 about initially. HAVA legislation was wonderful.
11 We can look at the holes we all know about. That's
12 my point. Sorry for the long-winded answer.

13 MS. HILLMAN: Thank you.

14 MR. DEGREGORIO: Thank you,
15 Commissioner Hillman. Ms. Davidson?

16 MS. DAVIDSON: I will try and make
17 mine brief. I won't repeat any of the issues but
18 there is a concern of mine that because of the time
19 frame of everything happening, beyond the time
20 frame for implementing the new guidelines, there is
21 other time frames and the vendors coming up to
22 speed with what needs to be done in the 2005, and

1 also the federal law saying they have to have
2 equipment in their office or in their facility and
3 working for that first federal election. That is
4 this 2006.

5 As a vendor, would you tell me what
6 you think is the time frames that, if people call
7 us and say, "We're looking at getting new equipment
8 in. We have an election in just a few months,"
9 what is the last time that a county or state should
10 be looking at implementing new equipment so they
11 can get acceptance testing, they can get a program,
12 they can do testing after its program and make sure
13 it's working, and bring up the credibility that
14 we're doing the job well for our citizens. How
15 much time needs to be built in there, how many
16 months?

17 MR. GROH: Well, the first part of
18 the answer would be that I'm going to try and tell
19 you what we would like and what would be our ideal.
20 Typically, everybody would like more time to get a
21 project implemented, but I think a reasonable
22 approach would be you should be implementing your

1 project plan of implementation six months before
2 your first usage.

3 Now, with that said, is that a hard
4 and fast date? No, it isn't because if it is a
5 small jurisdictions with only less than 100
6 machines or a small voting population of less than
7 30,000 voters or less than 20,000, that
8 implementation may be more manageable because of
9 the size and scope and scale can be handled.

10 But if you get a major installation
11 or it would be the City of Chicago, or if you are
12 Cook County or Los Angeles County or Houston
13 County, those are completely different situations
14 because there is a lot more that is involved in it.

15 We all are today, as the vendor
16 community -- and I will speak collectively -- have
17 the sense that we feel as our company, we're
18 stretched really hard right now. There are things
19 that we're telling people. We're turning down
20 orders that we didn't know we were going to get
21 because we hadn't been able to anticipate them
22 because we don't want to fail in an order that we

1 had committed to a customer on.

2 We know that there were people that
3 made their decisions late in the year of 2005.
4 They were -- they are the ones at most risk for us
5 because others that made them early, our plans are
6 in place and implementation is going on, but we
7 just can't just uproot those folks because of bad
8 implementation of the people who are very
9 proscriptive and proactive and look ahead to take
10 care of somebody who has delayed and now wants to
11 have emergency feedback by us.

12 So, I know I have not answered your
13 question is that two weeks or two months, six
14 months. Ideally, I think there are times you can
15 do it in two or three months. The one other thing
16 I want make sure that I made a point of is nowhere
17 should we be trying to change the software or
18 firmware in any window of time six months before
19 the election because to have developed, test
20 certified, QA'd certification process at the state
21 level, install, train, there you need a six-month
22 window. So the major changes you are going to

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1 implement also add to it.

2 MS. DAVIDSON: You have ESP because
3 that was going to be my next question. You talked

4 about the emergency of being able to get something
5 certified for something that a county or a state
6 filed that was different. So that was my next
7 question.

8 You talked about the balance, but as
9 a vendor, you hear that people talk about, "We
10 don't want you really supporting the county. We
11 feel the county should stand on their own two
12 feet."

13 Wendy mentioned in her presentation,
14 and I think we all realize this, in the smaller
15 counties where there is no IT support, that is very
16 difficult. Do you have an answer to that?

17 MR. GROH: I think this is a fact
18 of life that all of us need to face. Small rural
19 America or small county America is never going to
20 have the technology experts that they need. They
21 are going to need to rely on the vendors. Vendors
22 are more than willing and I think are also very

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1 capable of helping them shore up where they do not
2 have the technology experts.

3 To give you some maybe home
4 examples, I have a pipe wrench but I don't fix my

5 own plumbing. I have to call that plumbing guy
6 when I need him for those rare instances. That's
7 usually once a year or something. I do that
8 because I will never be good enough to do my own
9 plumbing no matter what. So, we think there needs
10 to be a separation of thinking that large counties
11 will have the talent and skills and the guidelines
12 will help them.

13 When it gets to a certain level of
14 jurisdiction, newer guidelines that you're going
15 to put together will give them a checklist or a
16 punch list that should also be complimented by the
17 fact that that is something that can be out
18 sourced, that that is something that can be done,
19 but help them understand how to check that out
20 sourcing with the capability or quality of work
21 they are doing. Make them go through some kind of
22 proving point on that.

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1 MS. DAVIDSON: I think, if I follow
2 you, and I'm taking advantage of you. I apologize
3 because those things just popped into my mind.

4 As part of that, what you're saying
5 is we need to build into our management guidelines
6 some security for the public to be more accepting

7 of a vendor being in that process. Is that what
8 I'm understanding?

9 MR. GROH: Correct, yes.

10 MS. DAVIDSON: Obviously the
11 public is very concerned about that, and the
12 perception is there that we want to solve that
13 problem. That's where I think we should go. I do
14 want to thank both of you for your testimony.
15 That's all very helpful. Thank you.

16 MR. DEGREGORIO: Thank you,
17 Commissioner Davidson. I will ask our Executive
18 Director if he has any questions for our panel.

19 MR. WILKEY: Thank you, Mr.
20 Chairman. I will try to be as brief as I can. I
21 certainly have a comment for Wendy and then a
22 question or two for John, but I'm very happy that

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1 Commissioner Davidson has raised the issue of
2 management guidelines. We didn't discuss this, but
3 it goes right into what I want say.

4 Wendy and I served on a number of
5 panels together. It was a joy to work with you.
6 Nobody in the business knows more about this stuff
7 than you do. I'd like you to know that we think

8 that help is on the way.

9 One of the things we have been
10 crying for since we first did those first set of
11 standards in 1990 is what happens after the
12 equipment has been delivered to the local
13 jurisdiction and has had all the qualification
14 testing and so on.

15 Because we know and your testimony
16 was perfect because you talk about all the people
17 out there that don't have advantage of national
18 organizations and training or state training, and
19 we need to be able to reach them. So we have --

20 And something I'm particularly very
21 pleased that we're doing. We began a project on
22 management guidelines and what happens after that

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1 system gets brought to the local jurisdiction, how
2 do they do acceptance testing, how do they do post
3 election testing, period guideline, training
4 guidelines, every bit of information that is needed
5 to make that system secure and managed well.

6 We recently started that project and
7 will announce some of the results of some of the
8 chapters that will be available this year, by
9 summer of this year. But I'm hopeful that folks

10 like yourself will work with us and encourage other
11 local jurisdictions to use this product once we get
12 it out the door.

13 I think what we have to do is make
14 sure it gets to everyone, not just to those who
15 have the opportunity to go to national conferences
16 and state conferences, but everyone who is going to
17 be buying or purchasing a system. So we will be
18 calling you for help in that area.

19 MS. NOREN: We may need to make
20 sure the vendors get this today. It may have to go
21 that we put some kind of commitment from vendors or
22 something that says they train the people who

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1 purchase this stuff on these vendors.

2 MR. WILKEY: Thank you. John,
3 there are a number of issues that you raise in your
4 testimony and certainly they are very valid. I
5 know we will be spending a lot of time with you and
6 others in the vendor community over the next
7 several months in working with us together with
8 everyone else in developing the certification
9 protocols.

10 We'll certainly review a number of

11 things you have in your testimony today because
12 they are well worth having that discussion, but I'm
13 compelled to ask a question because I think with
14 the audience that we have here, I may never have
15 this opportunity again.

16 You know, I think there is a notion
17 out there that has been raised recently or over the
18 past year or so that as part of the NASED program,
19 we just pick these ITAs out of the yellow pages of
20 the telephone book, and that they don't have what
21 it takes to do the job. We certainly know that the
22 quality of the ITAs have, going all the way back to

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1 the mid '70s, has been incredible and the resources
2 that they have and the work they have done.

3 But one of the notions that we hear
4 quite often and is often out there either in blocks
5 or newspapers articles is that because the vendor
6 is essentially paying for the qualification of that
7 product, and that's going to have to continue under
8 your program because certainly there are no dollars
9 to be able to effect that.

10 But there is a notion that because
11 you're paying for this qualification by one of our
12 ITAs, that you're kind of getting a free ride. I'd

13 love to have you comment on that for the audience
14 and Commissioners.

15 MR. GROH: That is not the case.

16 In our experience, the ITAs are an incredible
17 group. They are a very small group. The
18 institutional knowledge that's within them is very,
19 very good and we need to make sure that we keep
20 that.

21 But my company, and I think I can
22 represent the other election companies, when we

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1 work with the ITAs, they look at this with a very,
2 very critical eye. I think the way you can measure
3 that is when we enter a new product in there, the
4 number of times that we have to take it back and
5 come back to them because there is something that
6 they -- it isn't that it doesn't work. It doesn't
7 work the way that they think it should under the
8 guidelines.

9 So, you then go back and redevelop
10 something that is there. There is a tremendous
11 amount of time, effort and energy put into that.
12 There is a much larger than arm's length distance
13 between the two of us that is there.

14 They are also made up of
15 organizations that are not connected to each other,
16 one being the hardware testing and the other being
17 software testing. Then they bring those two
18 together. The credibility of the ITAs is based
19 upon their nonbiased approach to things. That's
20 what they are in business to do, is to give an
21 independent test analysis.

22 If we use Wiley as an example, which
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1 is one of the existing, this is an organization
2 that has been proven and is qualified to test for
3 NASA. I don't think they would have gotten to that
4 level of credibility passing things through just
5 because we paid them a few \$1,000 to do things.

6 So, Tom, you bring up an excellent
7 point that I wish there were a way we could make
8 that more visible, the energy and efforts that the
9 ITAs put. But, also, the relationship between the
10 vendors and the ITAs is one of not community and
11 closeness. It is one that there is a definite
12 demarcation that is there.

13 MR. WILKEY: Thank you, John.

14 Thank you, Mr. Chair.

15 MR. DEGREGORIO: Thank you. I'd

16 like to ask our counsel, Ms. Hodgkins. We have
17 been calling her Thompson and Hodgkins. She is
18 transitioning through marriage. I'm trying to get
19 that straight today and help that process along.

20 Ms. Hodgkins.

21 MS. THOMPSON HODGKINS: Thank you,

22 Mr. Chairman. I don't have any questions at this

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1 time.

2 MR. DEGREGORIO: Thank you. Well,

3 I would like to add and thank our panelists for

4 your excellent presentation. We have been at this

5 for two years. I know Ms. Davidson just joined us,

6 but these sessions are always very enlightening for

7 all of us.

8 I know in addition to enlightening

9 us, we have people in the audience. Secretary of

10 State Mary Kiffmeyer from Minnesota I know has been

11 with us this whole time. We appreciate her sitting

12 through this as others have, too. We have Jim

13 Dixon who represents the civil rights and

14 disability groups with us. We have folks from NIST

15 and we have folks representing members of Congress

16 and voter advocates in the room and others

17 representing the vendor community.

18 So, we appreciate you staying with
19 us and learning as we have over the past few hours
20 about this process because it's a challenge for us
21 to move forward, but it is our top priority, to
22 move forward in this area. The testimony we
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1 received today has been important but we want to
2 continue to hear all of you and from the public on
3 this matter as we make decisions that affect the
4 voting process in the United States.

5 I'd like to ask my fellow
6 Commissioners if they have any closing comments to
7 make.

8 MR. MARTINEZ: No.

9 MS. HILLMAN: No, I do not.

10 MR. DEGREGORIO: Well, thank you
11 for coming. This meeting is adjourned.

12 (Thereupon, the above meeting was concluded
13 at approximately 12:50 o'clock, p.m.)

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CERTIFICATE OF COURT REPORTER

I, Belinda Lomax, court reporter in and for
the District of Columbia, before whom the foregoing
meeting was taken, do hereby certify that the
meeting was taken by me at the time and place
mentioned in the caption hereof and thereafter
transcribed by me; that said transcript is a true
record of the meeting.

Belinda Lomax

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