

Minutes of the Public Meeting

United States Election Assistance Commission

1225 New York Avenue, NW

Suite 150

Washington, DC 20005

Held on Wednesday, June 17, 2009

VERBATIM TRANSCRIPT

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission ("EAC") held on Wednesday, June 17, 2009. The meeting convened at 1:01 p.m., EDT. The meeting was adjourned at 4:25 p.m., EDT.

PUBLIC MEETING

CHAIR BEACH:

This meeting of the United States Election Assistance Commission will come to order. Please turn off all your cell phones, BlackBerries and pagers either to off or silent. And please join me with the Pledge of Allegiance.

[Chair Gineen Bresso Beach led all present in the recitation of the Pledge of Allegiance.]

CHAIR BEACH:

Can I get a roll call, please?

DEPUTY GENERAL COUNSEL GILMOUR:

Certainly, Commissioners would you please respond verbally when I call your name? Chair Gineen Beach.

CHAIR BEACH:

Present.

DEPUTY GENERAL COUNSEL GILMOUR:

Vice-Chair Gracia Hillman.

VICE-CHAIR HILLMAN:

Here.

DEPUTY GENERAL COUNSEL GILMOUR:

Commissioner Donetta Davidson.

COMMISSIONER DAVIDSON:

Here.

DEPUTY GENERAL COUNSEL GILMOUR:

Madam Chair, all three Commissioners are present.

CHAIR BEACH:

Thank you. We have before us today an agenda and I want to turn to my colleagues, do we have any questions or comments or changes to the agenda?

COMMISSIONER DAVIDSON:

Madam Chair, I understand that Warren Stewart is ill and will not be able to be with us today for the testimony, but he has submitted written testimony. I would like to have that -- make sure that that's entered into the record, the written testimony. But I'd like to change the agenda to remove his name as one of our panel members.

CHAIR BEACH:

Okay, we did talk to Mr. Stewart and we have not received his testimony as of right now, but, certainly, when we do receive it we will make it available on our website and to the public.

COMMISSIONER DAVIDSON:

Very good, I make the motion that we amend the agenda removing his name as testified.

CHAIR BEACH:

Do I have a second?

VICE-CHAIR HILLMAN:

Second.

CHAIR BEACH:

All in favor say aye.

[The motion carried unanimously.]

CHAIR BEACH:

The motion carries and the agenda is amended as adopted. I want to thank everybody for joining us today. We certainly have a full agenda, which includes EAC business, our Requirements Payments Update from our Grants Department and an update on several research projects.

And before we turn to our Old Business, I would like to make a comment to congratulate Bob Carey, who is now the new Director of the Federal Voting Assistance Program. As you know, the Director of FVAP does sit on our EAC Board of Advisors, and I would like to just extend my congratulations and on behalf of the Commission look forward to working with him.

Okay, the first item on our agenda is the correction and approval of the minutes from the May 19th public meeting. Is there any discussion?

VICE-CHAIR HILLMAN:

There's no discussion, but if we could just hold off on this, we can either make the motion and second and table it, or just hold off, because there's just one thing I want to check that I wasn't able to check on before the meeting started.

CHAIR BEACH:

Okay, so you would like to move it until after the Executive Director's report?

VICE-CHAIR HILLMAN:

After our first break, whenever that is.

CHAIR BEACH:

Okay, we will move that item. Then we move to the report of our Executive Director, Thomas Wilkey.

EXECUTIVE DIRECTOR WILKEY:

Thank you, Madam Chair, and thank you everyone for being here today and for those who will be watching online when the web cast is available tomorrow afternoon.

A lot has happened at the EAC since our last public meeting. Under Grants, we're now accepting applications for our Mock Election and College Poll Worker Grant Programs. Information on eligibility and how to apply are available on our website. We're also seeking peer reviewers to evaluate the applications for these two programs. More information about the requirements and compensation are available on our website.

Under Requirements Payments, so far, we have disbursed 35 million of the 215 million available in the 2008 and 2009 requirements payments. This includes 15.3 million we've disbursed within the last few weeks, which includes 798,000 to Nevada, 1.61 million to Kentucky, 1.72 million to Louisiana and 2.76 million to the State of Georgia. It also includes payments being processed now, 2 million to the State of Arkansas and 6.5 million to the State of Florida. And, of course, the 20 million we've previously disbursed includes 575,000, each to the States of Montana, Idaho, Wyoming, North Dakota, Rhode Island, South Dakota, 1.7 million to Iowa, 1.37 million to Oregon, 1.36 million to Oklahoma, 1.36 million to Connecticut, 1.92 million to Minnesota, 1.7 million to Colorado, 3.17 million to Georgia and 4.92 mill to the State of Pennsylvania.

As I mentioned last month, we have a more streamlined process for obtaining requirements payments. States can now apply for 2008 and 2009 funds at the same time. Instructions are posted on our website along with a list of funds available to each state and their match requirements.

We're holding a technical assistance call tomorrow to answer state questions about the new process. If you'd like to join the call, send an email to our Grants Director, Mark Abbott, at havafunding@eac.gov. We also posted a new HAVA funding advisory opinion request, and we're accepting comments on it through July 1st.

Under Voting System Testing and Certification, the 120-day HAVA mandated comment period for the proposed revision to the 2005 VVSG began June 1st. We'll be providing an online comment tool and we'll alert everyone when it's ready. In the meantime, comments may be submitted by email or postal mail. A copy of the proposed revisions is posted online along with instructions on how to submit a comment. We encourage all of our stakeholders to participate in this important process and by sharing their input with us.

In other voting systems news, we posted a draft test plan from Wyle Laboratories for the Unisyn OpenElect voting system, release 1.0. This is the first test plan to follow our recently issued Notice of Clarification on test plan formats.

Under NVR, Regulation Transfer Update, we initiated the transfer process last July by sending a draft of the *Federal Register* notice to the FEC. Since that time, we have been waiting on FEC

to review and edit the draft. The FEC Regulations Committee has approved a draft of the notice, and last week provided a draft to EAC. EAC staff is reviewing the draft and will provide edits to the FEC. Once both agencies agree on the language of the *Federal Register* notice, the draft will go to FEC Commissioners for a full vote. And I understand as of last night we had some additional information on that and will be giving the Commissioners a briefing on it in the next couple of days as to any updates to this information.

In other news, we recently held a meeting of our Board of Advisors. We updated them on recent EAC activities, including the revision of the 2005 VVSG and the Election Data Collection report. Information about the meeting, including an agenda and copies of presentations and reports, are available on our website. They also elected their officers, and we want to congratulate the new officers of our Advisory Board: Jim Dickson from AARP, as the Chair, Keith Cunningham from the State of Ohio, as Vice-Chair, and Terri Hegarty from the State of Michigan, as Secretary.

Also, just in passing, and I want to mention that the EAC Standards Board will be having a meeting in early August, and more information will be available on that through our website. The purpose of this meeting will be, of course, to review the revisions to the 2005 VVSG.

Madam Chair, that is my report. If you have any questions, I'll be glad to review them with you.

CHAIR BEACH:

Thank you. I'll turn to Vice-Chair Hillman. Do you have any questions?

VICE-CHAIR HILLMAN:

A question and a clarification. Jim Dickson is with the American Association of People with Disabilities, not AARP.

EXECUTIVE DIRECTOR WILKEY:

AAPD.

VICE-CHAIR HILLMAN:

PD not RP.

EXECUTIVE DIRECTOR WILKEY:

Yes.

VICE-CHAIR HILLMAN:

And then just a question for you. Do I understand correctly, from your report under requirements payments, that Georgia is the only state so far to be receiving both 2008 and 2009? I see that they were listed as having previously received funds and on the list of funds that were disbursed within the last few weeks.

EXECUTIVE DIRECTOR WILKEY:

Yes, I believe they are, but I can make sure that that's the case.

VICE-CHAIR HILLMAN:

Okay, so I take it that's the only state?

EXECUTIVE DIRECTOR WILKEY:

Yes. Yes.

VICE-CHAIR HILLMAN:

Okay, thank you, and then just one comment. On the back and forth with the FEC over the draft notice, I don't recall, at this

moment, what was in the first notice and you said you would be briefing us. I hope that the briefing will include what the changes and edits were to the notice, so that we have a chance to look at that before it's sent, as cleared, to FEC.

EXECUTIVE DIRECTOR WILKEY:

Yes. And I think Counsel is working on a memo now, so that we can circulate it to you.

VICE-CHAIR HILLMAN:

Okay, thank you.

EXECUTIVE DIRECTOR WILKEY:

Um-hum.

CHAIR BEACH:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

I don't have anything, but I mean, obviously, when Mark Abbott comes up we can clarify it, but by his report on attachment two, I think that, as I reviewed it, Georgia's amount for 2008 is the 3 million, and as of right now we haven't given out any of the 2009, but we have states that have requested it and is on the list to pending. So, by looking at the report we can clarify it when he comes up, but that's the way it looks like it's being addressed.

VICE-CHAIR HILLMAN:

Yes, well -- oh, I see what you're saying, pending.

EXECUTIVE DIRECTOR WILKEY:

Yes.

VICE-CHAIR HILLMAN:

Right, um-hum.

COMMISSIONER DAVIDSON:

And it will be two million seven hundred and something,
when they get the additional money.

CHAIR BEACH:

Is that all?

COMMISSIONER DAVIDSON:

That's it.

CHAIR BEACH:

Okay, I have just one question for you. Regarding the peer reviewers, was that something that EAC has conducted before, we had peer reviewers to come in to review the grant proposals?

EXECUTIVE DIRECTOR WILKEY:

We've usually done that in the past with a number of our grant programs, and particularly with the college poll worker grant program.

CHAIR BEACH:

Okay, thank you. If there are no other questions or comments, we will move to New Business.

I'd like to invite Dr. Mark Abbott up here. This year, the EAC has streamlined the process for states to receive their requirements payments. Our Grants Director, Dr. Mark Abbott, will provide a status report about the distribution of requirements payments and describe the new process. He will also provide an update about the status of the report that we will provide to Congress this summer, about how states have spent their HAVA funds.

With that, I will turn it over to you.

DR. ABBOTT:

Thank you, Madam Chair, Commissioners, for this opportunity to brief you today on the status of our Section 251 funds, the requirements payments.

As you know, Section 251 funds are first used to meet Title III of HAVA, namely compliant voting systems and statewide voter registration systems, and after that improving the administration of federal elections. This is a really broad area, and I bring it up now, because I think it's important moving forward. We have 15 states that have made that certification that are Title III compliant, and thus, are moving in to this fairly broad area of work. And another 15 states that have certified they're using their minimum payment to work in the area of improving federal elections.

In particular, we're interested in this right now, because it signals that in the future as states try to figure out what they're going to use -- what activities they're going to do with these funds, we can be of help by providing more guidance up front, by providing technical assistance, some ideas on best practices, so that as they do modify their state plans they have more of an arsenal of material to use in developing those plans, and thus coming forward with more detailed budgets, for example, in their state plans.

In terms of expended to date, overall, and this gets into the report that we're going to be submitting to Congress in mid to late July, it will be ready for you in about two weeks to review a draft of, we have approximately 75 percent of the funds up until 2008 have been expended by the states. Now, that drops down to 69 percent if we include the \$215 in interest that has been earned on the 251

payments since the first ones went out. In terms of 102 funds, they have been expended with one exception, and then 101 funds, we are about 71 percent expended on those funds. So, states have made good progress in those two areas, as well. That detailed report will be ready for your review -- the draft review in about two weeks.

Turning now to the instructions for the 2008 and 2009 requirements payments, just some kind of highlights of those instructions. I think you'll -- when we wrote them, our intention was to put things into plain English, to create some flexibility so that we could move funds faster, and states could get access to those funds more quickly. That flexibility also extended to being able to apply at the same time for both '08 and '09 or choose '08 or '09, depending on where you are as a state. 16 states already have their '08 funds, so the combined guidance didn't make sense for them.

We took a hard look at what a material change was, and provided some flexibility there where we thought we had it, so that infusion of dollars into a state plan did not necessarily constitute a material change, and then we left that determination to the states to make that call.

And then, in terms of matching funds, how and when to provide those matching funds in order to receive your initial allocation of requirements payments, we took the time to explain more clearly what we meant by when that money had to be available.

And then finally, we were working on issues of transparency. So, we use now something called a Notice of Grant Award, which looks pretty familiar for most organizations that receive federal funds, and in one page lays out all the requirements and conditions of receiving those funds. That's been very helpful for states like Florida, for example, who needed to have evidence that they were getting the requirements payments prior to June 30th, and without that they were going to lose their matching funds. So, we were able to provide this with them with some conditions that they still have to meet that allows us to say, "You've been awarded your '08 requirements payments."

Mr. Wilkey went over the states that already have their requirements payments for '08 and '09. I would just clarify on the pending column for '09, pending means several different things. They're all pending, but some are less pending than others. Georgia, is in the mail, we're told by GSA. Arkansas needs to return a few documents to us, but theirs will be going out in very short order. And Florida, we're waiting for the 30 days to expire on the notice of their revised plan in the *Federal Register*.

VICE-CHAIR HILLMAN:

I'm sorry, excuse me, one second.

DR. ABBOTT:

Yes.

VICE-CHAIR HILLMAN:

You said Florida, but on the 2009, Colorado.

DR. ABBOTT:

I'm sorry, 2008 is Florida.

VICE-CHAIR HILLMAN:

Right.

DR. ABBOTT:

And 2009 is Colorado, and we're waiting for the staff to review their plan.

VICE-CHAIR HILLMAN:

Thank you.

DR. ABBOTT:

These instructions are the first in a series of changes we hope to make that are geared towards primarily reducing risks for grantees, and increasing the efficiency at which we administer the funds, and in which they are able to spend the funds. Our view is that everything we can do to reduce risk for the grantees will go towards more effective administration of HAVA funds, and we can talk more about that if you have questions.

Other areas that we intend to look at around this include the maintenance of effort, language, and policy. We think we now know enough from the states' experiences and from our own, looking at this issue over the last year or so, to be able to issue some plain English, sensible guidance that will help states meet this requirement, and thus help them in everything from their audits, to working with their local jurisdictions on MOE.

And then, in terms of providing good guidance and instructions around state plan modifications, we now have a whole arsenal of information from advisory opinions, to FAQs, to feedback we received directly at our disposal. We need to make that more available in easy-to-read formats for states, as they revise their

state plan. If we can make that available early on, it helps us on the backend, in terms of administering the awards. For example, if they're able to detail the kind of spending they want to do and work with us prior to publishing their plan, we can be of great assistance prior to publishing the plan, helping them get exactly what it is they want there. If we wait until after it's published, we've missed the window, because at that point, it's baked. So, by doing that we hope to be able to move away from backend decisions, around allowable costs, for example, and put them at the front of the process. Those are just two examples of areas that we want to move in the future.

So, with that, I'll take questions.

CHAIR BEACH:

Okay, wonderful, thank you. Vice-Chair Hillman.

VICE-CHAIR HILLMAN:

Thank you, Dr. Abbott, two points that you raised. One was on the topic of material changes, and you said providing flexibility to the states where we have it.

DR. ABBOTT:

Um-hum.

VICE-CHAIR HILLMAN:

Can you expound on that a little bit, in terms of where we have the flexibility and where we don't?

DR. ABBOTT:

I can. One is just in the reading of what constitutes a material change in terms of the budget. So for example, when we looked at states that have a moderately detailed budget, and say

we're going to spend funds in these areas for '08, let's say for example, in '09 they got an infusion of dollars, almost the same amount that they got in '08, maybe a little less, to do those same activities. So, the additional funds, in and of themselves, does not constitute we believe, a material change to their budget. It, basically refinances the activities that have already been approved in their plan. So, rather than having them go through the process of making the change, simply to infuse dollars into a plan that may not change at all, or they've decided won't change at all, we've said that does not constitute a material change.

Secondly, we looked at the amount of money that was coming in and whether or not that was over ten percent of the total amount they had been allocated for the requirements payments, from the inception, of any particular states having received funds, and in most cases it does not meet the ten percent threshold, and thus is not a material change. So, budget -- an infusion of new money into the budget does not constitute a material change, which made it much easier for states to apply now rather than 120 days from now, after they do their plan.

VICE-CHAIR HILLMAN:

So, if I follow that through, what would constitute a material change would be if the state decided to -- if it had ten budget items and decided not to put any money in one of those items, but quadrupled what it was spending on another. Is there a formula for that? Or how does a state know that an allocation of funds has tripped a material change?

DR. ABBOTT:

So, in most cases, even moving money off of one particular line item would not raise the ten percent change that we talked about, so they would not necessarily have to change their plan. Where we pointed them to was back to the published guidance we have on material change and said, "You need to look at this closely and make the call." We'll concur, or we'll test by looking at that, whether or not we think you've done the right call on this, but it's up to the states to determine whether or not the changes they're talking about constitute something that should go for, kind of, through the process of allowing public input and making the change to the plan.

VICE-CHAIR HILLMAN:

Okay. And then, my other question is on the items that are available to the states as resources and tools they can use to know the proper, not only budgeting and allocation, but the recording, accounting of the funds that are spent and the reporting of it. And I was wondering if you could just, sort of, identify if, either in categories or specific items, the kinds of things that are available to states, and how they know this information is available to them. I mean, are we telling them? Is it up to them to find it?

DR. ABBOTT:

So, for the most part, we tell them. We probably haven't told them recently, at least in the last ten weeks since I've been here, where they need to go for resources to effectively manage their funds. But they have at their disposal the circulars, for example, A-102 for states, A-87 for non-profits, they have grants from us and universities. We have our advisory opinions that we post, and our

frequently asked questions, and then the occasional policies, such as the material change policy that's posted up. So, they have those. If they know where to look for them, they can use those to figure out if what they're doing -- that they're on the right track. Or if they have a question, for example, then of course, they have the ability to pick up the phone and call us. So, those are the tools and information they have available.

VICE-CHAIR HILLMAN:

Okay, and in the letters that -- I think we sent letters out recently notifying states about the opportunity to apply for the 2008 and 2009 singularly or combined?

DR. ABBOTT:

Yes.

VICE-CHAIR HILLMAN:

Does that letter recite what these tools or resources are?

DR. ABBOTT:

Not explicitly, it does not. It references several of them...

VICE-CHAIR HILLMAN:

Um-hum.

DR. ABBOTT:

...for example, the material change plan, but it does not go through a litany of resources they should be looking at to make sure they're going to be okay, for example, in their next audit. We have not done that.

VICE-CHAIR HILLMAN:

So, as we go through this, where are we, sort of, in terms of best practices for providing concise information to the state,

recognizing that, particularly, new Secretaries of States, that is, Secretaries who may have been elected after the first 251 funds were disbursed to the states, that they may not be as familiar with this, and EAC's responsibility is to provide guidelines to them?

DR. ABBOTT:

There are several things that we can and we should do, based on best practices in the Federal Government. First, it is to provide some custom material around the circulars and around the statute. So, something like core competencies for HAVA funds management would be a document we could put together that sends them in all the right places for the right material, that takes time, where we know we have hot issues, where we know we've had audit findings in the past, where we know the states have challenges and writes out for them again in plain English in a concise way, the kinds of issues they should be looking at, the kind of resources that they should be going to, to figure out, you know, if they have their stuff, their books in order, if they're going to be ready for their next audit, if they're meeting all the guidelines that are laid out in 102, for example, in terms of administering federal funds. So, we can provide that.

We should also be providing direct technical assistance, and that should be done primarily through a contractor, or an outside person that can go in after having worked very closely with EAC staff, and work with them on shortcomings, work with them to fix certain processes and controls that should be in place that maybe are not, especially around the sub-granting processes, a place where there are numerous audit findings, generally, when states

administer funds down to the next local level of government. So, we should be doing that.

Finally, our website, and we're working on this, should be revised in such a way that the stuff is one click away so, you know, if you know the general topic you're looking for you can find it fairly easily. That's something that's also a best practice, and we're moving in that direction, as well.

VICE-CHAIR HILLMAN:

So, if I needed guidance on purchase or leasing of vehicles, short of going through every policy that the EAC has previously adopted, is that what you mean by the...

DR. ABBOTT:

I do.

VICE-CHAIR HILLMAN:

...user-friendly website?

DR. ABBOTT:

I do. And we're now in a position where we weren't several years ago, or even at the beginning of the Commission, we have a tremendous body of information made available through the AO process, and through your rulings, and through the FAQ, and the work that General Counsel has done to get answers to those questions. We now can take that information and get it in a user friendly way, that states can actually count on it as guidance for when they're making their decisions around, for example, if they're going to do a sub-granting process they should have in their instructions to the locals exactly what they can spend funds on, the parameters around that, so when they get their budgets back and

they review them they're what they need to be for them to administer the sub-grants.

VICE-CHAIR HILLMAN:

Federal Government can sometimes be a laborious process, and I'm just wondering if you have had an opportunity to assess whether EAC has a decently streamlined process, a laborious process, are we getting better, do we have work to do in that regard?

DR. ABBOTT:

I think we have some great opportunities to increase our efficiencies now that we have all of this information and we've made decisions in a number of areas that are applicable to many, many more states and local jurisdictions. So, there is an opportunity to speed things up for grantees. Because, remember by the time -- for example, in our advisory opinion process, by the time a state is requesting to use funds they're ready to do something. They have the money in hand and they want to spend it on a particular item. So, a best practice would be allowing that to happen, either through the application process so they already have approval to spend the money, or short of that, because we already know that it's okay or not okay, being able to get them that answer in a fairly short turnaround, one to five-day turnaround, would allow them to move forward much more quickly than they do now.

VICE-CHAIR HILLMAN:

Thank you.

CHAIR BEACH:

Commissioner Davidson, do you have any questions, comments?

COMMISSIONER DAVIDSON:

I do, I've got a few questions. How long have the states had the new instructions? When was that sent out? Have they had it a couple weeks or...

DR. ABBOTT:

About two weeks.

COMMISSIONER DAVIDSON:

About two weeks. So, how has their reaction been to being able to receive -- I know you've had some phone calls with them -- receiving both '08 and '09 money at the same time and moving forward? How have they...

DR. ABBOTT:

We've had several questions -- calls regarding just questions about the process. I would say, to characterize though, the general response has been fairly positive. Florida and Georgia, in particular, are very happy with how quickly we were able to get them the documents they need to secure their matching funds. Arkansas and Colorado are pleased with where they are in the process. Pennsylvania and a few other states have contacted me saying that they will have their stuff to us in a matter of days. So, it seems to have gotten folks in gear.

I think prior to having this issued, just looking back at what we'd issued in the past, there was a reluctance to move forward, because there was seemingly a lot more work than there needed to be in order to secure the funds. So, now that the state legislatures

are in session, and people are working to get their match funds teed up for this next round, I think we're going to see a lot of action, in terms of being able to disburse funds, and people seem generally excited about...

COMMISSIONER DAVIDSON:

Great.

DR. ABBOTT:

...the process we've set up.

COMMISSIONER DAVIDSON:

Also, you mentioned that there's only been 15 states that have certified that they're meeting the requirements. Why do you think that there's so few states that have done that certification?

DR. ABBOTT:

We're in the process of doing a census of the states to find out where they are, where the other states are on the certification. I actually wouldn't want to speculate. I suspect many of them are on the cusp of being able to certify Title III compliance. I suspect some states, simply have not sent in their certification and may well be Title III compliant, and others, of course, are still working on these issues, especially around the voting machines. So it's...

COMMISSIONER DAVIDSON:

Or disability issues...

DR. ABBOTT:

Yes.

COMMISSIONER DAVIDSON:

...with their polling locations?

DR. ABBOTT:

And disability issues. I think looking at that low number it tells me that we want to be more proactive in terms of technical assistance and support there. I would like to see that jump dramatically in the next year or so, realizing that it's not up to us, it's up to the states, but there's a lot of support we could provide them to move the needle on that

COMMISSIONER DAVIDSON:

You know, we've, kind of, discussed around this a little bit, but can you briefly tell us what our process is currently for approving state spending of any amount of money over \$5,000? I think it would be helpful to people that view and our audience what our current process is.

DR. ABBOTT:

The current process is that funds for equipment purchases over \$5,000, or purchases over \$5,000, need pre-approval from the Commission prior to spending the funds. So states -- to receive -- so, in order to get that preapproval they have to write in a question, we post that question for comment in terms of whether that's an allowable use or not. The staff does an analysis of the question and the cost, and writes up a justification, which then eventually, gets around to a tally vote by the Commissioners, we post the vote and it goes from there.

That's the broad stroke process for the most part. I'm sure I'm skipping details of it.

COMMISSIONER DAVIDSON:

Curiosity, do you think we have states that are spending that \$5,000 without asking the ability to do so in areas that -- do you

think there might possibly -- my concern is then when they're audited they've got a problem.

DR. ABBOTT:

So forgiveness, not permission?

COMMISSIONER DAVIDSON:

Um-hum.

DR. ABBOTT:

Yes, we have states asking for forgiveness. Some of them claim to have not saw the rule around the 5,000. I think there's a tally vote out now for several hundred thousand dollars from a state who belatedly realized they should have gotten preapproval for stuff that's already been spent. And also, just looking at the amount that's been spent so far, I suspect there are probably a few states also that are in the forgiveness category and need to come to us, after the fact.

COMMISSIONER DAVIDSON:

My last question is, kind of, this in this area. Is this the most effective process? Is that the most effective area that we can really exercise our authority over the states and how they spend their money? Do you think there's other ways that we can do that? I mean, my concern is -- and I'll tell you what my concern is, and it always has been, is, we get close to an election and states realize maybe it's a disaster that's taken place or something has happened to that state, whether it's a hurricane, or something that they've lost a building that equipment was in, with fire, or floods, or whatever, and they have to purchase equipment right away and they have to go through this process. My concern is, sometimes we -- are we

tying their hands as they move? Can they put in a state plan that they could have an emergency fund where they wouldn't have to come to us? Is that a possibility, something like that in their fund? I'm really concerned. We've had a lot of things happen to states, whether it's floods, hurricanes, other things, that really have affected their elections, and if we tie their hands some way or another, I want to leave something open, that we're not.

DR. ABBOTT:

Okay. So, to your first question, is this the best way to do it. I think it was the best way to do it, and the Commission needed to appropriately weigh in and use its authority to make sure that we're not spending money inappropriately. In the first days of the Commission, in the first years of the Commission when there was no time to do any kind of guidance, or instructions, or technical assistance, because we had a mandate to get funds to states, there was no way to do that prior, or upfront in the process. If you look at the grant cycle, it starts way over here on the left with issuing good guidance, providing good assistance, helping craft budgets that then come in, and then we place money against those budgets, effectively approving them. There was no time to do any of that and we didn't have a lot of track record, we didn't have a lot of policies set. So, as we were going along expenditures would come in, we looked at them, and you know, it's right when you see it. Is it allowable? Is it allocable? Is it reasonable? Those standards need to be checked here, by the Commissioners. And so, that's correct.

Now, though, I would say you have a body of information and a track record, and we can do this, and we can now do it upfront. And if we do it upfront and we work with the states prior to submitting their plan, so their plan has the right budget with enough detail in it, it will allow them to have flexibility in emergencies like you've cited, but it will also allow us to approve that budget upfront. So, we no longer need to do the \$5,000 approval on the backend, we approve it upfront and then they're free to go and spend. That also pushes the onus on to the states to be accountable for when audits come up rather than making us the person that's accountable, because we're saying "Yes" and "No" to every expenditure as it happens. We're saying "Yes" to the plan, "Yes" to the budget, and then they need to stick to that.

COMMISSIONER DAVIDSON:

So, this process that we would set upfront, Commissioners would have the capability of weighing in and going through that process with the Department prior to going out to the states?

DR. ABBOTT:

I think so. And I think we can get to a point, I think, the states would be very receptive to this approach. It's a carrot. It means freedom on the backend if they work with us upfront. And so, you work in pretty good detail to get some more consistency between states, a more robust plan that will actually give them more flexibility, because you can move money between line items up to a certain amount, in case there was an emergency or something like that where they wouldn't need to come to us to purchase equipment if a building were to fall down. So, I think you

would find -- my guess is they would be receptive to that kind of change.

COMMISSIONER DAVIDSON:

It sounds like their audit would go smoother if we had that type of process in place where they knew upfront, they'd be more prepared for an audit.

DR. ABBOTT:

I think that is a safe assumption to make. It is another area we're going to provide technical assistance which is pre-audit support. We know what goes on in an audit. We know what the auditors look for much better than the grantee does at the onset of an audit, so getting there early and helping them prepare is something that we want to do.

COMMISSIONER DAVIDSON:

Obviously, this is the first time states -- I mean, in the last few years, is the first time that our state election people have ever received federal money, so it is a new process, and we do have a lot of turnovers in our offices.

Thank you, I appreciate it. Thank you, Madam Chair.

CHAIR BEACH:

Okay, thank you. I have some questions for you. You discussed the process that we have now. You said we've notified states for about two weeks that they can now apply for the 2008 and 2009 requirements payments. How does that impact the state's five percent match? Or does it impact it at all?

DR. ABBOTT:

They're still required to provide us the match. States that have managed to get the full amount of match into their state budget, they're going to provide it upfront into the fund, and then, they'll receive our money once they've told us it's there. The way the guidance reads now, though, if you only have a portion of your match, you can receive up to that amount of the federal funds equal to the amount of match you have. So, we can do this in iterations. In other words, we can move it in three or four disbursements to the state depending on how much funds they have available. So, it gives them more flexibility, it gets money out quicker, rather, if they have some money but not all of it.

CHAIR BEACH:

Okay. And for our audience here and for the public, I know we've talked about, and referenced state plans, can you briefly describe the process that we go through here at the EAC, when we receive a state plan?

DR. ABBOTT:

So, a state plan comes in, and then we have a checklist it goes through, that basically follows the statute. There are probably 15 items on that checklist. And we look at the plan and we review it against those 15 items, and if everything is there and appropriate, and the plan meets the minimum requirements in the statute and in our instructions, then we approve it. We say, "It's ready to be posted." And what we do is we then post it to the *Federal Register* for a 30-day period, that's required in the statute. If in fact, there's something wrong or we're missing something there, it doesn't -- it's not in anyone's interest to post it, not correctly, so we go back and

talk to the state about what's missing, what we might need to change or add, and they can make the call as to what process they need to do to get that into the plan.

I think, moving forward we would like to adjust this process a little bit. It would be much, much better to have us talking to them about their plan prior to putting the notice at the state level. So, they go through a process with their constituents and stakeholders at the state level, and then they share with us early drafts of where they're heading, what's in their plan, and we provide some guidance and some insights into best practices in this area. It's a give and take. It's not us overseeing them, or making them do things in their state plan, but we can be of help. And if we do that upfront we're not caught in a situation where we look at the budget and we say, "Well the way you've written this we can't add any more funds to this without it being a material change," for example. That's pretty late to catch that after they've already gone through their entire process, upfront. It would be better to know that beforehand.

CHAIR BEACH:

So maybe, to get a clarification, so when EAC receives a state plan, are you saying that we review it and make determinations on it? Or we just, you know, we make sure that the requirements under HAVA that they have, are contained in the plan?

DR. ABBOTT:

I consider those determinations. So, we make sure that the plan meets the minimum requirements laid out in HAVA, and those

are the same requirements that we put in the letter that we sent to them. And then, that goes in the file to show that we've done our diligence in terms of making sure that we put a plan up for public comment, and then put money against that plan that meets the minimum requirements.

CHAIR BEACH:

So, does staff then make determinations? Because, I know you said that you have staff look to see if we concur with a state's determination on material change.

DR. ABBOTT:

Right.

CHAIR BEACH:

Because, my reading of HAVA, and maybe General Counsel could shed some light on this, does EAC have the authority to tell a state about material changes to state plans, or make determinations on their state plans?

DEPUTY GENERAL COUNSEL GILMOUR:

I think, to understand the process we're talking about here, the material change comes from the circulars. There's a section on state plans within the circulars, and it discusses when, essentially, a state plan needs to be changed. State plans are a very common feature of grants of this nature, so the idea would be that at some point in time a state plan that is published would need to be amended to reflect new conditions. So the EAC, essentially, as I'm understanding what is being said here, and if I'm not please correct me, is looking -- is essentially providing guidance on, contextually within HAVA, what a material change would be. Is that accurate? I

mean, you were talking about frontend, in part, guidance to essentially provide assistance again, because the OMB circulars are designed to be government wide, so you have very broad guidance that is difficult to apply. So, providing states tools, as I'm understanding it, as it impacts a particular use of the funding here, using EAC funds through HAVA, is just one of the additional tools you provide. Is that how I'm understanding the process that you put forth?

DR. ABBOTT:

I think so. But, speaking directly to your question, do we approve the plans or not, and do we have the authority to do that, we don't approve the plans, and we don't say -- we would never say, "This plan is not acceptable and, therefore, you can't have your funds." I think -- but in a very practical sense, though, you have to be able to communicate and talk and go back and forth with your partner, with the state. I mean, we've characterized this -- we're starting to characterize this as a partnership, and our interests are entirely in line with theirs in this regard. We don't want them to not be meeting the statute. We don't want them to have a plan that is deficient. We don't want them to have a plan that when the IG goes out and does an audit, they get in trouble, because the plan is not sufficient. So, we will work with them to get it where it needs to be. Now, would that hold up, possibly, funds? It could, but we'll do our part to get it as fast as we can to make sure all the ingredients for the plan are in place and correct. Specifically, in regard to material change there are examples, just in the media the other day, of something that would constitute a change to a plan,

and we would be very remiss in not pointing to the state that, “Hey, if you want to switch that entire way you do business, that probably is something you need to go back and adjust.”

CHAIR BEACH:

So, it's more of just giving them a notice, not making then, a determination?

DR. ABBOTT:

Right.

CHAIR BEACH:

Right.

DR. ABBOTT:

But we make judgment calls, you know, and we're trying to be as flexible as possible, but at the same time remember our main focus is reducing risks. So, we don't want to do anything that's going to create risks for the grantee.

CHAIR BEACH:

Agreed, okay, thank you, I just have one last question. When can we expect the final version of the report about how states have spent their HAVA funds? Do you have, kind of, an estimation?

DR. ABBOTT:

We're about two weeks out...

CHAIR BEACH:

Okay.

DR. ABBOTT:

...from that providing a draft to you for review prior to printing and sending to the Hill.

CHAIR BEACH:

Thank you, I believe this was very helpful for our audience.

And...

COMMISSIONER DAVIDSON:

I have one additional question...

CHAIR BEACH:

Sure.

COMMISSIONER DAVIDSON:

...to follow-up on that one.

CHAIR BEACH:

Commissioner Davidson.

COMMISSIONER DAVIDSON:

Has every state gotten -- submitted their information for the report, or are you short some?

DR. ABBOTT:

We have two states that have been remiss, but other than that we have everything.

COMMISSIONER DAVIDSON:

Okay, very good.

CHAIR BEACH:

Any further questions or comments? Okay, thank you.

DR. ABBOTT:

Thank you.

CHAIR BEACH:

Okay, at this time we're going to move to the discussion of the report to Congress on the Election Data Collection Grant Program Evaluation. We have our EAC Research Director, Karen

Lynn-Dyson, and we have Dr. Diana Davis from ICF International, who is our independent evaluator.

Last year, the EAC executed a \$10 million competitive grant program regarding election data collection that was funded by Congress. The five successful applicants were Pennsylvania, Minnesota, Ohio, Illinois, and Wisconsin. The grant program was designed to develop and document a series of administrative and procedural best practices in election data collection that could be replicated by other states, improve data collection process, enhance the capacity of states and their jurisdictions to collect accurate and complete election data, document and describe particular administrative and management data collection practices, as well as particular data collection policies and procedures. The EAC is compiling a report with the data provided by the states. The report is due to Congress on June 30th. To meet the deadline, we will conduct a tally vote and deliver it to Congress, and then EAC will then distribute it to the public and post it on our website.

And now, we're going to receive an update from our Research, Policy and Programs Director, Ms. Karen Lynn-Dyson.

MS. LYNN-DYSON:

Thank you, Commissioner Beach. Let me, if I might, add a few comments to your opening comments to say also, about how -- for the public's benefit, a little bit about how the grantee states were selected. They were chosen based on criteria, including their overall program strategy and feasibility for doing this pilot program, their readiness to proceed with this program, which was no mean feat, under some very, very tight deadlines, and their proposed

outcomes and measurements of goals. Some additional grant criteria included factors such as the size of state, the region of the country, whether or not the state was an Election Day state, or had vendor contracting. Also, whether they had more than one contractor providing the tabulation of election data and information.

Also, I wanted to let you know what the early feedback that we have gotten on this program is that it has been an overall success, and that in the EAC's effort to highlight some of the grantees' best practices the EAC research staff have begun exploring some options and venues in which our five grantees might share their experiences, their best practices, and their challenges with collecting these election data.

Let me conclude this very brief overview by also pointing out that the original appropriation EAC received from Congress required us sharing drafts of our independent evaluator's report with EAC's Board of Advisors, so that the Board of Advisors could offer some observations. The Board of Advisors has been, and the input they provided and the feedback has been very important and very helpful to us as we move towards a completion of a final report that, as Commissioner Beach mentioned, is due to Congress on June 30.

With that, I'm going to allow our lead principal on this investigation, Dr. Diana Davis, to offer some thoughts and some observations, overall. And then, with your permission I will go back to what I would like the Commissioners to consider, some draft recommendations that we might consider in this report that you will make to Congress.

CHAIR BEACH:

Okay.

DR. DAVIS:

Thank you. I have a few comments to make generally, about how the grantees performed in their programs, and then, a few notes on each of the grantees, a little description of their activities.

Some over-arching findings were that all of the grantees are interested in moving towards a seamless election data collection reporting system, and they have numerous needs, and many of them have been hampered over the years with very time-consuming manual compilation of election data. So, they're delighted to be able to make this kind of progress, and to have the assistance of the grants. All of the grantees moved closer to eliminating manual data collection and special reporting in gathering their election data and statistics. Some, for their grantee programs were more focused on reporting for the 2008 Election Day survey than overall system improvements. A lot of their focus, their early reports to us were focused on that very short time period running up to the 2008 election, and their ability to report that information, fairly quickly in their regard by March to RTI, to the Election Day survey vendor.

The decentralized states all had to address, in varying degrees, a lot of data standardization issues, since when...

VICE-CHAIR HILLMAN:

Excuse me one second.

DR. DAVIS:

Yes.

VICE-CHAIR HILLMAN:

Is it possible to get a little more volume on her mic?

DR. DAVIS:

Sorry.

VICE-CHAIR HILLMAN:

It's like every fourth word is disappearing.

DR. DAVIS:

Okay.

VICE-CHAIR HILLMAN:

Thank you.

DR. DAVIS:

Maybe I'm looking away. The decentralized states seemed to have more difficulty with data standardization, in that all of the local jurisdictions are very capable of renaming contests, and a lot of different ways of expressing the contests and the candidates, and when you try to aggregate this data up you have a lot of different data to compile into simpler categories. So, that's been a difficulty for them.

Two important topics that all five grantees have moved towards, one is something called a data warehouse where a lot of the information as much as possible, on registration, voter turnout, and other kinds of election data, are collected in one place, electronically, where they can generate a variety of reports, not only standard reports, but ad hoc reports for their various stakeholders. And another trend has been towards GIS mapping capability. A lot of these trends are given to us in language from the IT information

technology area, because all of our grantees, really, focused on technology; electronic systems, software, compiling data in those kinds of approaches.

I'd like to briefly give an overview of each of the grantees, the critical difference in each program, a little bit on their program plan, a little bit on their challenges and outcomes.

The Illinois grant program emphasized IT, that is, information technology, expertise and contractor performance. Illinois gave the majority of the responsibility for their program to a tested contractor that had developed the voter registration system, had successfully worked with local election officials, and understood their grant program goals. One of their guiding beliefs was that IT people have a different perspective on election data than election officials and can help them develop new and more efficient ways of managing their information. The heart of the Illinois program was something called the EAC Data Hub, which included a system to translate voter tabulation results into data to be used at the state level, using a process very similar to the one currently in place for their voter registration data. They also developed software linkages between their voter registration database and their voter tabulation data, and developed an online data entry mechanism, again, to get away from paper and manual reporting. They pilot tested their approaches in seven different sites to get a sense of how different local jurisdictions would handle the new system's online data entry, some of these refinements. Their goal was to emphasize to the local officials that this was a mutually beneficial change. Some of their challenges included multiple tabulation resources. They have

at least four different vendors with no consistency across vendors, and sometimes within vendors, on how they program their data tabulation systems, and also, as I mentioned earlier multiple naming conventions for contests and contenders across the state. Key outcomes for Illinois is more information for virtually all of their stakeholders, the legislature, candidates, political parties, academia, ordinary citizens are now more able to get more rapidly the kinds of information about election administration they've been seeking. Also, the local jurisdictions have been relieved of some of their very labor intensive work in fulfilling information requests.

Over in Minnesota, Minnesota was our centralized grantee. Although there were 87 counties, only one voter tabulation vendor, which incredibly streamlines things for Minnesota. The Minnesota grant program was based on their extensive, now, maybe five or six-year plan. So, they were delighted to have the grant funds, because they could extend and move more rapidly in their system improvements. Their guiding principle was to keep everything in-house and to get assistance from the Computer Services Division of the Office of Secretary of State. They focused on an election reporting system and voter registration system refinements with a series of tasks, something like 11 different sub tasks, including adding modules to address specific reporting issues, such as the UOCAVA record management that had been out of their reach previously. Their guiding principle was to rely on experienced staff and also because of time pressures to plan for parallel development, so that no particular key person carried all of the burden, or was, therefore, likely to be a bottleneck. Among their

challenges were being swept up not only in normal national election activities, but also they faced an extended federal recount that, again, took a lot of their resources away from the project. However, they had planned for this potentiality and were able to achieve their goals on time.

Over in Ohio, Ohio emphasized improving data maintenance functions using the Secretary of State Divisions of Elections and Information Technology. Again, they focused on streamlining some of their data maintenance functions in their system, again, a real concern in avoiding too much reliance on local officials during the run up to the election. The heart of their program was to improve data storage, data processing, reporting, quality control; the kinds of things that they sometimes call the backend of these data collection systems. Their major challenge was to work with four tabulation vendors and bring them onboard to provide general requirements that all could meet.

Pennsylvania also emphasized technology upgrades. It has a very extensive statewide uniform registry of elections which is their main repository for election data information. And they had planned a three-phase project, only the first phase grant funded. They were able to leverage additional funds for their larger project. And they -- one of their challenges, again, was the strong culture of local autonomy in the local jurisdictions and in getting cooperation and understanding of their plans and of the positive outcomes planned at the local jurisdiction level.

Finally, Wisconsin emphasized extensive organization and moving to a more web based system. Wisconsin spent a

considerable amount of time doing -- planning for their grant program. I'm not quite sure how they pulled it all off on time, but they were able to take a look around at the resources available and sitting in the Capital of Madison and having the University of Wisconsin Madison there, which has quite extensive programming, they were able to reach out to the university for assistance with training for the local jurisdictions, and also for an independent evaluation of their program. They were also able to reach out within the state government to the Department of Administrations Division of Enterprise Technology which does a lot of this kind of system design and was again able to immediately address the kinds of concerns and goals that they had in Wisconsin. Their challenge in Wisconsin, was nearly 2,000 local election officials to train, as well as accommodating their request to reduce the burden as much as possible, on the local offices during the election.

That very quickly, is an overview of the grant programs.

CHAIR BEACH:

Okay, thank you. Before we turn to recommendations, I thought I would allow my colleagues here if they have any just overall general questions about the program to Dr. Diana Davis or our Director of Research Karen Lynn-Dyson. Vice-Chair Hillman?

MS. LYNN-DYSON:

Commissioner Beach, if I might also add a few clarifying remarks for -- I certainly am aware the Commissioners know this, but the public should also be aware that this program very specifically used the 2008 EAC Election Day survey. It took six of the questions which appear in that survey and those six questions

states -- grantee states were asked to collect data at the precinct level.

So, I just wanted to provide that additional information, so the public knew.

VICE-CHAIR HILLMAN:

Did the states provide recommendations or suggestions to EAC to say, "If these things were in place it would be easier to collect the data," or, "We could do it on a regular basis," or any other kind of feedback that suggests what the states learned about their efforts to collect data at the precinct level?

DR. DAVIS:

A couple of things come to mind. One is having the Election Day survey questionnaire much in advance, as much as a year or two years in advance, due to the need to work with their voter tabulation vendors who start their programming as much as 24 months in advance of an election. So, that was something that was quite prominent in their comments. And also to have the ability to predict, at least, what core items would be on the survey, so that they would know well in advance.

VICE-CHAIR HILLMAN:

And we'll have a chance to explore that question a little later in this meeting, because we are going to be talking about the Election Day survey. Is that correct?

MS. LYNN-DYSON:

Absolutely.

VICE-CHAIR HILLMAN:

But to Dr. Davis, from your experience, how long does it take to develop a survey instrument from zero to, "Aha, we got it," so that we could be in a cycle of providing the instrument two years, 24 months out, without -- well, I'm sure you've embraced Federal Government processes enough to know what we have to go through to make changes in any kind of instrument like that.

DR. DAVIS:

My rule of thumb is always twice as long as you think it's going to take. It also has been my experience that the more levels, the more people involved, the more drafts you have to go through. And that very often we think we know what questions we want on the questionnaire, but we need to discuss what information we want in the end, and that often leads us to take what we think is a question and break it down into five earlier questions, or five questions that deal with that question. So, I think, I almost can't over-emphasize the complexity and the amount of time, the number of reviews, and then with OMB, the need to do pretesting and prepare the package, and what can be up to 120 days, as you all know, wait for OMB approval. So, it really should have started already.

VICE-CHAIR HILLMAN:

Well, what would you say -- what would your assessment be? EAC has had five years to develop...

DR. DAVIS:

Um-hum.

VICE-CHAIR HILLMAN:

...the instrument for three election cycles, two Presidential and one non-Presidential. And the question is, have we arrived at a point where we can leave it alone? Or is it fair and appropriate to go and review it one more time? And so, I'm not asking you to comment on the latter, but rather saying, five years, is that about the right length of time? Would you expect it to take longer? Understanding we're doing it through the Federal Government, this is an instrument of the Federal Government...

DR. DAVIS:

Um-hum.

VICE-CHAIR HILLMAN:

...not just whatever we'd like to put out whenever we want to put it out.

DR. DAVIS:

Two things. I would think after five years, perhaps the EAC has an appreciation for what data they want, now. Maybe enough discussion has happened, so that you may know what we want. And also, may have reached a point at understanding what the core items need to be, given that from time to time there can be changes that are germane to a particular year, a particular set of issues. So, I would say that five years has given the EAC a lot of experience in what's possible, thinking things through, what kind of a data file is needed or is required or is requested, by all the stakeholders. So, I would say it would seem like it has started to come in to this point, but for each new year I would see evaluating it, making sure that everybody agrees, "These are core items, this is where we're going, what this means, we can report this, we will not be able to

report that.” And at some point everybody has to say, “We will report this, we will not be able to report. We can’t be everything to everybody.”

VICE-CHAIR HILLMAN:

And my final question is, do you have any comment on the value of collecting the data at the precinct level?

DR. DAVIS:

I do not. I am not a data user of this data file, other than in the evaluation sense.

VICE-CHAIR HILLMAN:

Thank you.

DR. DAVIS:

That would be unfair for me.

CHAIR BEACH:

Commissioner Davidson.

COMMISSIONER DAVIDSON:

I just have a couple. When you have a survey and you put it out to the states like we have done, and the survey has changed every year, and obviously, we’re trying to get to the point, like you said, don’t change -- they want two years before -- notice before it’s changed. We understand how long it does take them to be able to accomplish this, with there is, and to be able to handle the changes. How many times should we allow a survey to be out there before we think about changing it again? I mean, do states need -- like you said, sometimes you find that there’s data that somebody just can’t collect. Should that survey be out there more than one time before we start assessing it? You know,

assessments, sometimes, it takes more input than just one survey. When you do surveys, do you find that a better assessment is if you have more than one year of the same survey, or more than one time?

DR. DAVIS:

Given that the information is coming from -- is it 55, 55 entities, but each of those entities has this enormous variety under it, I think you would need to deal at a number of levels, definitely with the states; how are they doing, what are they doing, what do they think is possible, given the tremendous complexity of these decentralized states. I think, you really have an extraordinarily complex survey here, from the perspective of who reports and where the data comes from, as well as all of the stakeholders and end users who are interested in the data. So, I would be reluctant again to say one time and okay, you know, we're going to make decisions on that. I do think that you have gradually accumulated knowledge over the years and it will be some time.

I do a lot of work with the Census Bureau, and how long has the census been going on. And every -- they have a ten year cycle, working up to that one questionnaire, and they review every single item. "Do we still need it? How are we going to collect the data?" You are not an unusual case.

COMMISSIONER DAVIDSON:

Right. But the way I, kind of, understood your testimony, we should be starting now if we want to change it for, not the next election, but the election after that.

DR. DAVIS:

If it's going to change dramatically, if it's going to change in an area where -- it seems that one of the key drivers are the voter tabulation vendors and they are -- that's the piece of this puzzle that starts to program their machines so far ahead of time. So, to the extent that anything on the Election Day survey comes from voter activity, and it's tied up in the data collected at the machine level, that's the part that needs to start so much ahead of time. And it would make a certain amount of sense to try to keep that standardized, once you've arrive at a place where you agree, "This is what we need."

COMMISSIONER DAVIDSON:

I agree. And my understanding is, we allowed them to report it however -- the method that they came up with to report it in.

DR. DAVIS:

Um-hum, um-hum.

COMMISSIONER DAVIDSON:

And in collecting that and then doing a report to Congress on everything being put together, doing a precinct level, if it's not completely done by technology, I mean, having the technology in place, it would be almost impossible. Is that -- I mean, because you've got to enter that data from the precinct level some place, if it's not electronically done.

DR. DAVIS:

Right, but bear in mind they do keep that data. It's just that it's kept in a manual...

COMMISSIONER DAVIDSON:

Oh absolutely, I'm talking about a report.

DR. DAVIS:

Reporting it up does become...

COMMISSIONER DAVIDSON:

Right, very difficult.

DR. DAVIS:

...very complicated and very burdensome for some of these very, very small precincts.

COMMISSIONER DAVIDSON:

So, I mean, what my point is, is definitely, the technology is a plus, and I think we could get into that when we get into recommendations a little bit more thoroughly when we start talking about that.

Okay, thank you.

CHAIR BEACH:

Thanks. I have a question for Dr. Davis. To collect this data, states had to have collaboration with their local election jurisdictions. Could you describe anything in the field that you've seen regarding this collaborative effort, as far as collecting the data, their working relationship, or anything that you could cite?

DR. DAVIS:

Bearing in mind that we did one-day site visits, two things impressed me from two different states. One was that they had developed, as much as they could, online questionnaires, if you will, places where the data could be reported, using, by and large, very experienced designers, so that when we were shown these systems they looked intuitively easy to handle. I think the whole Internet technology, online data collection has finally reached a

place where it is not unreasonable to expect people to be able to enter data into something that is developed using the state-of-the-art, not something clumsy. But each one that we saw, while it was different, was very well done, and you got the sense that this would be a usable system.

Also, at least three of the five sites did do field tests using local election official people, trained them and had them try it out, had them give feedback about what worked, what wasn't, what didn't seem to be useful, what seemed to be confusing. And I will do a little commercial for the University of Wisconsin, Madison's -- their adult education and e-learning group did the training program for Wisconsin. And it was just so clear and so clean, and they did -- again, they tested that with the local jurisdiction people. "Do you understand. Can you do this? Is it burdensome? Is it difficult?"

CHAIR BEACH:

Thank you. Ms. Lynn-Dyson, do you want to move forward now...

MS. LYNN-DYSON:

Yes.

CHAIR BEACH:

...with discussion...

MS. LYNN-DYSON:

Yes.

CHAIR BEACH:

...of the recommendations?

MS. LYNN-DYSON:

Yes, I would. I'd like to note that ICF, once again, our independent evaluator on this project, and I think you've just heard, just some snapshots of the very interesting things that they observed when they were in the field and were able to collect some most helpful information about the differences and the similarities among the states, so that as we move forward and we present our report to Congress by June 30th, my recommendation to the Commissioners is going to be that we present to Congress this independent evaluation. Included in that evaluation are a series of recommendations that they have made as to how the EAC might move forward. And I come before the three of you today with some draft suggestions and ideas/recommendations for what we, the EAC, may wish to present in our report to Congress.

As the Commissioners may recall, by law the EAC must include in this report that we submit, such recommendations as the Commission considers appropriate to improve the collection of data relating to regularly scheduled general elections for federal office in all states, including recommendations for changes in federal law or regulations, as well as the Commission's estimate for the amount of funding necessary to carry out such changes.

I have recommended, and recommending that we take, as I said, under consideration the half dozen or so recommendations that ICF has put forth and that we, in some cases, add to those recommendations and alter some of them. For example, some that we might consider are heightening EAC's profile among state and local election officials, and in doing so we can increase our visibility and the public's understanding of us as a champion for collecting

good election data and reporting. We would also consider, perhaps, providing support to those states and local jurisdictions who have less sophisticated election data systems, and we might consider if we are to in the future ask for precinct-level data and information, that we work with states to give them additional support so that they can develop these more sophisticated technologies and data collection systems. We certainly, I think, can very easily in our role as this national champion of good election data collection facilitate dialogue among our 2008 grantees, as well as our elections community at large. I think there's some really, really good learnings and examples, and not just the best practices, but the willingness I think of our peers to share some of the real challenges that they encountered, and we could potentially in a number of different venues have some learning/problem solving kinds of conversations.

I think we need to continue, as we do within the Research Department, to try and address these tremendous variations that we have come to find out exist in terms of how election data is reported and collected. That is an ongoing perennial challenge for us, and I think that we as the federal agency that's charged with collecting these data have a very good opportunity to inform the public about these tremendous variations in definitions, and we will continue to try and work on that issue. Similarly, I think we have to -- I like to, and the Commissioners have heard me say this, that this is a process towards successive approximations toward where we're trying to get, ultimately, in terms of good election data and good election information.

I would conclude by saying, as we are required to have some recommendations and give some thoughts to Congress about what would be required financially to, I think, better understand towards the end goal of creating better information around election data election information, I think that there is much work yet to be done in terms of really understanding fully what this would cost and what this would entail. So, I would encourage the Commissioners to think about further study, further research, much more detailed study of the costs that would be associated with doing this. And really, I could envision research staff spending more time talking to the grantees about their experiences and the costs. Moving forward, we will be getting this fall, from the states, from the grantee states, some final accounting on how their grant funds were expended. We do not at the present have those final numbers, that final accounting. That's the kind of information we will need to do a better and more in-depth analysis.

CHAIR BEACH:

Okay, thank you. I'd like to turn to my colleagues. Do we want to move forward on discussion?

VICE-CHAIR HILLMAN:

Why don't you go first.

COMMISSIONER DAVIDSON:

Thank you. Karen I agree wholeheartedly with you that we need to give Congress supplemental information than what we're going to be able to do by the 30th. And some of the things I think that we need to -- when I looked at your suggestions I went deeper, I will tell you. I went quite a bit deeper. And what I really would like

for us to do is give Congress more information. Like, number one, what's the added value? Commissioner Hillman said what's the added value of this information? To me added value even goes back to, it would help states -- if this is electronically, obviously I'm talking about the big picture, the good picture of all of it being electronically, this would help states even early on, in setting up the ballot once their ballot is set up, the names is on it, that starts the process where, hopefully you wouldn't have to enter that data again and eliminate mistakes in spelling of names or whatever the case might be. From going to there to after the election, even preparing your canvass after the election, auditing, making sure, are you going to have a recount right away, this would help them bring in that capability of moving a little bit faster in knowing that, getting their abstract done and getting it out. So, all of this could be, really, a help to states if it's done properly.

Now, I will put a caveat on there and say we know it's taking longer to do statewide voter registration systems than what we initially thought, and I think that we need to be honest with Congress that this isn't going to happen overnight. I mean, it's going to -- we're going to go through some growing pains in getting it done, because all of our states are different. They all have different laws that they work under and their process is a little different. Like you said, you had five different states; five different ways of, actually, collecting that data was done. I think it's important to tell Congress that if they want precinct information, that we need to go -- and it needs to be electronically, because we have to deal like we did with our regular report this year, and some of

those states, a few of them, sent it in by hand, some of them had the option of doing it by Word, some of them had, Karen help me out with the other two...

MS. LYNN-DYSON:

Excel spreadsheet. It was the spectrum.

COMMISSIONER DAVIDSON

Excel spreadsheet. So we're putting all that together. So, if we go down to precinct, it will take us much longer to develop a report, and we'd never meet the timeframe. I'm not sure the state would meet the timeframe either, or we would meet the timeframe that's set out by law. So, we need to be honest with Congress and say, "Here's the type of timeframes that we're looking at." We need to be very open with that if it's not done electronically. So, I see this being more cost, even, you know, in our part, if it's not electronically, if it's electronically done where we can set it up. Karen tell me, do you think that the study that we would have to do in the future that talk about money, would it also have to include how the states would submit it to us, what format or what -- I mean, I know that...

MS. LYNN-DYSON:

I think there are a great many things that we would want to look at when we considered the costs. I, actually, as you know, have been at the EAC for five years. The 2008 survey represents, for me the third survey that I've been around, the second one that I've had staff responsibility for, and to date we have never done, kind of, a financial analysis, if you will, of what it actually costs states to administer our survey. We certainly have some helpful

numbers. We have a \$10 million grant program. We know what it has cost our contractors to collect these data. But we've actually never gone out to the states and gotten a very good accounting of, you know, "Tell me how many hours it actually takes everyone in your state to collect this EAC Election Day information." And that's not just the state election director or the state point of contact. It's that local person who is working with his or her team and with the programmer and those folks, to really get an accounting of that. I think we're getting closer to understanding the number of hours that are consumed by states, and you'll be hearing a little bit about that, I know, from some of the folks who will be testifying around the 2010 survey. But we just have a lot of information that still we need to collect to really get a better understanding of what this entails.

COMMISSIONER DAVIDSON:

And I agree. The states are going -- the two states that's testifying here shortly, I think will be able to tell us some of the issues. We also know -- I think, the reason why I said I think that we need to tell Congress and get the information from the states, how they see the information would help, would it help them to have it? We need to go to that level. How much of it needs to be done down to the precinct? I mean, you asked for six elements...

MS. LYNN-DYSON:

Yes.

COMMISSIONER DAVIDSON:

...to go on down to the precinct level. How much of our survey needs to be down to the precinct level.

MS. LYNN-DYSON:

Yes.

COMMISSIONER DAVIDSON:

So, I see a great deal more information for Congress that they would like to have, I would think. I mean, obviously, this type of information would be very helpful in redistricting as you mentioned. You know, the census is obviously very important to that. This kind of information is utilized in redistricting, obviously. So, I just see that we need to give Congress more than what we're giving initially in our comments. And I don't know if you agree with me and I guess you can say...

MS. LYNN-DYSON:

Absolutely, absolutely.

COMMISSIONER DAVIDSON:

...whether you do.

MS. LYNN-DYSON:

Yes, yes.

COMMISSIONER DAVIDSON:

I just looked at it, that I saw that this was being kind of a fluff, but we need to give Congress good elements, so they can make decisions wisely, I think is what they're looking, by...

MS. LYNN-DYSON:

Right.

COMMISSIONER DAVIDSON:

...what they...

MS. LYNN-DYSON:

Right.

COMMISSIONER DAVIDSON:

...want us to do.

MS. LYNN-DYSON:

I certainly, Commissioner Davidson, as I think we all are, are very mindful of our Congressional statutory obligations. And I absolutely think we can and should meet that statutory obligation. I think that if I were asked for a recommendation I would say, certainly we will provide Congress with what we can in terms of our early understanding of what we have learned from this program, and that I would imagine that in six to eight months from now we could provide Congress with a far more detailed assessment and response to their initial request of us. By then we will know much more about how funds were expended on this program, and we could do more work and field research into what it would take.

COMMISSIONER DAVIDSON:

Well, I think we have to be honest with Congress, that if it's not done electronically we can't meet the timeframes that's within the law right now. States couldn't meet it and neither could the EAC. So, that's the kind of information I think that we need to be very honest with Congress, "If you want this, this is what it's going to be. If it's not electronically, we have to look at timeframes that's in the law or, I mean obviously, states would be hurting and so would we."

Thank you.

CHAIR BEACH:

Commissioner Hillman, do you have any comments?

VICE-CHAIR HILLMAN:

A couple of questions, and I just want to make sure I understand this correctly. The report that EAC will send to Congress...

MS. LYNN-DYSON:

Yes.

VICE-CHAIR HILLMAN:

...will be the independent evaluator's report...

MS. LYNN-DYSON:

Correct.

VICE-CHAIR HILLMAN:

...with a cover letter and our recommendations or suggestions?

MS. LYNN-DYSON:

That's correct.

VICE-CHAIR HILLMAN:

And the evaluator's report includes recommendations?

MS. LYNN-DYSON:

Yes, it does.

VICE-CHAIR HILLMAN:

And their recommendations will stay in their report, intact as they have made them to us?

MS. LYNN-DYSON:

Absolutely, yes.

VICE-CHAIR HILLMAN:

Okay. So, in that context, and in the language in the appropriation and any conversations, and Mr. Wilkey if you have anything to shed on this please share, the recommendations that

Congress is looking for, because some of the recommendations that you have shared with us are, sort of, recommendations to ourselves in a way...

MS. LYNN-DYSON:

Yes.

VICE-CHAIR HILLMAN:

...and I'm just wondering if we have good clarity on what Congress seeks to learn. Or are they -- or is Congress pretty open, in terms of what EAC believes should be shared with Congress about the report? I mean, is Congress -- they must have had a goal in mind, and I'm just wondering if the language in the appropriation clarifies that, or if it's pretty general and it's up to us to frame.

MS. LYNN-DYSON:

If I were to surmise, and this is indeed a supposition, Commissioner, I think that this language that says "such recommendations as the Commission considers appropriate," to me, that is the telling clause, what we in our judgment consider to be appropriate to improve the collection of these data. I have interpreted that, would be certainly open to our General Counsel's interpretation, but I have interpreted that to mean that Congress is very interested and open and willing to hear our recommendations, our insights, and our thoughts on this, recognizing that this is very new territory.

VICE-CHAIR HILLMAN:

Commissioner Davidson, you addressed one thought that I've been having, and that is, a lot of times the reporting deadlines

that are imposed on us don't meet with the reality of how systems work, and so -- and I think it's worth explaining further what our tally vote process is and why we're using a tally vote process between now and June 30 while we're sitting here discussing this report, because it may very well be that EAC needs to step back and look at the reporting deadlines, everything from, how long it takes the states to collect, when they report it to us, how long EAC needs to spend analyzing, compiling, analyzing and then, reformatting the data to report to Congress. And I'm not pushing, necessarily, for longer timeframes, because I know how frustrating it is for people to have to wait until September to get data from an election that was held ten months prior, you know. People are like, you know, "The data would have been really, really useful and interesting if we could have gotten it in January or February," but, for the long-term, you know, we're looking at a process for the long-term. And Commission Davidson is right, until it's fully electronic and people can just, you know, plug it in, and zip and send it, and we can cut the process down by several months, we're in a position where we can't report it very much earlier than what we currently do. And I'm just wondering if part of the evaluation report addresses timeframe. I mean obviously, the pilot program wasn't an ideal timeframe, but what would have been, or what would be an ideal timeframe, if we're going to drill down to the precinct level.

DR. DAVIS:

We have mentioned in the report that some states do experience up to the 24 months in advance that their voter tabulation vendors do start programming. So, that is in the report,

some justification, and some explanation for the timeline, not only the grants timeline, but the states and the local jurisdictions' timeline for collecting the data and reporting.

VICE-CHAIR HILLMAN:

Well, how about from Election Day to when it gets submitted to EAC, you know, the timeline. You know, is it a reasonable timeframe? Or was it a reasonable timeframe, I should say, under the pilot? Or, you know, would the report have benefited from a longer timeframe?

DR. DAVIS:

You're talking about states reporting...

VICE-CHAIR HILLMAN:

Right.

DR. DAVIS:

...the survey data...

VICE-CHAIR HILLMAN:

From Election Day.

DR. DAVIS:

...by March 31st I believe was their deadline?

VICE-CHAIR HILLMAN:

Right, right. I mean people would say, "That's five months. Shouldn't that have been long enough"?

DR. DAVIS:

Well, the grant program was unique, in that our five grantees were designing and synchronizing systems to then report that data by March 31st. And sometimes they took shortcuts when they realized they weren't going to have -- several of them had pilot

tested their system, but did not have everybody trained to report all of the data by March 31st. So, this time some of them did use paper and other means. So, they were both designing systems and implementing them in that timeframe. Once their systems were designed and tested, say for 2010, that would sound more feasible. But I would still go back, because it was only five that we worked with. And, you know, other states did have beautiful reporting, I understand, but I think I would go back to all of the states and get their opinion on that.

VICE-CHAIR HILLMAN:

Okay, and then, just going back to the tally vote. You did mention tally vote earlier, but I'm not sure everybody knows what a tally vote is, so perhaps an explanation would be beneficial.

CHAIR BEACH:

Sure, General Counsel can explain the tally vote.

DEPUTY GENERAL COUNSEL GILMOUR:

Sure, that is a circulated notational voting. In other words, basically the commissioners independently receive a memo and a ballot, and they essentially vote independently on recommendations given. So, it's different in that there's not an opportunity like this for them to interact and discuss, but it's a way to take care of agency business essentially without that discussion. So, there will be a public record obviously, of the vote, what they voted on, clearly, but it is essentially a manner of providing a ballot, a memorandum and notice through a prescribed process within the agency.

CHAIR BEACH:

And also, the tally vote process does include a section for comments, so when the Commissioners do cast their votes they can state reasons why they cast their vote a certain way or not, et cetera.

VICE-CHAIR HILLMAN:

And it's my understanding the recommendations coming to us through the tally vote will be based on today's discussions.

MS. LYNN-DYSON:

Absolutely, yes.

VICE-CHAIR HILLMAN:

Thank you.

MS. LYNN-DYSON:

Yes.

CHAIR BEACH:

Okay, does our Executive Director have any comments? I know you're a former election administrator on the -- I know, also being from New York as well, New York likes to collect precinct-level data.

EXECUTIVE DIRECTOR WILKEY:

Yes, we've always collected data at the precinct level, because of a number of issues that we have to deal with, particularly in the nominating process by our political parties, where we have weighted voting. So, with 14,000 plus precincts in our state, that's an overwhelming job.

I did -- I just wanted to comment on something that both Commissioner Hillman and Commissioner Davidson raised. I think Congress -- and I appreciate the fact that they put a general

statement like that in the legislation, because it certainly gives us the opportunity to give them as much information as I think they need. They're looking for that. We're seeing, in the legislative process now, particularly, in appropriation processes that relates to us, more and more pieces of legislation that go beyond just the requirements payments issues, but special grants for our absentee ballots, for the poll workers, for other issues that individual members of Congress think are important, and think need to be funded. Certainly this is one of them, and I think that there probably will be any number of members that will take anything that we can give them and will probably end up in a piece of legislation with an appropriate appropriation given for whatever they feel is best. So, I'm happy that that's in there and I think it's appropriate that we give them as much recommendations, specific -- to the specifics, as we can, because I think it will be useful to them.

While I have the chance, I have a question and I have a small request. My question is -- and if you -- I don't want to put you on the spot, so if you don't want to answer it that's fine -- were there any of the five that were at that point, or even near that point, that they are or could, with some additional work, become a model for other states to go about this? I know we're learning different things from the differences in the five states, but are there any that you think may have come even close to being able for us to hold up and say, you know, "This is really what you ought to be looking at"?

DR. DAVIS:

I can say yes. I can say, at least two of the states, their plans were very holistic, and so, they focused on scheduling

stakeholders. Various pieces of the plan had a very holistic approach to perhaps focused only on, how much can we do in a very narrow part of our systems to clarify, clean up, streamline, you know, synchronize. So it would have -- part of recommendations or models for states would have to start with, where is the state? Do they need a holistic plan? Or are they -- do they have a particular part of their system where they know they just need a lot of streamlining and they could get assistance from the states? So, there are really just two models.

EXECUTIVE DIRECTOR WILKEY:

Okay, the other is just a small request that we would certainly at the staff level appreciate. I'm always accused of wanting to go on to the next project before this one is finished and, you know, you have to have some vision about what you want to do in the future. We have been requested by our Board of Advisors and others to do a study on the cost of running an election. It is an enormous, comprehensive, almost inconceivable idea. However, it goes to something that I have been talking about for many years and that really no one has tackled. We do not have a picture, a single picture of what election administration looks like in this country. It is so comprehensive. It is so, at the state level, breaking it down to all of the local components, the county and the townships, if you happen to live in parts of the country like New England where they do work at the -- where they have the responsibility at the town level, we simply need to get a handle on that. So, I'm hoping to be able to make a recommendation to the Commissioners very soon on how we would begin a feasibility

study of at least getting a handle on the basics. Who are they? Where are they? How are they appointed? Who gives them their money? You know, how much is their authority? Things like that. We need to do that first, before we can go on to do the big picture of how much does it cost to run elections in this country. And so, anything that you or Toby have gleaned from just working with these five states, and working your way through the jurisdictional process would be very valuable to us as we step back now and look at how we would begin to take this first step, because unless we do that so much of the work that we have ahead of us, regardless of whether it's doing a study on cost of elections or doing other similar studies, needs to start there and we need to get a handle on that first before we do anything else. And it's an enormous job. So, we would certainly appreciate your recommendation, although it wasn't written in your contract, but certainly anything that you and Toby would like to present to us, with the idea of moving forward in that direction.

Thank you Madam Chair.

CHAIR BEACH:

Okay, thank you. Thank you for your presentation and discussion and recommendations.

And now, we'll move forward to the next item under New Business, which will be discussion of the Report to Congress, the impact of the National Voter Registration Act of 1993 on the administration of elections for federal office 2007 through 2008.

HAVA mandates that the EAC submit a report to Congress every two years about the impact of NVRA on the administration of

elections. The report includes data from the states as well as recommendations from the EAC regarding the implementation of NVRA. Ms. Karen Lynn-Dyson and her team have proposed recommendations for the report and we're going to discuss them here today. She is joined by our research consultant, Dr. Toby Moore of the Research Triangle Institute, where he is an elections and voting researcher. He is a former project manager for the Commission on Federal Election Reform at American University. And after today's public discussion, Ms. Lynn-Dyson, will, like the election data grants, will incorporate our comments about the recommendations and present a final version of the survey to Commissioners for our consideration. The report is due to Congress on June 30th, so to meet the deadline we will also be conducting a tally vote, and then subsequently delivering it to Congress. We will then distribute the report to the public and post it on our website.

And I believe this is the first time we are actually having a discussion of the NVRA report at a public meeting.

MS. LYNN-DYSON:

That is correct.

CHAIR BEACH:

So, without further ado I will pass it to you to give us the presentation.

MS. LYNN-DYSON:

As I did with our last discussion, let me supplement a little bit your opening remarks by also noting that this is the eighth NVRA report to Congress. However, pursuant to the provisions of NVRA

as amended by HAVA, it's the third report that the EAC is submitting, the first five reports having been submitted by the Federal Election Commission. The information that's in this report is based on the data collected from this larger 2008 Election Day survey. And I would also note that in the coming months EAC staff, along with Dr. Moore, will be presenting to you the 2008 UOCAVA, that is the Uniformed and Overseas Voter survey that we are required by Congress to submit, as well as, in the fall we will be coming to you with the overall findings from the 2008 survey.

So with that, I'm going to allow Dr. Moore to give you some over-arching comments, his broad overview of the process, and the stresses and strains under which he and his staff have labored, since, really, about the beginning of this year to get us to the point where we, actually, were able to put together these data and make a report to you all.

And then, once Dr. Moore is finished, then I will move to the half a dozen or so recommendations that we are required to -- Congressionally mandated to submit.

DR. MOORE:

Thank you, Madam Chair. I'm going to do a very quick overview of our process for the data collection, where we stand now and how we feel like the data collection went, and leave it for questions. I'd be glad to respond to anything that you have.

We collected data in 2008 from all 55 states and territories, so we had data from -- at least some data from all states and territories. In a general overview, we saw continued progress in higher response rates, and I'll give you a few examples of that,

although holes remain and some states still have problems in relaying county level data to us across the questionnaire.

Some of the highlights of how I think the data collection went. Again, we collected data from all states and territories, so we had a response across the country. We've established I think, in the fall of 2008 a reliable questionnaire -- summer and fall of 2008 that can be the basis for surveys going forward. In other words, it's a professional, well thought out questionnaire. It can be improved, and I'll be glad to talk about some ways it can be tweaked, but it does give I think, a basis for going forward and it was well received for the most part by the states. Third, we developed a Microsoft Excel based template for collecting and reporting the data that I think proved popular with state officials. We had positive feedback on that. I think it's an appropriate way to get the data from the states, allow the states to collect it and relay it to us. We also developed alternative instruments that provided flexibility for the states and cut down administrative costs on their end. For instance, we also had a Word-based template that the states could distribute to their counties, the counties could fill it out and then send individual county surveys to RTI for aggregating into the state level, and that was well received as well. And we think that's an alternative way of collecting the data. So, we think we came up with some very workable instruments on a technical level based on our experience in other data collection projects. We also have more data categories in this survey than you've had in the past. We had more than 800 variables in all. So -- and many of the questions were asked previously, but this time they were asked

with more categories and more detail. And while the response rate varied, you do have more detailed information on some of the same things you asked before. And then lastly, we've gone to some lengths to try to decrease the burden on the states, being flexible in the data formats that we took, looking for ways to help them aggregate the data, being responsive to their requests, and in time, if that's repeated then that should lead to greater cooperation, which will result in a positive relationship between your contractor and the state officials.

Just some examples of what I think are generally a higher response rate. For example, applications processed. In 2008, the EAC received data on the change of address, name, or party, you know, how many of these applications were due to a change of address, name, or party. 39 states gave us that data in 2008 compared to 35 in 2006. We received data on duplicate applications from 41 states, up from 37. Voter list maintenance, we received data on the number of voters removed due to death from 44 states, up from 38 states in 2006. And on failure to vote, 38 states, up from 34. Now, other categories saw very little change, but in general we had a bit higher response rate for most of the categories, which we were pleased about.

Listening to the talk about the precinct-level responses and being able to provide data at the precinct level, there's such a wide variety among the states with their ability to collect data. You have some states that can provide you precinct-level breakdowns very efficiently, while other states are not able to provide you county level information. That's mainly not technological, but structural or

procedural; they just don't have cooperation from their local governments. So, the wide variety of data collection systems in the states, is, to our mind, probably a more limiting factor than the technological barriers of programming and that sort of thing.

And I'll also mention that simultaneous to this we were working on the grants data -- the grants program data that we're now in the final stages of processing and the statutory overview, which we did as well.

Finally, I'm kind of moving forward to what lessons we've learned from this process, getting the survey out early obviously, is probably the number one wish from the states. Getting the 2010 survey out a year in advance late this summer or early fall, but simultaneous to that you need to start technical assistance to the states as well, because if you can get in now and start building these relationships up with the state offices and getting them to start thinking about it -- because when it came out in 2008 in the early fall or late summer states were already swept up into their election preparations and you weren't able to get their attention. If you get the 2010 survey out early, and then have some technical assistance of calling them up saying, "What are your plans?" you're going to have higher response rates.

The EAC should consider targeting those states which failed to provide complete results in 2008. So, pick the bottom five or ten states and really target those states, call them this fall and say, "What are your plans? Can we come out and talk with you about how to improve your data collection for 2010?" Because, I think

those bottom states, the states that are not performing well, at all, are the ones that are really dragging down overall response rates.

And I think greater coordination, as we've discussed, with the Department of Justice, which is showing increased interest in enforcement, would be helpful as well. That's beneficial to the states if the Department of Justice understands the data that we're collecting, but it's also in the minds of all the states as we deal with them, is, "What is the Department of Justice going to think about this?"

And finally, the 2008 survey could be administered in 2010, but it would be a missed opportunity if, at least, some thought is not given toward tweaking it, making some decisions about key questions, maybe dropping off some questions, for instance, on the poll worker ages that don't need to be repeated every year, to lessen the burden on the states. The question on machine technology needs to be reworked to make it easier for the states to respond to. The EAC may also want to consider whether it needs the depth of that -- needs all the information it collects through that. The Election Day registration question that was asked the first time, you know, should be looked at, the responses should be looked at to see did we get what we were asking for. So, there needs to be at least some, at the very minimum to me, some tweaking of the directions, maybe some deletion or breaking up of questions that doesn't change what we're asking, but changes how we're asking it to make it clearer for the states, because there's no reason to repeat any mistakes in 2008, for 2006.

So, I would be happy to answer any questions.

CHAIR BEACH:

Okay, I think we'll follow the same process as we did for the prior report where I'll turn to my colleagues who may have any general questions on the overview that was given to us on this report before we proceed to the recommendations.

Vice-Chair Hillman.

VICE-CHAIR HILLMAN:

Thank you. Dr. Moore what, if anything, jumped out at you about the information being reported this year in the context of the purpose of the National Voter Registration Act?

DR. MOORE:

Obviously, it was a high-interest election. We had a lot of work that was being processed. Applications were up, the number of registered voters were up. Without giving you any of the statistics that are actually in the report, it's obvious that the period between 2006-2008 was a very busy period for election officials and their offices were under quite a bit of strain.

VICE-CHAIR HILLMAN:

And if you were a member of Congress looking at the data, what would it tell you?

DR. MOORE:

Well, two things. First of all, we do not have anything like -- in election data collection, anything like what we have in other fields. So, I mean, the incompleteness of the data, the inability of states to tell us what's going on, even though states that want to, but don't have good systems for tracking it, consistently, which needs federal investment.

Secondly, the use of technology is very slow to really get -- we asked this year for the first time about Internet registrations. Very few states are allowing people to register over the Internet, or even using the Internet effectively to aid people in registering manually. There's an enormous amount of manual labor still going on that technology has been very slow to replace, and that's reflected in these millions and millions of forms that are being processed, many of which are duplicate or invalid that never go anywhere but still have to be processed. So, I think it's an appreciation for the work they have, but also the slow pace of being able to integrate technological improvements into that system.

VICE-CHAIR HILLMAN:

And I think this is my final question, and it's sort of a follow-up, and Ms. Lynn-Dyson you may want to add in, because it does I think, also go back to a question about the data collection grant program. But, are there any state laws or procedures that would prevent a state from reporting the data the way we request it? Did we come across any of that?

DR. MOORE:

Well, we run into cases in which litigation or other -- for instance, states are involved with litigation that makes them hesitant, or prevents them from giving us certain information. I don't think it's a big barrier, aside from states that simply don't, because of their laws, don't have, for instance, registration. They don't have -- they don't rely heavily on provisional ballots or something like that. But I don't think there's anything that we run into, very often, cases in which state laws are blocking the

collection. It's mainly just local autonomy and a decentralized system in which it's never been collected before.

VICE-CHAIR HILLMAN:

Okay, thank you.

CHAIR BEACH:

Commissioner Davidson.

COMMISSIONER DAVIDSON:

Karen, my first question is to you, because I know this has to go through the Paper Reduction Act if we change it, and everything else, how much time, if we did do the tweaking, as Dr. Moore suggested looking at changing some questions, you know, whether it's eliminating a few, or whatever it might be, how much time are we losing before we can give that information then to the states and the states have to go back and out do reprogramming and everything like that? Can you give me kind of an estimate of how long that would take us, six months, four months?

MS. LYNN-DYSON:

If we make, Commissioner Davidson -- staff's estimates are these. If we made really relatively minor changes to the survey, we could put a draft of this survey out to the states in July or August of this year. Now, keep in mind, it's a draft and it still has to go through OMB clearance, Paperwork Reduction Act, 120 days. So, while the states will have it in their possession, it won't be a final document until sometime in the fall. Now, should we -- and I know you're about to hear some very good testimony from a spectrum of stakeholders on this...

COMMISSIONER DAVIDSON:

Um-hum.

MS. LYNN-DYSON:

If we were to make any kind of substantial change to the survey, adding a significant number of questions, or revising some questions significantly, we would have to work with the contractor over the summer. I think Dr. Davis very eloquently described all that goes into, actually, changing the survey instrument and what that really entails, so we really are looking at an October or November timeframe, in which a fairly substantially revised survey would be released, again, for public comment, 120 days.

COMMISSIONER DAVIDSON:

Um-hum.

MS. LYNN-DYSON:

So, you're looking at a finalized survey instrument being -- likely being administered in December, or even January of next year. So I think it's fair...

COMMISSIONER DAVIDSON:

So less than a year before the election.

MS. LYNN-DYSON:

Yes, I think it's very fair to say that what we're talking about in terms of timeframes, if you so choose to change, substantially, this instrument, you're going to add about three months on to the process.

COMMISSIONER DAVIDSON:

Which, I mean, it's not like the states -- I mean, they have to be ready for the election way before November. They've got primaries they have to be ready before that.

MS. LYNN-DYSON:

Sure, sure.

COMMISSIONER DAVIDSON:

So, obviously, time is of the essence even now. I guess, dropping off questions is not as big of a thing to the states, except that when I think about it, is, they're not -- they may have a draft in their hands, but they're not going to change their programs, because we don't have the comments in and everything else. If they change the program and then we had to change one little thing, it's going to cost more money down the road.

MS. LYNN-DYSON:

Well, actually Dr. Moore and I have never discussed this, but the thought occurs to me, and I'm no programmer, but the thought occurs to me that there are some costs incurred, even by removing questions, because I would suspect the programmers have to spend some time reconfiguring programs if they drop questions. Yes? I mean...

DR. MOORE:

Well, they would just collect data that they wouldn't report on to us. I mean, I don't think that would be a big hurdle.

MS. LYNN-DYSON:

Oh, okay. Okay.

DR. MOORE:

But I think the big advantage of getting the survey out as soon as possible is just getting the states to start planning and thinking about what they're doing...

COMMISSIONER DAVIDSON:

Right.

DR. MOORE:

...because, again, to me the big barrier is the procedural, instructional ones and not the technological ones.

MS. LYNN-DYSON:

Okay. And that would mean giving us an opportunity, as Dr. Moore mentioned, with our slower folks, folks who have had bigger challenges, we could begin, you know, as soon as this summer, going out into the field and working with them, providing some intensive technical assistance.

COMMISSIONER DAVIDSON:

And that would be even more valuable, I would think, if we didn't change the form this election.

MS. LYNN-DYSON:

Yeah. Yes, yes.

COMMISSIONER DAVIDSON:

Dr. Moore I've got a question for you that goes back to the last one, and I think it's important that we know, for Congress, in talking about precinct-level data. If the states didn't have complete technology, if they were reporting like they have done this last year, how much longer would it take you to be able to collect and give us charts down to the precinct level in some of the categories?

DR. MOORE:

Well if you had a standard format, you could ask for it in a standard format, which we did not do with the grantee states. We allowed them to use whatever format was most convenient for them. But if you gave them a format and asked -- it would not be

very difficult, at all, because, as you were saying earlier, all the precinct-level data, you handle electronically. There's no doing that by hand. So it's really not...

COMMISSIONER DAVIDSON:

But my question is, if you gave them the capability you gave them this time, how much more time is it going to take?

DR. MOORE:

On our end?

COMMISSIONER DAVIDSON:

Um-hum.

DR. MOORE:

No, it wouldn't take much. That's not the -- that wouldn't be the problem. It's a day's work to aggregate all that up to whatever level you would want. You just churn it out on the computer.

COMMISSIONER DAVIDSON:

I guess, that's pretty well covering my questions that I had jotted down. Thank you Madam Chair.

CHAIR BEACH:

Okay, thank you, I have a question for Dr. Moore. Can you comment on the states' efforts to respond to the survey? Have the response rates increased over time, or do you think it's kind of been stagnant? Or...

DR. MOORE:

It's gradually improving. I mean, the work EAC has done, the work that the previous contractors who are now working with us, Kim Brace, Clark Benson, Paul Gromky, these guys, have been doing in the past, has all contributed to a higher response rate in

2008. States know it's coming. Institutional resistance is breaking down. They're beginning to see it as part of their normal responsibilities of work flow. And I think that, nationally, there's been more attention paid to it. It's talked about more at NASS meetings and that sort of thing. So I think it's on the right tangent, it's just a matter of continuing to invest, get it out earlier, put the time into it. And I think you're poised in 2010-2012 to see a real sharp jump if you can get the survey out earlier and the technical assistance out earlier, because -- and really focus on these laggard states, the states that are not onboard yet.

CHAIR BEACH:

Okay, thanks. Ms. Lynn-Dyson, are we going to be releasing the datasets along with the final NVRA report to Congress?

MS. LYNN-DYSON:

Yes, we will.

CHAIR BEACH:

Okay.

MS. LYNN-DYSON:

Yes, we will. We anticipate that, as you know, we'll be delivering this report on June 30th to Congress, and very shortly thereafter, we will make available on the EAC's website the datasets.

CHAIR BEACH:

Okay, great, thank you. Now I'll move forward with the proposed recommendations.

MS. LYNN-DYSON:

Yes. Very quickly, I will go through them as I did with the proposed recommendations for you to consider on the Election Data Collection report. I have about a half dozen or so of them and they include: States should continue to improve and modernize their electronic reporting and list maintenance systems, and we've had some good conversation about that this afternoon. We really encourage states to use their statewide databases as tools for generating data to assist them with responding to NVRA sections of the survey and other requests for data. Just these types of electronic databases could help to ease the burden of responding for state and local officials alike.

Secondly, states should explore supporting a coordinated data collection effort that allows local jurisdictions to provide election data to their state election offices. As states anticipate and prepare for collecting election data after each federal election, response rates that are contained in our surveys are likely to continue to improve. If states, we think, I think, have a well coordinated local and state approach to gathering and compiling these data, they will be able to, more efficiently, respond to federal requests. This could also, we believe, assist states, not only for NVRA, but for other related kind of election administration questions.

States should provide EAC with information on their proven best practices models for election data collection, in order to facilitate sharing among states through EAC's clearinghouse function. As we all know, I think election data collection systems vary greatly across the 55 states and territories, and programs such

as the one we just discussed can provide -- the Election Data Collection Grant program -- can provide some really good practical solutions, proven solutions, as well as their problems that they're facing. I think this kind of exchange of information is enormously helpful, and I think we've all seen that at our trade association meetings. I really would like us to take increased efforts and visibility through the clearinghouse and other types of venues we might explore, to actually encourage information sharing among states, and also among localities. Lots to be learned there and lots to be shared, not just in the great successes, but in the real stumbling blocks and hurdles.

States are encouraged to use their technology to ease the workload on their election offices, as these states deem appropriate. We have seen, through the 2008 survey, a substantial increased number in registrations, as well as an increase in duplicate and invalid registration applications. We think that if states are able, if they're willing, if it is possible, they really ought to consider, for their registration systems, using technology and electronic means, as much as possible, to really ease the workload for election staff.

States should encourage their public service agencies to remind voters to check and update their voter registration information. These public service agencies include DMVs, public assistance agencies, and disability service agencies, as well as organizations with which state election offices work to distribute voter registration forms. They ought to be working with all of these

agencies, as NVRA describes, to reach out to voters to check and update their voter registration information.

And finally, a recommendation for the purpose of creating comparable election data for future election administration and voting surveys, the EAC will continue to work towards a common understanding of election terms. As I mentioned, as I always like to mention, this is an exercise in successive approximations. It is an iterative process. We're getting there. We are enormously decentralized with our democracy. But to the extent, as Dr. Moore indicated that states are beginning to become more comfortable with this survey, completing the survey, I think on a similar track, states are becoming increasingly more comfortable with the terms that the EAC uses to describe certain election practices. We made a very good effort this time around with the instruction manual that we provided that had a series of definitions in it that election offices could reference. Also, and we'll be discussing at a future date, our statutory overview which we administer to the states this year, and it gave us an enormous important body of information and knowledge about how these states actually are defining certain terms like provisional voting, like felon, disenfranchisement. So, we will be using the information contained in this overview in our next 2010 survey. I'm certain we will be updating the definitions in the instruction manual. And I just think we're getting there. We are making enormous progress with this instrument and with the information contained in it.

So, with that, Commissioner Beach that represents the recommendations that I am putting forth to you all, that you will, in turn, consider having in your report to Congress.

CHAIR BEACH:

Thank you. I'd like to open it up now for any comments, questions or discussion on the recommendations.

Vice-Chair Hillman.

VICE-CHAIR HILLMAN:

I don't have any questions. My only comment is that I tend to concur with the recommendations that have been put forth by the Research Department.

CHAIR BEACH:

Okay, Commissioner Davidson.

COMMISSIONER DAVIDSON:

And I agree. I don't have any comments, I agree.

CHAIR BEACH:

I appreciate your hard work, and I think the recommendations are certainly good. And with that I will end this discussion, this portion of the meeting and we'll now move -- before we move to the next item on New Business, I'd like to just take a five-minute break.

[The Commission recessed from 3:18 p.m. until 3:28 p.m.]

CHAIR BEACH:

We're now going to be turning to the fourth item of discussion under New Business. It's the 2010 Election Day survey.

Every two years the EAC collects data for its Election Day survey. The last survey instrument included a comprehensive set of questions about voter registration, provisional voting, UOCAVA voting, and poll workers. Today's discussion will focus on the 2010 survey instrument. Our Director of Research, Karen Lynn-Dyson, will describe the process for adopting a final survey instrument, including the opportunities for public comment. There has been a lot of discussion about whether the EAC should collect -- have additional questions or collect information about voting system anomalies, and I look forward to hearing from our participants on this particular issue.

In addition to Ms. Dyson, we'll also be receiving testimony from Mr. David Burgess, the Deputy Secretary for Planning and Service Delivery for the State of Pennsylvania; Miss Sarah Ball Johnson, the Executive Director of Kentucky State Board of Elections, and we had invited, as we said earlier in our meeting, Mr. Warren Stewart, who is a Legislative Policy Director of Verified Voting, and he will, unfortunately, not be with us today, as he is ill and unable to participate, but we will have his written testimony when we receive it and post it on our website.

So, now I would like to turn to Ms. Karen Lynn-Dyson who is going to give us an overview.

VICE-CHAIR HILLMAN:

Before we do that Madam Chair, can I ask a question? What will be the timeframe for this panel? I think we're running a little late. We're scheduled to conclude -- adjourn at 4.

CHAIR BEACH:

Four o'clock.

VICE-CHAIR HILLMAN:

So, what are we going to do?

CHAIR BEACH:

Well, right now we had scheduled ten minutes per each panelist, but certainly if their testimony is shorter we can cut that and if we can cut our questions at that time.

VICE-CHAIR HILLMAN:

Okay, well, I think that the topic, unfortunately, is important enough that we really should get out as many questions as the Commissioners have, since we will be needing...

CHAIR BEACH:

Sure.

VICE-CHAIR HILLMAN:

...to make a decision and this is one where there's been a lot of back and forth, so hopefully, the panelists will be able to stay past four.

CHAIR BEACH:

Do we have ability to continue beyond 4 p.m.?

MS. JONES:

We should. They should be fine travel-wise.

CHAIR BEACH:

Okay.

VICE-CHAIR HILLMAN:

Okay, good. Thank you.

CHAIR BEACH:

Okay, thanks.

MS. LYNN-DYSON:

Certainly, my comments are very, very brief. I think we've covered a lot of this in the last couple of hours, and let me just give you a little bit of additional context.

I've already talked to you in the last panel about some of the timing that would be required to release this report to our state folks, so I won't go through that again. Let me just say as, kind of, a set up to the panel you're about to hear from, I really am actually very pleased that we're doing this panel, because as someone who hears from a wide range of opinion from our key stakeholder groups about changing the survey, leaving the survey as it is, as well as what the end users, actually, do with the information contained in it, the progress that we're making towards getting better information. And I now have a really full -- a better appreciation having spent time in the states talking with the states what it really requires to configure and reconfigure election data collection systems, marrying them up with VR database systems. I am fully appreciative of the work that goes into and am very appreciative of the work that states are willing to do in order to collect these data for us. While many of the questions on the survey instrument are required -- we are required to collect through UOCAVA, and through NVRA, there are questions on the survey that they are not required to report. But, I think fortunately, now that we are in what will be our third iteration on this, actually, a fourth iteration on this, people are becoming increasingly more comfortable with providing these kinds of data.

So with that, I just look forward to hearing from the panelists, and a forthcoming decision that the Commission will make about how to handle the release of the 2010 survey.

VICE-CHAIR HILLMAN:

One quick question, and I'm not sure who it would go to. Do we know what Mr. Stewart would have commented on? I mean, do we know if he had a position or an opinion on this?

CHAIR BEACH:

We don't have a copy of his testimony at this time.

VICE-CHAIR HILLMAN:

I know.

MS. LYNN-DYSON:

We don't have a copy of his testimony. If I were to conjecture, Commissioner, I would think he would, perhaps, be talking about additional information on the survey, collecting additional information on the survey, perhaps, related to equipment and voting machine functioning, malfunctioning, but I don't know.

VICE-CHAIR HILLMAN:

Okay, it really is too bad that he's ill, because we did want to have a balanced presentation with election officials and non-election official stakeholders in our process. So, hopefully, he will submit testimony.

MS. LYNN-DYSON:

Yes.

VICE-CHAIR HILLMAN:

Thank you.

CHAIR BEACH:

First, I'll start with Mr. David Burgess. Mr. Burgess, as I said earlier, is the Deputy Secretary for Planning and Service Delivery for the State of Pennsylvania. He is responsible for all aspects of the Department's current and future IT initiatives. Pennsylvania was also one of the five recipients of the Election Data Collection Grants that we had discussed earlier, so he has a unique perspective regarding the collection of data and we look forward to hearing from him.

And second, we'll have Ms. Sarah Ball Johnson who is the Executive Director of Kentucky State Board of Elections. She is also a member of the EAC Board of Advisors, and the EAC Standards Board, and she serves as the EAC Board of -- serves as Board Secretary for the National Association of State Election Directors.

So, I'd first like to turn to Mr. Burgess.

MR. BURGESS:

Thank you Chair Beach, Vice-Chair Hillman, Commissioner Davidson, Executive Director Wilkey and Deputy General Gilmour, good afternoon. I'm going to make a little briefer my comments, so that I can get to some of the meat of it, and then we can have the discussions.

As Chairwoman Beach stated, I'm Deputy Secretary for Planning and Service Delivery for the Pennsylvania Department of State, and I am responsible for all of the Department's current and future IT. I'm actually, by history, a developer, so I understand some of those issues.

Thank you for inviting me to testify at today's public meeting. I appreciate the opportunity to speak on the Election Day survey instrument, the efforts to collect precinct-level data, and the potential impact of making changes to the survey.

As you know, and as has been stated, there have been three Election Day surveys conducted, in 2004, 2006, and 2008. The process for collecting this information is a three-tiered process. It is totally a three-tiered process; the EAC, the state, and the local jurisdictions are all involved. And throughout the entire process each level has evolved as a result of these survey periods.

I'm not going to go too far into each of the past surveys, other than to say that from the 2004, it was somewhat simple. It had a smaller amount of data.

The 2006 was much larger, and it actually went to a Web based, which caused a lot of other issues for the states, particularly in the Commonwealth, where we had to do a statewide, as well as 67 county data into the Web base. And we had multiple issues in that.

In 2008, the data collection process evolved further. In this survey the EAC once again asked for the information being provided via spreadsheets to us. We had some issues communication wise and we were not able to submit it the way we wanted. We actually had to submit it on the spreadsheets. But this time the data was collected via our statewide uniform registry of electors and our SURE portals. Let me explain those a little bit. The statewide uniform registry of electors is a voter registration system that is centrally located in Harrisburg that all 67 counties

utilize. All the voter registration data is there. The SURE portals is a further movement of the data and allows us to capture things like provisional ballot and other aspects of information that is not contained in the voter registration database. We leveraged those two systems in order to do the 2008, and I'll talk a little bit about that.

From Pennsylvania's perspective, the form of the Election Day survey and the methods utilized by the EAC to collect the data contained therein have improved over the past three federal elections.

Though the core elements of the survey instrument have been somewhat consistent, voter registration, votes cast, absentee ballots, et cetera, the form of the survey instrument and the method for transmitting results have changed with each federal election.

Our experience has demonstrated that an instrument that allows limited manual intervention is the optimal method for gathering and collecting data. The manual intervention that I'm talking about is best at the reconciliation stage of the process and not during the collection or submission process. Limiting the amount of manual keying of information is far superior to the 2004 and 2006 process, because it reduces the number of induced errors in the data elements being collected. Incorporating precinct-level data increases the reconciliation process to ensure that any anomalies are understood and explained.

It is clear, based on the willingness of Congress to appropriate 10 million to improve and expand the scope of election data gathering, that the collection, compilation and dissemination of

election statistics via the Election Day survey instrument is an important public service. In fact, recent years have demonstrated that timely and reliable statistical data relating to the administration of elections promotes the integrity of the process by enabling election administrators and independent observers to identify the strengths and weaknesses of the election administration process.

For example, the availability of reliable data regarding the number of voters who cast a ballot versus the number of votes cast for a particular office enables election officials to identify unusual patterns in under vote rates. This, in turn, enables officials to determine if there is a weakness or a gap in the election administration system, such as poor ballot design, which may have contributed to an unusually high rate of under votes.

As election-related technology continues to progress, the ability of state and local jurisdictions to collect and compile data is in turn augmented. Therefore, it is natural for the EAC and for state governments to expect to collect ever-increasing amounts of data. The EAC must understand the impact on changes as this process evolves over time.

By increasing the use of technology and automated processes, changes to the surveys are more complex and costly. No longer can an element be inserted into the process without understanding the impacts on the data collection systems at all levels of the process, the EAC, states and local jurisdictions. Use of industry best practices to manage the complexities of these changes is imperative. In return, the amount of data and the

integrity of that data collected will continue to increase allowing greater transparency and confidence in our electoral process.

Although certain core data elements have been consistently represented in the survey instrument from one federal election to the next, the lack of overall continuity from year to year does not allow state or local jurisdictions to strategize and implement with any certainty for the next federal election. As a result, state and local jurisdictions are often limited in their planning for future federal elections.

State and local jurisdictions frequently do not see the final survey until several months prior to the federal election for which the data must be collected. Based on mutual conversations we have had with the EAC and other state officials, there appears to be a consensus among states that local officials -- and local officials that more lead time is necessary, ten months or more prior to the election, for jurisdictions to properly train and prepare for the efficient collection of survey data.

As the process continues to integrate into various systems for data collection and the states are able to expand the scope of the election data they can collect from local jurisdictions, it is essential to promote continuity by decoupling the EAC's instrument from the process. There is a need to establish a standard method of data transmission between the states and the EAC using open standards, such as XML, with industry best practices in change management. This would enable the process of collecting, reconciling and submitting the data to be increasingly automated and cost effective, while also enabling changes to occur in a

controlled manner. Open systems architecture and change management practices enable every state to participate as they are fiscally able, and still provide the information as needed by the EAC. Promoting continuity will enable states to take the “long view” as they consider specific enhancements to their election data collection methods.

Though continuity is an important aspect of improving survey data collection efforts among the states, it is also important to consider and clearly identify which data elements are most crucial from the EAC’s perspective, and package the document in such a way that the data is always collected. It is easy for a state and local election official to feel some level of anxiety over the number of questions and sub-questions presented in the survey instrument. Although state and local jurisdictions can infer, based on statutory mandates and past experiences, which data elements are most important to the EAC, clearly identifying those items and creating a document in a prioritized format to allow for degrees of compliance would greatly assist state and local jurisdictions to prioritize and focus resources. Knowing what is most vital will also help reduce the level of anxiety by state and local officials, because they will be able to visualize completion of the survey in stages, from most important to least important.

Once the format is established, changes could be appended into the document in a controlled manner, so that the electronic means of data collection can be augmented over time. This would allow for a more stable release approach to changes, allowing

states to implement as funds are available and still provide the core information for the survey.

As we consider here we go from here, we acknowledge there is an increasing interest in expanding the survey instrument to include more detailed information regarding the Election-Day experience. Reliable information is sought by election officials and independent observers relating to the technical and administrative challenges that voters and poll workers must sometimes overcome on Election Day.

Should the EAC determine that it is necessary to expand the scope of the survey in 2010 to include the collection of detailed information regarding Election Day challenges, it is worthy to note the importance of timely defining, to the extent possible, the exact nature of the information being requested. For example, collecting reliable information about such things as voting system issues and long lines would likely require additional training of those individuals on the front lines of election administration. It would also require, in many cases, the development of additional reporting processes to ensure that the information is collected efficiently at the precinct level.

At this point, concentrating on the 2012 election may be more effective. Defining and identifying the types of Election Day challenges required for 2012 in advance of next year's election and prioritizing the information would allow states and local jurisdictions to strategically develop effective methodologies for building what is needed into the systems in a multi-year approach while also training poll workers and collecting the requested information. The

high priority information may be implemented prior to the 2010 election.

In conclusion, I would like to once again thank the EAC for giving me the opportunity to present these observations at today's meeting. I also want to thank the EAC for its commitment to help Pennsylvania, and other jurisdictions, implement the provisions of the Help America Vote Act. And based on what I heard today, I also think that there's more dialogue that needs to continue on this effort.

And I'll save for the rest of the questioning.

CHAIR BEACH:

Thank you Mr. Burgess. Ms. Johnson.

MS. JOHNSON:

Thank you also for inviting me to come up here. It's always good to see you all, and to represent state election officials and our local officials in our state. It's always a great joy to do that.

I thought I would focus my discussion on giving you some examples of what we mean when we say, "This causes problems back on a state level." One thing I would like to say is that I am all for data collection, and most state election directors and local election officials, they do want data, they do want it collected, we're surrounded by a multitude of data, and quite honestly, without a survey like this, there are a lot of times you wouldn't actually sit down and compile the data into a report. So, the concept of gathering data is not something that any election official realistically is against, in any way.

I would like to, kind of, summarize a little bit how we do it in our state, because I do realize Kentucky is slightly different, because we're Kentucky. But, we are slightly different than a lot of states. We work on the county level. The data -- most of the data elements, over time, have been built into our voter registration database, so we run simple queries and get the data, and it is input into the data collection tool, either manually or electronically. And I actually do all of that data compilation and data entry. And I say that simply because I know -- when I mention these examples, I know for a fact they occur and I am very familiar with them. And that's, pretty much, why I would say that our level of where election officials are, and myself, in particular, is, I'm frustrated with this Election Day data survey, not because we have to do it, but, because the fact is we just never know what the questions are. Everyone has said that all day long. It's true. We never know what the questions are.

And I would like to add a little bit of caution, based upon some of the other information I heard earlier, that it's one thing to get a draft of what the survey is going to look like. It's a far another thing to get the final version. As you all mentioned, you know, when you send out a draft, and you go through, I think, it's the Paperwork Reduction Act, I believe, or various federal acts, those do change based upon public comment, et cetera. And that's where the disconnect occurs, as far as election officials are concerned, is that we'll get a draft, and we will build our database programs or train our counties based upon the draft question. However, when we receive the final survey, and it's not just the

paper survey, it's the data collection tool that the EAC expects you to use, it is far different.

And I'll give -- the best example that I can give, in our state, is the 2006 Election Day survey, or Election Day survey, excuse me. It used to be called Data Survey, and now it's called Day, so if I use them interchangeably, I'm talking about the Election Day survey. The best example of that, is, in 2006 the paper copy of the survey for the NVRA data asked for county-level data, and that is still what is currently going to be reported to Congress is county-level data. That was the same as it was in 1996, when the first NVRA report came about, it's all county-level data. However, in 2006 that changed. When they handed out the draft version of the survey, it was still county-level data. When we got the -- as my companion over here mentioned, when we got the Web survey tool that the EAC gave to the states to use for the data entry, it asked for it on the county -- I'm sorry -- county level, not the statewide level, excuse me, it's always been reported on a statewide level. So, my state having invested over ten years of doing this data, our programs were all written to get the monthly counts on a statewide basis, not on an individual county basis. So, that was a big issue and that's in my written comments, and a lot of you that were here lived through that with me and my continual complaints on that, because you cannot go back in time and recreate data, especially with the voter registration database. So, that is an example of, it's not just your paper survey, it's not just what your survey looks like, it's what your data entry tool that you're giving the states, that really matters, whether it's statewide or county level.

And so, I will say this, after 2006, for example, we worked with the staff and with the contractor to provide our statewide totals and we got those reported, so Congress got our totals, and it did not look like that we did not respond. But I will say this, this also occurred in 2008 Election Day survey because I kept asking, "Are you going to keep the same mechanism? Do you want county level monthly counts on this issue?" And I never really could get an answer for that until late 2007. That was too late to program the database. So, I only had -- when it came time to do the 2008 Election Day survey, I only had the counts for 2008, not 2007, and 2008. So, we were back to reporting just the flat giant totals for the state. Hopefully, if it does not change in 2010, I'll actually get to do -- have two years worth of data, but that's an example of where it matters, not just paper survey, it matters what your data entry tool is going to be.

I also want to mention the frustration that I have, and I know other election officials have, and this was a great discussion at our NASED, State Election Directors conference in February, and that is, when questions are -- they show up on the draft questionnaire, we're back to the draft questionnaire, they show up on the draft questionnaire, but when you get the final questionnaire, it's not on there. Same issue, but this is a different example, military UOCAVA voters. I do realize that you are mandated, under that, to ask certain things, but there, obviously, is some flexibility on how you ask those questions, because in 2006, the questions were based upon separating out military into overseas military and domestic military. So, somebody, somewhere at the EAC, has

some flexibility to do that. That's how it was reported. Election officials, you know, did comment that that's going to be very difficult for our local people, because you can't tell, all the time, by the address, whether it's domestic or overseas, and I think that was actually learned, because by the time the 2008 survey, actual, final version got released that question was not there, it was just military or overseas.

The problem for most states is most states had already programmed their databases, trained their clerks, found out too late to go back and tell them, "Don't do it." So, we ended up collecting a lot of data that we did not need. We did not need to separate that out. Well, from a research perspective, it may not look like a big deal, it is a big deal when you're a county level clerk trying to capture all of that data and figure out, is it overseas, is it domestic, and you're reporting that. That's precious seconds in a heavy election year that you're never going to get back, for data that nobody wants. So, that's just an example of what that -- an example of what I mean by the differences.

The other frustration that we have on the statewide level, or at least, election directors, and I know locals do too, at least in our state they probably don't realize how long it takes anyway to do it, but fellow election directors across the nation do, and that is how long it takes to complete the survey. You know, as was mentioned earlier, there's over 800 variables for this last version of the survey, for the 2008 survey. It took a tremendous amount of time. And when you read through the paper version of the survey that was released out to us, you know, it said at the bottom, it's estimated it

will take on average 88 hours to complete. Well, just to let you know, I was curious, so I actually tracked the hours, this is just the hours on my side, the state level, it was 160 some hours. And our counties -- that doesn't take into account our county time. And so, we have sent information to Chair Beach, and I know it's been spread around, about a survey that we did concerning the time.

So, what I would like to say is, as we go forward and we look at these questions and we study the effects, that we really study whether it's a viable question. Is this a good question to ask? Do you really have to ask this, or do you not have to ask this for the betterment of elections? Or is this just one thing that one researcher or group wants, but no one else needs to know? Or Election Day registration, or Internet voting, not enough states are doing it, why is it on the Election Day survey?

So, my suggestion is that we do not change, for 2010, the survey. I know it was mentioned that we could tweak it a little bit. Well someone's definition of "tweak" can be one thing, and it could be a change to me, but a tweak to them. So, let's really seriously, take a look at what things we can and can't do, dropping questions as I mentioned, equally impacts a state as adding questions.

CHAIR BEACH:

Okay, thank you. Both of your testimony was very helpful as we move forward.

And I'd like to now turn to questions. Does Vice-Chair Hillman have any questions for our panelists?

VICE-CHAIR HILLMAN:

I do, and I will start with Pennsylvania. Thank you both. I wouldn't expect anything less than candor.

Mr. Burgess, in your testimony, you talked about manual intervention, and I can guess what you meant by that, but would you just explain, in plain language, what you mean by manual intervention and the critical stages at which it's helpful or not helpful to have?

MR. BURGESS:

We were, basically, totally, electronic. Let me explain a little how we got the data. We created a data warehouse, which was mentioned previous, in which we pulled data from all of our various different databases, that we have, from the voter registration system, as well as from our provisional balloting system, our Election Night returns, basically, everything that we were gathering data from, including the internal election systems. We housed it into a data warehouse, and then that's where we were pulling all the data from. So, pulling the data into that data warehouse was electronic. We created systems with storage procedures, et cetera, to do all of that.

Due to some various communication issues, various things that went on in the project, because it was a pilot project, a very, you know, time-constraint project, it ended up that we actually had to put it into the spreadsheets that were supplied by the vendor, RTI, which is the same data -- it's a very formula delimited spreadsheet. We actually cut and paste...

VICE-CHAIR HILLMAN:

A very what?

MR. BURGESS:

The spreadsheet had all kinds of formulas in it for drop downs and things like that. It was as if you were doing it manually, and in order to keep that format, we actually cut and pasted. We captured the data -- we gathered the whole amount of data and we were able to paste it in, but we had to paste it in one spreadsheet at a time. That's something that you don't want to have to do. That's the type of stuff that is an intervention that shouldn't be there.

But, when you're at precinct level, and you're at county level, there were some anomalies between the two. And most of the anomalies were based on the fact that not all of the counties are at the same level of being able to report data. A good example is, we have some counties -- we have three counties that are not part of the SURE portals, to date. It's been a long process to get all 67 counties on, and there are still three counties that are not. Those counties, we actually sent out to them for their provisional balloting numbers, et cetera, in a spreadsheet, and we pulled that stuff in manually, as well. So, what happened is, we didn't get all of the same information. We had to explain where the anomalies were.

So, that reconciliation step needs to take place. You need to look at it and make sure that what you're submitting is really what is supposed to be submitted, and that you can explain where the errors were. It was particularly between the precinct level and the county level data that we had the anomalies, that we had the issues that we had. There were various reasons we had to repull data, we had to do a lot of different things, but most of it came because not all of the counties were on the various systems that we were pulling

from. So, the manual intervention part, particularly if you're at the precinct level and the county level, is, just making sure everything makes sense, making sure that everything comes together.

As our election systems, as our internal data warehouses continue to grow, that step will actually be able to be done in our systems, not in your instrument. And that's, sort of, where one of the steps that I'm, sort of, talking about is the instrument for an electronic environment. How we give it to you shouldn't matter, and even what we give to you, really, shouldn't matter, so that -- it was actually mentioned by, I believe it was RTI, that if you decide to drop a data element, just because we had it on the last survey, if I can't get it off of my system and submit it to you, you can drop it in your results. There are multiple levels, and if you don't have that coupling of, actually, having to put it into a Word document or an Excel document that you guys have created, that you have to put in all the right formats, but there's a standard, and we're just appending fields on the end, you can technically make changes over time. And some of the changes can be done at the county side, some of the changes could be done at the state side, and some of the changes could be done at the EAC side, so that if you are tweaking -- if the data is coming up, because this was 2008 we collected this data, you tweaked it, and it was a couple months before the election and we can't take it off, you accept it, you take it off, and go forward with it. So, some of the tweaking can actually be done at the EAC side, if you don't couple the election instrument, the data collection instrument, with our actual having to submit it to you.

VICE-CHAIR HILLMAN:

So, what you're saying is, be careful what you ask for, right? EAC, be careful what you ask for, you may get it whether you want it or not?

MR. BURGESS:

Yes.

VICE-CHAIR HILLMAN:

Okay. The last part of your explanation, is that what you were referring to in your testimony as industry best practices?

MR. BURGESS:

What I was actually -- I'm a technologist so -- I've only been in the government for five years. I'm slowly learning all of the bureaucracy that you go through, and I understand that the Federal Government has quite a bit, as well. What I'm talking about is, if you do decouple your data collection from your Election Day survey, then you can manage the data collection using industry best practices. In other words, release management. You can say, "Here's the core data that we need. I'm going to add four or five more elements." That would be release two. So long as you give us release one this year, get us release two by "x" date, which is how you're managing what you're actually asking for, over time. I understand that some of that based on law can't necessarily be as easy as that, as technologists would like it to be, but if you can use change management, and you can decouple the actual instrument that you are seeing from the data being collected, a little bit, you can manage that change management process.

The other part of it, is, not every state can do the same things. Not every state has the funds, not every state has the technology or the capability. We have a central voter registration database which allows us to get some things, but if you ask for election systems anomalies, we're not capturing that in any way yet, in Pennsylvania. Other areas might be. So, that would be another process that we would have to go through, through a project management approach, to really understand where is it best collected? Who is it best collected? Because, my charge is to make sure that I don't inundate the counties with more of what they need in a federal election, and start asking them to do more things and put it into a whole other system and have to train a whole other system, if I could actually input it into a system that they already have; add a new couple of fields, or whatever. I would need time to do that, and that's the best practices that I'm talking about, is, actually understanding where the changes are and managing those changes from the three tiers that you have, and understanding what that is.

Some of the changes need to happen from the EAC perspective, if the tweaking is happening, is the tweaking is happening on your end, if it is a small amount. Actually, creating a data warehouse in your own environment can give you some more possibilities down the road to do that, as well.

VICE-CHAIR HILLMAN:

A question for Ms. Johnson. And I was struck by a comment that Keith Cunningham made at the Board of Advisors meeting. And we're so glad you're on the Board. Thank you very much for

your willingness to serve. But he talked about the numerous survey instruments and questionnaires that election officials receive, whether at the state, or at the county, and local level, and the notion that EAC could design and maintain a comprehensive enough survey that it could answer most of the questions. Now, we're never going to be able to answer everybody's sets of questions, but then that could be a tool that states and locals could use and say to the person sending yet another questionnaire, "Your information is in here, take this and run with it."

So, I guess I have two questions. One is, can you guess how many of those kind of questionnaires and survey instruments you would get following a federal election? And do you respond to all of them? Are you able to respond to all of them?

MS. JOHNSON:

Actually, I counted them this year for the general election, because we got so many questions, and I got 75 questionnaires in the month of October and November. And those were from various other groups. Some were from media, some were from entities that were looking for pre-lawsuit discovery, quite frankly, and they'll tell you they were. There are a tremendous amount of surveys and they do ask quite a few of the same questions. And we have in the past, you know, said, "The EAC is doing this Election Day survey. If you would just wait a few months until it comes out, all of the data in the exact way you're asking it is already compiled in that survey." And we have done that. In 2004 we said that, in 2006 we said that, and we said that again in 2008. And we got various responses, and this was mainly media related, "No, I want it sooner." "No, I

would rather just get it from the state,” and various other reasons. But, yes, there are a tremendous amount of surveys. That’s just what I got on a state level.

We work very well with our counties and have a really good relationship. I know that’s not always the same in a lot of states, particularly in Mr. Cunningham’s state, and they get surveys too. They get quite a lot of different surveys that we don’t get, because we’ll get questions, “Do I have to answer this,” et cetera. And I do know they got quite a few more than I did.

VICE-CHAIR HILLMAN:

More than you did you’re saying?

MS. JOHNSON:

More than I did, yes.

VICE-CHAIR HILLMAN:

Okay, all right, and then my final question. Have you had an opportunity, the two of you, to swap notes on how you collect the data, and then how you transfer that to the EAC form? I’m just wondering, are you close? Are you vastly different? I mean, are we looking at apples and oranges, and by the time it gets to us, it’s a grapefruit, but you’ve got an apple and you’ve got an orange and somehow you make it a grapefruit?

MS. JOHNSON:

We haven’t, actually, sat down and talked, but just hearing, I think, the presentations I can answer on our end, we have an older database. They have a little -- a newer database, I think a recently revised database, too, so they’re a little -- technology wise, they’re a little further ahead than we are, versus what I have to do. Mine is

all data entry into that, and so, I feel every one of those 800 variables 120 times. But it is different. And I will say just using our examples, it's even -- I can only imagine what RTI had to deal with in trying to get the states and territories to answer this, because it is so different. And I totally agree with, you know, a lot of what you're saying where we need to be. I just, you know, I'm not trying to be a pessimist but, you know me, I don't see that happening, you know, very fast, just because of the vast differences out there, and the vast divisions on how much control a state has over the locals, and vice versa.

MR. BURGESS:

Do you mind if I answer that as well?

VICE-CHAIR HILLMAN:

Please.

MR. BURGESS:

I agree, we do not talk, probably, as much as we should. Typically, when we want to talk, it's in the middle of a huge election and nobody has time to talk. So that's the issue.

What we're doing in our state, and what I think needs to happen in all the different states, is, we're actually taking an understanding of the entire evolution of the election itself, per se. The voting systems, themselves, are draining a lot of time, based on all the things that are happening out there, the data collection and other things. News media, the transparency of elections is draining a lot of time. What we're doing to address that, is, we're actually building a data warehouse that we can have our state be able to answer more of those questions, and we are answering

more of those questions, because they don't want to have to go to 67 counties, they want to come to the state. So, the states, themselves, are evolving, but I think we're all learning our own lessons, and we're probably relearning a lot of the same lessons. I do think that there has to be more, I just don't know where the time, necessarily, would come from on all ends, because it actually has to be from all three different levels, to sort of understand what you're doing. But we are taking a look, as is every state, to try to understand, how can we hit the transparency side, how can we manage the election issue side, and how can we actually continue to manage the election without inundating the counties.

I do know that in Pennsylvania a number of counties, when they get calls from the surveys, just like you stated, a lot of them are -- they'll call us and say, "Do I have to answer it?" Actually, a lot of them are actually now saying, "Call the state." So...

VICE-CHAIR HILLMAN:

Thank you.

CHAIR BEACH:

Commissioner Davidson.

COMMISSIONER DAVIDSON:

Ms. Johnson, you made a statement, just now, that sent a red flag up, because of us talking about how we're going to move forward with recommendations to Congress, on collecting data down to the precinct level. You said you had to enter everything by hand from all elements, the 800 elements that we have on the survey, plus from all of your counties, individually. If you had to go down to the precinct level, how much additional time would that

take you, in trying to collect information if you didn't have the money to redo your electronic system?

MS. JOHNSON:

It would take -- it's pretty hard to estimate. We have 3,555 precincts. It took me 166 hours to do what we did now, on a county- level basis, so it would be a tremendous amount of time. And I will say we tried cutting and pasting, you know, from our different sites into that spreadsheet, and on some questions it would work, some it really didn't work, and you spent more time proofing what you would cut and paste, that I ended up just doing it all by hand. That was -- that piece of it was my choice on it. But it would be a tremendous amount of time.

And, I certainly agree with what you said about then matching up what you have as a county total, and then you separate that out into each individual precinct, and those numbers have to match, and there would be a tremendous amount of error checking on that, because it is amazing, when a county will give you a county total, and then if you were to go below that, how it doesn't add up. We do that with provisional ballots, and we have very few in our state, to begin with, but it is always going back and going, "This does not add up."

COMMISSIONER DAVIDSON:

Trust me, I understand.

MS. JOHNSON:

Yes.

COMMISSIONER DAVIDSON:

I've done statewide audits.

MS. JOHNSON:

So, it would be a tremendous amount of time, and I think it would be a lot more burden on the counties. And, granted, we don't go down to the municipal or township level, like some states, and I can only imagine what that is.

COMMISSIONER DAVIDSON:

Are you telling us it's time to go home?

MR. BURGESS:

Can I add something to that..

COMMISSIONER DAVIDSON:

Sure.

MR. BURGESS:

...at the precinct level? One of the other anomalies you have to understand in many election systems, is that it's rolling data. In other words, the person may have moved by the time that they have actually collected the fact that they voted in this precinct, and they've actually moved to a different precinct. And that's one of the anomalies that we found, is where we pulled the data from in the voter registration system, really matters. And you don't necessarily see that, but you're getting much more of a transient electorate out there, that by the time that the counties have actually counted all of the poll books, you're now pulling data -- if you're not pulling it from the right place, that's where some of your anomalies are, at the precinct level, because they have now moved. And you don't want to capture the precinct from the voter record, you actually have to capture the precinct from which they voted in.

COMMISSIONER DAVIDSON:

It's -- Election Day is very hard to get the right numbers because, as you say, you've got to go down to the level of, how many people did an emergency registration on Election Day. You can't take it the week before that you cut off your registration. It is Election Day when you take all your address changes, and they move to a precinct and everything else, so it's very difficult to have your numbers come out the very same. And it's hard for people to understand that.

One last question that I had, if -- you mentioned something that really intrigued me. If we would say to states, "Okay, here's the elements that we want, and here's the most important elements." Obviously, the required elements, by law, is the ones that would be priority one. And then, as we would change the survey, we'll say in 2012, if we move forward in moving there, if we gave you that survey before 2010, and we say, "Okay, this is the elements we're going to want in 2012," you know, and start doing it, because you mentioned giving timeframes that you wanted each different set of elements in the future, is that exactly what you mean, that kind of thing, of setting priorities?

MR. BURGESS:

Yeah, what I was trying to mention, is if you have priorities, as well as change management, and we need to look at that whole process, how that actually works...

COMMISSIONER DAVIDSON:

The change management is very important.

MR. BURGESS:

...but if you have the priorities, then we can expend the funds necessary, possibly, to meet those priorities in the timeframe. And we might be able to get more, we might not be able to.

COMMISSIONER DAVIDSON:

Um-hum.

MR. BURGESS:

And that's based on each of the different jurisdictions, each of the different areas. Some of the data elements that you're going to ask for may not be in a system today, may not even be in a collection system.

COMMISSIONER DAVIDSON:

Correct.

MR. BURGESS:

So, in order to get it, you actually have to train the poll worker to do something to capture that data, and then send it back to the counties to get it to us. We may not be able to do that in a short timeframe.

COMMISSIONER DAVIDSON:

So, are you telling me that -- you mentioned and the one question that has come up and we've had a hearing on it in the past, is, anomalies that take place on Election Day, problems with voting equipment -- are you saying that you don't know, at the state level, currently, there's no reporting ability that you have that the counties are saying to you, "I had a problem in this precinct with my voting equipment?"

MR. BURGESS:

Yes, on Election Day, we actually have a system in which we capture all issues that are reported to us, and we have an environment in which we actually have a three-tiered approach for phone calls, on what systems -- what's happening out there. We also look at other various websites and news media to see if something is happening. The counties don't, necessarily, always know what an issue that's being raised, actually is, you know, and that's where we get into the question of, "What are you actually trying to get by an issue?" I mean, we had an issue where there was an individual, it was reported that a police officer was at a precinct, which you're not supposed to. "Well, he was a candidate." I mean it's -- there's different things. Is that something that you report? Or is that something that you don't report? I mean there's...

COMMISSIONER DAVIDSON:

Yes, and how do you, actually, define an election machine anomaly, you know,...

MR. BURGESS:

Right.

COMMISSIONER DAVIDSON:

...whether it's the machine that made a mistake, or is it a poll worker that made a mistake.

MR. BURGESS:

Right.

COMMISSIONER DAVIDSON:

So, it does get very, very difficult.

MR. BURGESS:

Right. And currently, right now, all of the system that does that, it's somewhat of a free-formed system of typing in whatever the person who is reporting it, "This is what they're saying." And then, we try to categorize it, we try to catalogue it. But, at this point in time -- and we've done this for the last three, three-and-a-half years of elections, because we do it not just in federal elections, but we do it in all the different elections. So, we are trying to sort of understand what that is. But right now, what is an issue, what is a reportable issue, what is the one that you need to see, as opposed to one that's mis-catalogued or misrepresented, those are all questions that you need to ask, before you start actually collecting data. This sort of goes back to something that you said and something that other people have said. The stakeholder who needs that data, who is that? Define what that person is. Define what they need the data for. Then we can understand how we can get it. If you just capture data and you just throw data out, you may do more disservice because many individuals are going to misread what that data actually means. So -- and elections issues would be one of them.

COMMISSIONER DAVIDSON:

It's too bad Mr. Stewart isn't here to see how he would define it.

Ms. Johnson?

MS. JOHNSON:

One of the things that we did -- we, too, you know, rely on phone calls. And I will say this -- we have a system set in place to try to work with our counties to find out those issues. But, I will say

in a heavy election year, like last year, like the last general election, things are happening so fast, so intense that, you know, that county's job is to fix that system or fix that issue with their poll worker, and sometimes they're worried -- they're focused where they should be, not on reporting, you know, to me in the state level that this happened, because by the time they finally get to me we patrolled the -- patrolled, I sound like a police officer -- we trolled the blogs a lot this year. We had very close media -- ties with our local media across the state, and we really pushed on blogs trying to see what's going on, because that's where it's getting reported first. And a lot of times we would see an entry on a blog saying, "I went to vote and this machine was down." "We've called the county. I don't know what you're talking about." They'd call the poll worker, "Yeah that happened an hour ago." So, it's so fast and furious on Election Day, that it is hard to, one, define it; and track it down if it really occurred or not.

And I'll give you an example on a voting machine. We had a precinct, one of the larger precincts in one of our counties, where the poll -- all four precinct officers were new, they opened up the voting machine, and immediately hit "close the polls." The voting machine was open for a minute and a half for voting, you know. And once it's closed, it's closed. You're not reviving it, because that would be a whole other set of conspiracy theories going on there. So, you know, that was an issue that, yes, that poll was closed. It did take an hour, because it was in a very remote part of our eastern Kentucky region, to get another system out there, but we had a mechanism in place for those voters to vote who were

waiting in line. So, it's those kind of issues about getting a national definition. We talk a lot about collecting data today. Well, getting a national definition of what a voting system anomaly is, I think, would be harder than fixing this Election Day survey process.

MR. BURGESS:

Um-hum. Oh, yeah.

COMMISSIONER DAVIDSON:

Okay, I'm stopping.

CHAIR BEACH:

I just have one question for the both of you. I know, Ms. Johnson, you referenced the NASED resolution on our Election Day survey. We talk about, there are questions that, you know, may not provide as much value, or may be outdated, or areas, you know, on the Election Day survey that, you know, may not require us to collect data for you on that issue. Can you provide an example, besides the military and overseas? I know you talked about the domestic and the overseas data collection. Is there any other -- are there any other areas?

MS. JOHNSON:

I think most of the angst that election officials have is really with the UOCAVA data, because it keeps getting parsed and parsed, and that is probably the hardest thing for our counties to track anything with absentees, because you get so many of them.

I think, just what I mentioned earlier about asking questions on this past Election Day survey of, "Do you have Internet voter registration?" Well, you knew before you sent that out how many states have Internet voter registration. It really wasn't necessary to

ask every single state that. Laws hadn't changed. Everyone I think knew there were a couple states that were doing that. Election Day registration, it's the same thing. Those kind of things you know, and part of this last survey was the statutory overview. That was a new piece that had never been done before. I'm not, you know, saying it shouldn't have been done, but it was a very extensive survey. That got turned in prior to us filling out the data, and at that point you knew some of the answers to these questions like Election Day registration, like the Internet. So, those kind of questions. But most of the angst over the years has really been centered on the UOCAVA section, and I do know federal law requires certain things. And, as they mentioned earlier, the set of questions on voting equipment was very lengthy and very laborious to fill out, I have to admit. And I have some ideas that you cannot tweak the question or change the question, but I think you can tweak the data entry tool to automate that a whole lot better than what it was previously.

But I do want to say the spreadsheet that RTI provided this year, although we just kind of talked about some issues that we internally had with it, it is the best one I've seen yet on getting the data back to you all. It was very, very good. It was very easy to use. And there were a lot of checks built in to that. So, if you report absentee ballots, here are the total absentee ballots cast and counted or something. And then, later on in another question you're asking you to parse that out into in-person, mail-in, military, et cetera, there were checks to make sure that what you said in column "A" matched up, total wise, with what you said in column

“Z.” So, there were a lot of internal checks, which if people had, you know, used them, it helped a lot. And it helped you on your end correct that data, so that RTI did not have to figure it out, or when you got it, it’s a better -- it’s good data.

CHAIR BEACH:

Thanks. Do you have anything to add, Mr. Burgess?

MR. BURGESS:

Yes. In our case with that spreadsheet, since we were trying to do it totally electronically, it was those checks that were actually killing the process. And again, I think some of the reason that we had to use it was on our side. We focused on gathering the data first, and that was sort of the end, and we couldn’t get our XML with RTI for whatever reasons. But if you’re going to go truly electronic, some of those checks and balances should be in the state side, for the pieces to check certain things to make sure that it’s right. But then a lot of the totaling, like she was mentioning is, you know, you’ve got this amount of data but you’re also asking for some other totals based on that data, that could actually be done by you once you’ve received the data from electronic environments. If we’re gathering it out of our systems, you should take the data that we have, and if you’re then summing for different places, or you’re adding knowledge to it, or you’re doing other links with it, that you do that on your end. The spreadsheet was one hundred percent much better than the other years, but for an electronic county, it’s not the best process to go through.

CHAIR BEACH:

Okay, thank you. I'll turn to our Executive Director, if he has any comments.

EXECUTIVE DIRECTOR WILKEY:

Just one. I certainly appreciate the comments made, particularly by my former colleague, and we always look to you to give us your best advice.

It's a real dilemma for us because we want to be able to make this good solid data available to a wide range of people who want it, and working through the Paperwork Reduction Act is one of the major hurdles that we have to deal with. If we didn't have that, if we didn't have to deal with that, certainly this process could go along further. And we could even enhance it by doing periodic surveys that we'd like to do from time to time. For example, if you call us and say, "I need to know how many states do this because they're talking about legislation in my state," we're not able to turn that around directly. It takes us several months to be able to do that. So, we understand the problems that we had, and I'm hopeful that we'll be able to -- that the Commissioners will be able to come to that resolution very soon.

But I'm wondering if -- I know I attend most of the meetings of NASED. Have they ever discussed some pertinent data, in addition to what they give us, that they would find useful for, you know, going out four years from now, let's say? Because that's the thing we need to know to plan for way, way down the road and that would be helpful too.

MS. JOHNSON:

I will have to say that, no, we never really have, and I'll tell you why. It's because most of the time we just talk about how we don't like the current survey or something.

EXECUTIVE DIRECTOR WILKEY:

Okay, we'll leave it at that.

MS. JOHNSON:

No, it's been more focused on the negative, but we'll focus on the positive.

EXECUTIVE DIRECTOR WILKEY:

Okay, great, thank you. Thank you, Madam Chair.

CHAIR BEACH:

Okay, thanks. Thank you for your participation on this panel. This information certainly is very helpful as we move forward on evaluating the survey and what we plan on doing here at EAC. Thank you.

Now, at this time we're going to move back to a portion of Old Business, that we moved to the end of the meeting, and that will be the correction and approval of the minutes from the May 19th meeting. Is there any discussion on that?

VICE-CHAIR HILLMAN:

I move adoption of the minutes, or acceptance/approval.

COMMISSIONER DAVIDSON:

I second it.

CHAIR BEACH:

Okay, great. All in favor say aye.

[The motion carried unanimously.]

CHAIR BEACH:

The motion carries and the minutes are adopted. I just want to thank everybody for their participation today.

And our meeting here is adjourned.

[The meeting of the United States Election Assistance Commission adjourned at 4:25 p.m. EDT]