

1

2

3

4 U.S. ELECTION ASSISTANCE COMMISSION

5 EXCERPT FROM THE PUBLIC MEETING

6

7

8 Taken at the Marriott Hotel

9 1535 Broadway, New York, New York

10

11 On the date of Thursday, June 30, 2005

12

13

14

15 COMMISSION MEMBERS:

16 Gracia Hillman, Chair

Paul DeGregorio, Vice Chair

17 Ray Martinez, Commissioner

Tom Wilkey, Executive Director

18

19

20

21 Start time: 9:30 o'clock, a.m.

22 Taken before: ELLEN REACH, a court reporter

2

1 CHAIR HILLMAN: Good morning.

2 Welcome to this Public Meeting of

3 the U.S. Election Assistance Commission.

4 Could I ask and remind you to

5 silence your cell phones, pagers and any other
6 electronic device that might make noise and
7 disturb the proceedings of our meeting. Thank
8 you.

9 If you would stand and join me in
10 the Pledge of Allegiance.
11 (Assembly reciting the Pledge of Allegiance)

12 CHAIR HILLMAN: Thank you.

13 If we could have the roll call,
14 please.

15 MS. THOMPSON: Thank you, Madam
16 Chair.

17 Please respond by saying present or
18 here when I call your name.

19 Gracia Hillman, Chair?

20 CHAIR HILLMAN: Here.

21 MS. THOMPSON: Paul DeGregorio, Vice
22 Chairman?

3

1 VICE CHAIR DeGREGORIO: Here.

2 MS. THOMPSON: Ray Martinez,
3 Commissioner?

4 COMMISSIONER MARTINEZ: Here.

5 MS. THOMPSON: Madam Chair, there
6 are three members present out of four.

7 CHAIR HILLMAN: Thank you.

8 It is wonderful to be here in New
9 York City. This is the first meeting that we
10 have held in this great city.

11 Doubly pleased that John Ravitz,
12 Executive Director of the New York City Board of
13 Elections is with us this morning to bring
14 greetings.

15 Mr. Ravitz, please. Thank you.

16 MR. RAVITZ: Thank you very much.

17 We want to welcome you to New York
18 City and hopefully you will have a wonderful time
19 here, spend money, which helps our revenue and I
20 would like to, on behalf --

21 There we go.

22 CHAIR HILLMAN: Please begin again.

4

1 MR. RAVITZ: I just asked everyone
2 to please spend money to help our city revenues.

3 But on behalf of the New York City
4 Board of Elections, we would like to welcome the
5 EAC here.

6 I would also like to recognize one
7 of our ten Commissioners who are here,
8 Commissioner Terry O'Connor, from the Borough of
9 Queens, is here to welcome you as well.

10 And it's good to see some very
11 familiar faces. Commissioner DeGregorio, as we
12 were talking earlier, has been in New York City
13 on Election Day during the last two general
14 elections.

15 And we are very happy and pleased -

16 and New York's loss is your gain in having Tom
17 Wilkey now as your Executive Director. And we
18 look forward to continuing our long working
19 relationship with Tom.

20 Just for those of you who don't
21 know, I was in the New York State Assembly for
22 12 years, representing the East Side of

5

1 Manhattan, before becoming the Executive Director
2 of the New York City Board of Elections.

3 And, quite frankly, for 12 years I
4 only cared about one thing when it came to the
5 election process - making sure that my name was
6 on the ballot, not caring about anything else.

7 Well, the first day I took this job
8 I asked our Chief Voting Technician to open up
9 the back of one of our Shoup 3.2 lever machines,
10 because I had never seen the back of the machine,
11 I had only seen the front of the machine.

12 When you open up the back of one of
13 those beauties and you see the work that has to
14 go into that that our technicians have to do to
15 strap those machines to get the ballots ready, I
16 began to see already that I had a lot of learning
17 to do about the electoral process.

18 The other experience I had with the
19 Board of Elections staff was in 1996 on Election
20 Day. I was in one off my tightest races and I
21 was in front of one of my busiest polling sites,

22 which is Hunter College on the East Side of

6

1 Manhattan.

2 I am just standing there greeting
3 voters and a woman came out around seven o'clock
4 in the morning and she said, "you are Assemblyman
5 Ravitz," and I said "yes". And she extended her
6 hand. I thought she wanted to shake my hand.

7 And she put a lever in my hand. And
8 I said, "well, what's this?" And she said,
9 "well, I just tried to vote for you and this
10 lever came out." And I said, "did you tell
11 anybody?" And she said, "no".

12 I said, "well, we have to go put
13 this lever back in because now no one is going to
14 be able to vote for me."

15 That hasn't happened in the three
16 years that I have been in this job.

17 But, again, just some background on
18 New York City. And Commissioner DeGregorio and
19 Executive Director Wilkey I think know it very
20 well.

21 We have 1369 poll sites in the five
22 boroughs of New York City. We have 7,639

7

1 existing Shoup 3.2 lever machines that the City
2 of New York has been using since the early
3 1960's.

4 On Election Day we bring in 30,000
5 poll workers to man our polls in all five
6 boroughs and we try and service 4.2 million
7 voters.

8 HAVA, obviously, has been on all of
9 our minds. We have been waiting anxiously for
10 the State Legislature for the last two years to
11 put what they wanted to put into state statute in
12 regards to implementing of HAVA.

13 We have successfully - and I am very
14 pleased to say successfully - introduced the
15 first phase of the HAVA ID requirement in last
16 September's election. And we spent a lot of time
17 doing as much as we could to make this as
18 painless a process for those voters who fell
19 under the category of people who had registered
20 to vote by mail for the first time after January
21 1, 2003.

22 We had good success and that will,

8

1 obviously, continue as we continue to make sure
2 that those people who fall into that category
3 will do so.

4 But, other than that, we were
5 waiting for the Legislature to act and this is
6 it. They finally, last week, finished their
7 legislative duties in putting into legislative
8 form the remaining pieces of HAVA.

9 The biggest issue that we have is

10 the Machine Bill and that's what - we are now
11 going to be beginning that process because under
12 this legislation that the State Legislature
13 passed, we are now going to have to have one new
14 voting system in each poll site in all five
15 boroughs for the 2006 election.

16 Now, I don't know what the Justice
17 Department is going to do regarding that
18 regulation. That's going to be up to the
19 lawyers.

20 We are moving forward and,
21 obviously, there are a lot of things that have to
22 happen on the state level with the state Board of

9

1 Elections, as well as our Commissioners making
2 the determination which systems they would want.

3 But you should know that we at the
4 Board of Elections have not just been sitting on
5 our hands. We have put together working groups,
6 internal work groups of our own staff, reaching
7 out to work in trying to acquire consultants -
8 who will be able to help us as project managers -
9 move into this transition form.

10 And the Mayor of the City of New
11 York, in his budget that will be adopted in the
12 next few days, saw the need that we are going to
13 have to do to implement HAVA in these final
14 stages and came through with the money that we

15 needed to hire communication firms, to help us
16 with our public relations, to do what we have to
17 do in terms of hiring additional technical
18 people.

19 So we are going to be ready to go
20 once we know what the systems we are going to be
21 using will be.

22 This is our roadmap now that we will

10

1 begin to start with.

2 But I have to tell you, and I say
3 this with all the sincerity that I can, I don't
4 know what's going to happen in 2006. Under the
5 state law we have to have 1369 machines, one in
6 each poll site. We probably will need an
7 additional 200 or 250 for spares, for training,
8 for demonstrations.

9 I don't know, once it gets to the
10 point where our Commissioners make a selection,
11 if any vendor is going to be able to produce
12 those type of numbers for us in that short a
13 time. Because we need as many of these new
14 systems in place so that we can make sure that
15 they interface with our existing systems that we
16 have in all five boroughs and our offices.

17 In addition to that, once we get
18 those 1369 plus machines, we are going to need
19 the other 6,000 machines very quickly after that
20 as well.

21 So the question that I will leave
22 all of you - and really to be up front with all

11

1 of you - is that we are going to do everything
2 that we can to comply with the law.

3 But because of the small window that
4 the State Legislature really has given us in
5 terms of all the work that still has to get done
6 before I can tell you or my staff or the voters
7 of the City of New York what new systems they're
8 going to be voting on, a lot has to happen.

9 And we look forward to working with
10 you as we try to move forward in this regard. We
11 appreciate the fact that the money that you have
12 given to us and to the state has begun to come
13 through and now that we can actually use some of
14 that money.

15 But this is a process that is still
16 very fluid in my mind and it is one that's going
17 to have to be done, as we have always said, in a
18 very responsible way. Because the one thing that
19 we never want to lose sight of, is we do not want
20 to disenfranchise any voter.

21 When you are dealing with a city as
22 wonderful as New York City, when you have 4.2

12

1 million voters - some of them voting for the
2 first time, some of them who are going to be very
3 anxious about changing the way they have been
4 voting for years and years - a lot of work has to
5 get done.

6 But working with you and working
7 with the state Board of Electionss, I hope that
8 we can do that.

9 So, again, I want to welcome you
10 here. Hope that you have a wonderful conference
11 here in New York City. And we are always here to
12 the be of assistance to you when you are here in
13 our great city.

14 CHAIR HILLMAN: Thank you very much,
15 Mr. Ravitz.
16 Commissioners, we have before us the
17 agenda for today's meeting. And unless there are
18 any changes or edits to the agenda, it's
19 appropriate for adoption.

20 VICE CHAIR DeGREGORIO: So move.

21 COMMISSIONER MARTINEZ: Second.

22 CHAIR HILLMAN: Thank you very much.

13

1 The agenda has been adopted.

2 Minutes for the May 24 meeting, are
3 there any corrections to the minutes? If not, it
4 would be appropriate to approve the minutes.

5 COMMISSIONER MARTINEZ: Move

6 adoption, Madam Chair.

7 VICE CHAIR DeGREGORIO: Second.

8 CHAIR HILLMAN: The minutes from May

9 24 have been adopted.

10 We have three reports this morning.

11 The first is an update on the Title

12 II requirements payments.

13 And, Mr. Vice Chairman, if you would

14 be so kind.

15 VICE CHAIR DeGREGORIO: Thank you,

16 Madam Chair.

17 Commissioner Martinez is also going

18 to share this responsibility this morning. But

19 let me say it's a pleasure to be here in New York

20 City and in New York State.

21 And, John Ravitz, thank you for

22 those remarks.

14

1 We certainly recognize the pressures

2 that you have been under in trying to get some

3 things done here in New York State and at least

4 they made some steps. But we hope that we, as a

5 Commission, can be the best of help to you, share

6 information from other jurisdictions around the

7 country that have gone through some changes and

8 the changes that you are about to experience and

9 hope that we could be of help.

10 And I have been in New York a couple
11 of times. I was here last November for the
12 general election in Commune City (sic), up in the
13 Bronx up there. I saw on TV this morning that
14 they were without electricity last night and
15 thought, wow, that's tough.

16 There were 14,000 people at this one
17 polling place in the Bronx, in one of the largest
18 polling places in America, with 72 poll workers
19 to manage that one polling place. And it was
20 amazing to see that last November in operation.
21 I appreciate it.

22 I also observed the primary election

15

1 up in upstate New York and I see Ed Szczesniak
2 here from Onondaga County in upstate New York and
3 got to observe a primary up there.

4 So I have seen the big city and I
5 have seen other areas of New York to see how
6 elections are conducted.

7 And the good news for the report
8 that we are giving today about the requirements
9 payments is that we are getting close to the end.

10 We started the process on June 9,
11 2004 to begin to disburse money to the states,
12 District of Columbia and the U.S. territories, 55
13 entities in total, to distribute money. And
14 there was \$2.3 billion appropriated for EAC to

15 distribute.

16 And I am pleased to report that we
17 are now down to the last \$115 million of that
18 \$2.3 billion.

19 Since our last meeting, Madam Chair,
20 we have disbursed funds to the State of
21 California - \$169 million; to the Territory of
22 Guam for \$2.3 million. And last, but certainly

16

1 not least, and good news I know to all of New
2 York State - \$153 million to New York State for
3 fiscal year 2003 and 2004 money.

4 I am going to ask Commissioner
5 Martinez to perhaps talk about what may be left
6 for fiscal year 2004 distribution.

7 COMMISSIONER MARTINEZ: Thank you,
8 Mr. Vice Chairman.

9 Just to wrap up this part of the
10 agenda, all 55 jurisdictions covered by the Help
11 America Vote Act - 50 States, the District of
12 Columbia, the Commonwealth of Puerto Rico and the
13 eligible U.S. Territories - have received all of
14 their 2003 requirements payment.

15 There is also a pot of money that is
16 the 2004 Title II requirements payments and of
17 that, of those funds, 48 States have received
18 their disbursement or 48 of the 55 eligible
19 jurisdictions have received their disbursement,

20 leaving seven jurisdictions remaining that are
21 eligible for the \$115 million or so Federal funds
22 that the Vice Chairman mentioned earlier.

17

1 We anticipate and we are in touch
2 with all seven of those jurisdictions. I know
3 that two of them - Michigan and Texas - have
4 sizable '03 - I mean, sizable '04 requirements
5 payments left to pull down. And they, for some
6 of those jurisdictions, it is a question of
7 coming up with the appropriate 5% match that has
8 to come down from the State to be able to draw
9 down the Federal funds.

10 We are working with all seven
11 jurisdictions, Madam Chair, to distribute this
12 money in a timely fashion so that they can put
13 the money to good use.

14 CHAIR HILLMAN: Thank you very much.

15 Are there any questions of your
16 colleague who gave the second half of the report?

17 The next item we will receive a
18 report on are the Proposed Voluntary Voting
19 System Guidelines.

20 We have been working very diligently
21 and we are able to post the proposed guidelines
22 on our web site. The appropriate notification

18

1 has been sent to the Federal Register so that the

2 information will be available as well through
3 Federal Register Notice. And the 90 day public
4 comment period can begin.

5 And Carol Paquette, who has been
6 serving as our Interim Executive Director, and is
7 now working with us to help us finalize our work
8 on the guidelines, will give us a report and an
9 update.

10 Carol, thank you.

11 MS. PAQUETTE: Madam Chair,
12 Commissioners.

13 Is this on?

14 THE CHAIR: Tap it. See the slide
15 button on top.

16 MS. PAQUETTE: As you are aware.
17 Section 202 of HAVA directs the EAC to adopt
18 Voluntary Voting System Guidelines and to provide
19 for --

20 CHAIR HILLMAN: Could you move the
21 mike just a little bit closer. I think we are
22 getting signals that --

19

1 MS. PAQUETTE: Sure. Section 202 of
2 HAVA directs the EAC to adopt Voluntary Voting
3 System Guidelines and to provide for the testing,
4 certification, decertification and
5 recertification of voting system hardware and
6 software by accredited test labs, among many

7 other duties that are assigned to the Commission.

8 To assist EAC with the voting system
9 guidelines work, HAVA provides for the
10 establishment of a body of subject matter
11 experts, called the Technical Guidelines
12 Development Committee.

13 This fifteen person body, under the
14 specifications in HAVA, is drawn from a variety
15 of organizations who have particular expertise
16 and interest in the subject matter, such as the
17 National Association of State Election Directors,
18 the Access Board, the American National Standards
19 Institute and the IEE, among other organizations.

20 The Technical Guidelines Development
21 Committee is Chaired by the Director of the
22 National Institute for Standards and Technology,

20

1 NIST, and NIST is charged with providing
2 technical support to the work of the TGDC.

3 EAC has provided nearly \$3 million
4 this fiscal year to fund the work of the TGDC and
5 NIST.

6 Under HAVA the TGDC is tasked with
7 developing initial recommendations for voting
8 system guidelines and providing those
9 recommendations to the Election Assistance
10 Commission.

11 The TGDC and NIST worked very

12 diligently on this effort for the nine months
13 provided by HAVA and they provided a very
14 excellent product for the Commission to review.

15 They completed their work and
16 delivered their initial set of recommendations to
17 the Commission on May the 9th.

18 The recommendations provided by the
19 TGDC augment the 2002 Voting System Standards,
20 particularly in the area of accessibility,
21 usability and security of voting systems.

22 This includes new requirements for

21

1 accessibility, for voting system software
2 distribution, for voting system setup validation
3 and use of wireless.

4 Also in recognition of the fact that
5 several states have enacted legislation requiring
6 voter verified paper audit trails, the guidelines
7 also include performance specifications for this
8 capability.

9 We would note that for federal
10 system certification purposes, the voter verified
11 paper audit trail are optional. They are there
12 for the use of those states that have chosen to
13 require this capability.

14 We would also note that a paper
15 audit trail is only one of several technical

16 approaches to provide voters an additional means
17 to the DRE summary screen to verify their ballot
18 choices.

19 The Commission expects to be working
20 with the TGDC and NIST to develop similar
21 specifications for audio, video and cryptographic
22 solutions that provide comparable capabilities

22

1 for voter verifiability.

2 Subsequent to receiving these
3 recommendations from the TGDC, EAC has been
4 performing its due diligence of thoroughly
5 reviewing these recommendation and preparing them
6 for presentation for public comment.

7 In particular, we have performed the
8 legal analysis of the guidelines to ensure that
9 all the aspects are fully in compliance with the
10 governing statute, HAVA.

11 This has resulted in some changes in
12 the accessibility provisions, for example. In
13 particular, Requirement 2.2.5 regarding
14 accessible voting systems, if the procedure for
15 voters is to submit their own ballots, then we
16 have changed the requirement from a 'should' to a
17 'shall', that voters who are blind are able to
18 perform this activity independently.

19 Essentially the idea is that if the
20 requirement is for the voter to be providing some

21 manipulation of the ballot, of the sighted voter,
22 that those with impairments should be able to do

23

1 the same thing.

2 In addition to these changes in the
3 accessibility section, selected portions of the
4 document have been revised to reflect the new EAC
5 process for national certification of voting
6 systems. And this was adopting the sections that
7 describe the previous NASED qualification process
8 to describe the EAC certification process. And
9 also we made updates throughout the document to
10 reflect new HAVA terminology.

11 As you noted, Madam Chair, the
12 Federal Registered Notice was published
13 yesterday, June 29th. And that begins the 90 day
14 public comment period.

15 We have copies of the Federal
16 Register Notice that are on the table for people
17 coming into the room. And that provides a full
18 description of the various ways that the public
19 can comment on these guidelines and also how to
20 obtain copies of the guidelines.

21 I would note, in addition to making
22 the guidelines available on our web site, they

24

1 are available on request in paper form or in

2 CD-ROM.

3 We have also provided it on our web
4 site in both PDF and HTML format, so that those
5 interested parties who use assistive technology
6 are able to read the document.

7 I would like to conclude by noting
8 that we are holding three hearings on the
9 guidelines, one today immediately following this
10 meeting.

11 We have a second hearing scheduled
12 for July 28th which will take place at California
13 Institute of Technology. And we have a third
14 hearing in August in Denver.

15 And we will have more information
16 forthcoming as these meetings are finalized.

17 Are there any questions?

18 CHAIR HILLMAN: Thank you very much.

19 Because we are having the hearing
20 this afternoon, we will be able to get into a lot
21 more discussion.

22 But I was wondering if you could

25

1 just tell us what somebody who is viewing the
2 document on the EAC web site can expect to see.
3 I mean, it is a very large document. And so we
4 don't want people to be deterred because they
5 think they have to sift through 300 and something
6 pages of material.

7 MS. PAQUETTE: Yes, this is a rather
8 formidable document. It is about 250 pages.

9 CHAIR HILLMAN: All right. So I
10 exaggerated.

11 MS. PAQUETTE: And for ease of use
12 on the web site, we had it posted in a number of
13 ways. So if someone wants to download the entire
14 document, they can do that.

15 The document is actually in two
16 volumes. One volume is for voting system
17 performance requirements and the second volume is
18 for testing requirements. You can also download
19 the volumes separately.

20 In addition, with each one of the
21 volumes, you can read or download each section of
22 the volume independently.

26

1 So you can sort of treat this in
2 somewhat bite-sized pieces.

3 And, as I said, it's downloadable
4 from the web site and also available in other
5 media for people who wish it.

6 CHAIR HILLMAN: Thank you.

7 Commissioner Martinez.

8 COMMISSIONER MARTINEZ: Thank you,
9 Madam Chair.

10 First of all, I want to say that the
11 publication of this draft of the Voluntary Voting

12 System Guidelines I think represents perhaps one
13 of the most significant, if not the most
14 significant, accomplishment of this new agency.

15 We have been around for 18 months
16 and certainly this is - in addition, obviously,
17 to distributing the funds, which we have been
18 working on since the first day that we were
19 officially appointed to this position - I think
20 the development of these guidelines is a
21 significant step forward.

22 And I applaud our staff for all of

27

1 the fine work that they have done. And also the
2 partners that we had - all of the members of the
3 Technical Guidelines Development Committee and,
4 of course, the National Institute of Standards
5 and Technology. I know some of their staff are
6 represented here as well.

7 We are certainly very grateful for
8 the work that has been done.

9 I know, Carol, one of the questions
10 that I have been getting - and I think rightly
11 so - and as I have gone and traveled around to
12 talk about this process for the past couple of
13 months - is what was the EAC, in receiving the
14 initial recommendations that came from NIST and
15 from the TGDC, what was the EAC doing in terms of
16 its internal processes to analyze the initial
17 recommendations and to move forward with

18 publishing the draft of the Voluntary Voting
19 System Guidelines.

20 And from my perspective, and I'll
21 let you chime in, but from my perspective, what
22 has been happening for us internally, for the

28

1 past six or seven weeks, has been the type of due
2 diligence that any Federal agency ought to be
3 conducting, especially when we are in receipt of
4 such a highly technical document as is the
5 Voluntary Voting System Guidelines or as is the
6 initial recommendations, actually, that came over
7 from the TGDC.

8 Our internal process has revolved
9 primarily around the idea of having our own legal
10 counsel take a look at the initial
11 recommendations that came from the TGDC and to
12 analyze those recommendations to ensure
13 conformity with our governing statute for this
14 agency, which is the Help America Vote Act.

15 And so any changes or any departures
16 that would be noted between what we published in
17 the past few days, or late last week, versus what
18 was given to us from the TGDC in the form of
19 initial recommendations revolves around that type
20 of due diligence - a legal analysis to ensure
21 compliance with our governing statute.

22 Any comment from your perspective

29

1 that you have been doing, obviously, the
2 day-to-day personal work on this for us, any
3 comment about that process?

4 MS. PAQUETTE: Well, certainly, as
5 you note, the legal review for compliance with
6 HAVA has been substantive work that has been
7 done.

8 As I indicated, we went through the
9 document also to change the previous terminology
10 to terminology that's used in HAVA. The
11 rationale for doing that was that this is a
12 guideline document. It is going to be adopted by
13 the Commission after we have opportunity to
14 consider the comments that are provided over the
15 summer. And it will be a document that will be
16 used for the national certification and, if
17 adopted by the states, also for state
18 certifications of voting systems.

19 So since this is a document that
20 will have some significant duration of life, we
21 thought it advisable to start it off with the
22 terminology that is going to be used moving

30

1 forward. And so that we made an attempt to do
2 that.

3 Similarly, as I indicated, we also
4 gave a high level description of the new voting
5 system certification process that the EAC will be
6 undertaking shortly, again, transitioning that
7 responsibility from the National Association of
8 State Election Directors.

9 So we are looking at this document
10 to provide a basis - and recognizing that we
11 expect to get many comments on the document and
12 it will certainly be undergoing further changes
13 over the next 90 days - but we wanted to start at
14 least with a common set of terminology and to
15 look forward to the future use of this document.

16 COMMISSIONER MARTINEZ: One quick
17 follow-up question. Just to clarify, again, the
18 thrust of our due diligence for past six or seven
19 weeks for the EAC has been a legal analysis on
20 the requirements.

21 That legal analysis was not
22 conducted by the TGDC. Clarify me if I am wrong.

31

1 My understanding is that there was
2 obviously a great deal of work done to ensure
3 that the requirements were attestable, objective
4 and in every way possible compliant with Federal
5 Law. But there was a not a legal analysis that
6 was done by counsel to NIST or anybody else to
7 ensure that the requirements that were finally

8 adopted by the TGDC in the form of initial
9 recommendations, were, in fact, in conformance
10 with the Help America Vote Act.

11 MS. PAQUETTE: Yes. And as you may
12 recall, at the final plenary session of the TGDC,
13 the TGDC requested that a legal analysis be
14 performed to ensure that the provisions that were
15 being put forward were fully in compliance with
16 HAVA.

17 Of course, under our responsibility
18 as the interpreter of HAVA, we would normally do
19 that anyhow. But, again, it was with the request
20 of the TGDC to cover that concern that they had
21 as well.

22 COMMISSIONER MARTINEZ: Thank you,

32

1 Carol.

2 One final question, Madam Chair. I
3 know that I have exceeded my time.

4 We have our General Counsel, Juliet
5 Thompson, here. It is also important, I think,
6 for full public view, that the public be allowed
7 to see what was given to the EAC in the form of
8 initial recommendations by the TGDC versus where
9 the EAC ends up in its final adoption of these
10 guidelines.

11 So, Madam Counsel, I guess my
12 question is, I know that there is a mechanism

13 within HAVA that addresses it so that at the end
14 of the process when we go final with adoption of
15 the Voluntary Voting System Guidelines, is there
16 a requirement that we also simultaneously publish
17 what came to us initially as the initial
18 recommendations from TGDC?

19 MS. THOMPSON: Commissioner
20 Martinez, the drafters of HAVA did specifically
21 deal with this in Section 221(f) of HAVA.
22 Therein they direct the TGDC to publish the

33

1 recommendations at the time that the EAC adopts
2 its Voluntary Voting System Guidelines.

3 COMMISSIONER MARTINEZ: Thank you,
4 Madam Chair.

5 CHAIR HILLMAN: Thank you,
6 Commissioner Martinez.

7 Mr. Vice Chairman, you have been our
8 designated Federal officer for the Technical
9 Guidelines Development Committee. I don't know
10 that Congress did this on purpose, but it gave
11 the TGDC nine months to produce a document.

12 That is about the length of time it
13 is to give birth to a baby. So the baby was born
14 and I know that you are a very proud parent.

15 I wondered if you had any comments
16 or questions for Ms. Paquette.

17 VICE CHAIR DeGREGORIO: Thank you,
18 Madam Chair.

19 Yes, I am the proud parent of four
20 wonderful daughters and I give my wife full
21 credit for what she had to go through for nine
22 months to bring them into this world.

34

1 But we went through a nine month
2 period, too, to come up with this and I have been
3 very involved in the process. And it's a
4 process, Madam Chair, that we all can be proud
5 of.

6 Because I know, Madam Chair, that
7 the four Commissioners - Commissioner Soaries was
8 with us - we were all committed to get this
9 process implemented in a timely manner. And we
10 worked very hard to get the members of the TGDC
11 appointed in a timely basis and they began their
12 work on July the 9th and completed it on May the
13 9th, nine months later.

14 And just a little perspective here
15 on what's happened in the past.

16 You may recall, Madam Chair, that
17 there were guidelines issued in 1990. Actually
18 they were called standards, Federal Voting System
19 Standards, issued by the Federal Election
20 Commission. And they were updated in 2002.

21 It took 12 years to get from 1990 to

22 2002 update.

35

1 And then we are now updating and
2 augmenting and improving on the 2002 standards.

3 And it's really been a nine month process to do
4 that, not necessarily a three year process.

5 And we do have to give a great
6 thanks to the members of the TGDC - some members
7 who are here today - who worked very hard, and to
8 the staff at NIST who supported them in this
9 process.

10 Certainly we followed very closely.
11 But we made it very clear from the beginning, we
12 wanted to follow a process that was dictated by
13 HAVA. And I believe, Madam Chair, we have done
14 that.

15 And they have done it in a way that
16 has been transparent and we have done it in a way
17 that is transparent and I believe will continue
18 to be transparent.

19 And this is the beginning of that 90
20 day process to have public hearings and to hear
21 about this.

22 And I want to ask Carol Paquette

36

1 about how the public comment period will work and
2 how transparent will it be.

3 And when people do make comments on
4 this document over the next 90 days, how will
5 that be affected, how will that get on web sites,
6 and how will that be brought to our attention and
7 to the attention of the public so it's done in a
8 very transparent manner?

9 MS. PAQUETTE: Yes, Vice Chairman.

10 As I noted, the document is posted
11 on the EAC web site. We also have on our web
12 site an on-line comment form, if you will, that
13 people can go right to the web site and enter
14 their comments on the document. They could be
15 reading the document in one window and commenting
16 on the other, if they are so inclined.

17 In addition, we have established --

18 Let me finish with that part.

19 Those comments then go into a data
20 base and each comment, we have a public
21 obligation to review the comments for
22 inappropriate language and other inappropriate

37

1 comments. But once that very initial screening
2 has been done, all comments will be posted on the
3 web site so anyone can see what the comments are.

4 In addition, we have established a
5 special e-mail box: [votingsystemguidelines@](mailto:votingsystemguidelines@EAC.gov)
6 EAC.gov.

7 For those individuals who don't have

8 Internet access or who may feel more comfortable
9 writing an e-mail or who may have documents they
10 wish to send us that wouldn't lend themselves to
11 being inserted in the comment page - although we
12 accept attachments on the comment page - this
13 provides another mechanism for individuals to
14 provide their comments.

15 And, of course, we are not averse to
16 taking comments by mail. And we have provided
17 our address in the Federal Register Notice and,
18 of course, also on our web site.

19 We ask that those comments be
20 specifically addressed to Voting System
21 Guidelines Comments, so that they can be rapidly
22 sorted out from the other mail that we receive

38

1 and appropriately treated.

2 We have a mechanism with the on-line
3 comment data base that any comments that are
4 received by e-mail or by mail, that we can enter
5 them into the data base.

6 So by whatever means the comments
7 come in to us, they will ultimately be posted in
8 that data base and available for anyone to
9 review.

10 VICE CHAIR DeGREGORIO: I understand
11 that the TGDC received, continued to receive

12 comments after their cutoff date for producing
13 their initial set of draft recommendations to us.

14 Will we receive any comments that
15 people have made to the TGDC since that period?
16 Because people are commenting on a document that
17 they produced, but it certainly can instruct us,
18 too.

19 MS. PAQUETTE: Yes. The comment
20 period on the TGDC draft, I believe, ended a week
21 or so before the April plenary meeting in order
22 to prepare the materials for that meeting.

39

1 We have received from NIST the
2 comments that they have received up until, I
3 think, about a month ago. And we have those
4 comments also to review. That was on the body of
5 the document as well as comments on the glossary
6 section, which is a fairly expanded portion of
7 the new guidelines document.

8 And we will be reviewing those.
9 And, certainly, as we continue working with NIST,
10 if they continue to receive comments that we need
11 to consider in our process, they will pass those
12 on to us.

13 VICE CHAIR DeGREGORIO: Thank you,
14 Madam Chair.

15 CHAIR HILLMAN: Thank you.

16 It certainly is an incredible piece
17 of work and we are pleased to be able to hold our

18 first hearing to get this part of the process
19 underway. Thank you very much.
20 Before we go to the final report, I
21 want to back up a minute to the Title II
22 requirements payments, because I neglected to

40

1 emphasize that I think it's pretty incredible
2 that in one year time, given all the start-up
3 challenges that we had as a Commission, we were
4 able to disburse over \$2.2 billion in funds to
5 the States.

6 And I think a lot of people in the
7 public, a lot of voters, don't understand the
8 incredible amount of money that the Federal
9 Government has made available to states to be in
10 compliance with the Help America Vote Act.

11 But I want to just say thank you to
12 my two colleagues who were serving as a task
13 force to work with staff, but also to the staff,
14 and, in particular, to Margaret Sims, who is not
15 able to be with us today, for the incredible
16 amount of work that she did as a one-person
17 office, to process all of the requirements
18 payments, which meant reviewing materials from
19 the states - and in some instances states
20 received two payments at different times.

21 So it is conceivable that she was

22 dealing with as many as 100 different

41

1 applications for funding. And it was just an
2 incredible process that was expedited.

3 And the General Services
4 Administration, of course, was very cooperative
5 and moving the funds just as quickly as we gave
6 notice to them.

7 So I think we ought to all be proud
8 and pleased that we have been able to move
9 through this, and working with the remaining
10 seven or so states who are doing the final work
11 to receive their final funds.

12 Our last report is on Statewide
13 Voter Registration List Guidance.

14 And I am sure, I mean, I really
15 enjoy looking out at our meetings and seeing
16 people who are interested enough in our work to
17 attend our meetings and listen to what we say,
18 hopefully, visit our web site, and help us do
19 diligence on the responsibilities assigned to us.

20 But I am sure that some of the
21 language we use must be just unnecessarily
22 burdensome - guidelines and guidance and why

42

1 guidance and why guidelines.

2 So I would just ask, Ms. General
3 Counsel, if you would explain, in your
4 introduction of the guidance, why we are

5 referring to guidance on the statewide vote
6 registration list, but guidelines on the voting
7 systems.

8 MS. THOMPSON: Thank you, Madam
9 Chair. Thank you for the opportunity to bring
10 you a report on the progress of the guidance that
11 we are issuing on statewide voter registration
12 lists.

13 For the benefit of those of us or
14 those of you who have not had the opportunity to
15 be with us at other hearings, let me explain that
16 under Section 311 of HAVA, the statute gives the
17 Commission not only the authority, but the
18 requirement, of issuing interpretive guidance to
19 the provisions of Title III of HAVA. Those are
20 several, including the requirement that states,
21 "implement a statewide voter registration list."

22 In April of 2005 we published a

43

1 document in the Federal Register which is our
2 proposed guidance on statewide voter registration
3 lists. That document was developed through a
4 working group of state and local election
5 officials, representatives from the Department of
6 Justice, technology experts and a partnership
7 with the National Academy of Sciences.

8 There was a 30 day comment period

9 that followed that publication. That period has
10 now closed. And, to bring you up to speed, we
11 received 320-odd comments during the period of 30
12 days. The comments were quite high quality.
13 They were received from state and local election
14 officials, from community interest groups and
15 from individuals.

16 To give you a bit of a
17 characterization of what the comments were,
18 primarily the state and local election officials
19 were interested in the architectural structure of
20 the data bases and the language of HAVA itself.

21 I know that we have thrown around
22 some terms that may not be as intuitive to

44

1 others, such as top-down and bottom-up. But that
2 makes reference to the architectural structure of
3 the data base.

4 For instance, a top-down system
5 would involve a data base wherein the state
6 controls the main data base for the state and
7 information is fed through either dumb terminals
8 or other access points through the local election
9 officials.

10 The state has the ability through
11 that system to be able to perform list
12 maintenance to coordinate with other state data
13 bases and to verify registrations through the
14 Department of Motor Vehicles and, if necessary,

15 through the Social Security Administration.

16 On the contrary, or in the bottom-up
17 approach, data is actually received up from data
18 bases at the local level into a central data base
19 that is housed at the state level.

20 And it's just a bit of a difference
21 in architecture. But I thought it would be
22 appropriate to more or less explain what that

45

1 concept it.

2 As I stated, the state and local
3 election officials were most interested in that
4 concept, but also gave us some very good comments
5 on the language of HAVA and its mandates and
6 particularly the mandates of the National Voter
7 Registration Act as well.

8 In contrast, the community interest
9 groups provided comments on what I will say was
10 not included in the guidance. They focused on
11 issues, such as security of the data bases. And,
12 certainly, this is an issue which is near and
13 dear to our hearts and we have continued to work
14 with the National Academy of Sciences, on
15 developing security guidelines and security
16 protocols that will assist states in making sure
17 that this very important pieces of information,
18 regarding all the voters in the country, are kept
19 secure.

20 In addition to that, the focus of
21 the community focus groups was also on issues of
22 list maintenance and verification, to assure that

46

1 when these tasks are performed, that there are
2 matching protocols that make sense, that are non-
3 discriminatory, and that produce good results in
4 terms of accepting voters or removing voters when
5 appropriate.

6 Just to give you a little bit of an
7 idea of where we will go from here, we are in the
8 final stages of reviewing these 320 comments and
9 we will have a product for your review, Madam
10 Chair and Commissioners, in the next week or so.

11 At that time, after there has been a
12 consensus around the idea of what the final
13 guidance will look like, it will be published in
14 full in the Federal Register, along with an
15 analysis on a categorical basis of these comments
16 that we received.

17 In addition to that, we will, of
18 course, produce a booklet which will excise some
19 of the technical language that goes into the
20 Federal Register Notice, but contains all of the
21 guidance and meat of this document, to be made
22 available to the public, to the states, to

47

1 whomever desires to have a copy.

2 If I can answer any questions,
3 please.

4 CHAIR HILLMAN: Thank you very much.

5 Mr. Vice Chairman, any questions?

6 VICE CHAIR DeGREGORIO: I know this
7 has been an important process, because many
8 states are facing the January 1, 2006 deadline on
9 implementation. And I don't know how New York is
10 going to get there, but I know they are going to
11 try very hard.

12 Will this guidance, you think, when
13 we finally publish it, be beneficial not just for
14 the short term, but for the long term for the
15 states to provide matches and other information
16 that they need to have the voter registration
17 lists and to provide people with every
18 opportunity to cast a ballot?

19 MS. THOMPSON: Absolutely, Mr. Vice
20 Chairman.

21 Our goal here was to develop
22 guidance that would inform the states during the

48

1 development of their voter registration data
2 bases, that would help them form the processes
3 that they would use for years to come in
4 implementing this.

5 CHAIR HILLMAN: Commissioner

6 Martinez.

7 COMMISSIONER MARTINEZ: Very
8 quickly, Madam Chair, I want to just clarify a
9 couple of the procedural aspects of this.

10 The first is that part of what we
11 have been trying to get our arms around - again,
12 for this new agency and in keeping with our
13 authority under the Help America Vote Act - is to
14 try to fulfill the service aspect of what our
15 agency ought to be with regard to our primary
16 stakeholders.

17 And what I mean by that is that, we
18 are, in one instance, an entity that provides
19 Federal funding to states to help implement these
20 uniform administrative requirements in Title III.
21 But we are also an agency that has an obligation
22 to ensure that we work with the states in a

49

1 partnership to ensure that there is an
2 understanding as to how to implement these
3 various administrative requirements.

4 States are given great latitude in
5 how to achieve the end result. And, yet, they
6 also need a Federal agency that would assist them
7 in making sure that if there are ambiguities in
8 any particular sections of our government
9 statute, that we can help to clarify some of

10 those ambiguities.

11 And just from a procedural
12 perspective, that is really what we tried to
13 accomplish in fulfilling our obligation, to issue
14 this guidance.

15 Juliet, if you can just comment on
16 that real quick.

17 MS. THOMPSON: Certainly,
18 Commissioner Martinez.

19 I don't know quite where to begin.

20 COMMISSIONER MARTINEZ: I will start
21 for you.

22 The point that I am making is that,

50

1 for example, we had one working group meeting
2 with State and local election administrators to
3 help us to arrive at an initial draft of language
4 for this guidance. But in keeping with trying to
5 fulfill or to provide a service to state and
6 local governments, for example, we have held a
7 follow-up meeting, again, under the umbrella of
8 the National Academy of Sciences, where we
9 invited not policy makers to the table, but we
10 actually invited information technology experts,
11 IT folks who don't normally sit around the same
12 room with each other. Usually they talk to each
13 other via e-mail, but don't actually physically
14 get into the same room to talk about such an

15 important objective like building a statewide
16 voter registration data base.

17 So from a procedural perspective, we
18 tried to be responsive to our state and local
19 partners by providing a service and the service
20 is to put the IT folks from state governments
21 together with IT experts provided by the National
22 Academy of Sciences. And let's try to solve some

51

1 of the technical difficulties dealing with
2 privacy and security concerns that have been
3 brought to our attention over and over again for
4 the past 18 months.

5 I think I just answered my own
6 question, but that's where we were going.

7 MS. THOMPSON: Well, a little
8 transitional thought there. And that is, while
9 we certainly adopt voluntary guidance as to each
10 of the sections of Title III, it is vitally
11 important to us that the states and local
12 election officials, and those that are involved
13 in the election administration process,
14 wholeheartedly adopt this and make this a part of
15 their own.

16 So we have taken steps to ensure
17 that those folks are involved in the process, as
18 you described, in the beginning, as well as
19 continuing through with the technical working
20 group to work on more of the specific

21 technological issues.

22 COMMISSIONER MARTINEZ: Thank you,

52

1 Madam Chair.

2 CHAIR HILLMAN: Thank you very much.

3 Certainly on the voter registration
4 list guidance, I mean voter registration goes to
5 the heart of what elections and is what elections
6 are all about, is a pinnacle of democracy in this
7 country. And many, many groups and individuals
8 are concerned with the integrity of voter
9 registration lists because many of the issues
10 that have arised have arised because people feel
11 they were supposed to be registered, showed up to
12 vote, but their names were not on the list.

13 So I know that we are making every
14 effort to keep groups and individuals fully
15 informed of the progress about this and to help
16 them see the relevance of this document against
17 the work that they do in their community.

18 And I know that we will continue to
19 do that.

20 Other than the Federal Register
21 Notice, how will groups know when the final
22 guidance has been published?

53

1 MS. THOMPSON: We will certainly put
2 this up as a permanent feature on our web site.

3 In addition to the publication in the Federal
4 Register, I would anticipate that we would also
5 distribute this to key stakeholders of ours so
6 that they will be aware that this document is out
7 and available.

8 And, of course, anyone is welcome to
9 write us and ask us for a copy as well.

10 THE CHAIR: If there are no other
11 questions on the guidance, it brings us to a
12 close in the meeting.

13 Before I do that, I want to
14 acknowledge the presence of - speaking of
15 stakeholders - some of our key partners and
16 people who work with us along the way. And just
17 a couple of public announcements.

18 We have with us -- Everybody here
19 today is very important to the work we do and I
20 know that. I just don't know everybody who is
21 here.

22 But I do want to call attention to

54

1 some people who work with us in different
2 capacities.

3 We have two members of our Board of
4 Advisors. The Election Assistance Commission has
5 a 37 member Board of Advisors and we have with us
6 today Wes Kliner and Sharon Turner-Buie.

7 And Ms. Turner-Buie is also Director

8 of Elections for the great city of Kansas City,
9 Missouri, and she also serves as a member of the
10 Technical Guidelines Development Committee. So,
11 wearing all three hats, thank you very much.

12 Another important stakeholder, the
13 National Association of Secretaries of State.
14 And with us, as always, is Leslie Reynolds, who
15 is Executive Director. Thank you, Leslie.

16 We have also Ed Szczesniak, who is a
17 member of the Election Assistance Commission
18 Standards Board. We have a 110 member Standards
19 Board and we appreciate you being with us.

20 We talked a lot about the Technical
21 Guidelines Development Committee and the hard
22 work that NIST did. And we have with us Craig

55

1 Burkhardt, from the Department of Commence, who
2 also works with NIST and the Technical Guidelines
3 Development Committee, and Allan Eustis, who was
4 very involved working with the TGDC from the
5 National Institute of Standards in Technology.

6 From our Justice Department
7 partnership, we have Brian Heffernen and Chris
8 Herren somewhere. I think they are still here.
9 Thank you very much. We appreciate everything
10 that Justice is doing with us to ensure
11 compliance and provide information to the states.

12 And last, but certainly not least, I

13 believe Brit Williams, for the Center for
14 Election Systems at Kennesaw State University in
15 Georgia is here, also a member of the Technical
16 Guidelines Development Committee.

17 Thanks to all of you for traveling
18 to be with us here today. We appreciate that.

19 Public announcements. We are going
20 to take a break when this meeting adjourns in
21 about two minutes and we will set up for our
22 public hearing which will begin at 11 o'clock.

56

1 This is our first hearing on the
2 proposed Voluntary Voting System Guidelines.

3 The public restrooms are on the
4 eighth floor. There are no facilities on this
5 floor so you will have to go to the eighth floor.

6 And we will assemble again at 11
7 o'clock for the beginning of the hearing.

8 We will take a lunch break at about
9 12:30 for one hour, come back at 1:30 and
10 anticipate that the hearing will go on until
11 about 5 p.m.

12 Mr. Executive Director, are there
13 any other announcements that we need to make?

14 THE EXECUTIVE DIRECTOR: I have
15 none. However, if I could have one minute to --

16 CHAIR HILLMAN: You may have more
17 than one minute. You can have two.

18 THE EXECUTIVE DIRECTOR: Thank you.

19 First of all, I want to say it's
20 great to be home for a day. This city means a
21 great deal to me and the folks at the New York
22 City Board of Elections and I have a long history

57

1 of working together and I want to thank Director
2 Ravitz for his comments this morning.

3 And I just want to point out that we
4 certainly realize that they have a great deal
5 ahead of them in the next year. But I want to
6 remind them that I was here on that fateful day
7 of September 11th.

8 And the very next day, out of when
9 everybody was still in shock and sadness and
10 grief, on that very next day the City Board of
11 Elections met to reschedule and redo an election
12 in less than two weeks.

13 And then, after that, did three more
14 elections before November 6th.

15 So if they can do that - and I
16 watched that up close and personal - I think they
17 can do anything they set out to do.

18 And they will have a lot of support
19 behind them.

20 And so, thank you, John. And it's
21 good to see so many acquaintances.

22 I see a fellow colleague from the

58

1 League of Women Voters, the former President of
2 the League, Marion Sinek is here and others from
3 the City Board.

4 This is a great experience for me.
5 In fact, the Chairman of the State Board of
6 Elections has just walked in, Carol Berman, now
7 the Vice Chairman, I guess; they have switched.
8 I want to acknowledge her.

9 But this is a great opportunity for
10 me. And in the nine days that I have been on the
11 job, I have already discovered what a remarkable
12 staff of people that I have joined, very
13 dedicated, very dedicated to everything they do
14 and, of course, the three Commissioners who are a
15 real joy to work with.

16 And I am looking forward to being
17 with them and working with them shoulder to
18 shoulder.

19 So thank I very much, Madam Chair.

20 CHAIR HILLMAN: Thank you and we
21 will assume - I don't normally assume anything -
22 but we will assume you really enjoyed your first

59

1 meeting as Executive Director.

2 THE EXECUTIVE DIRECTOR: So far.

3 CHAIR HILLMAN: Thank you very much.

4 If there are no further items of
5 business, it is appropriate to adjourn the
6 meeting.

7 COMMISSIONER MARTINEZ: So move.

8 VICE CHAIR DeGREGORIO: Second.

9 CHAIR HILLMAN: The meeting is

10 adjourned and we will reassemble at 11 for our

11 Public Hearing.

12 (Thereupon, at approximately 10:35

13 o'clock, a.m., the above meeting

14 was adjourned.)

15 * * * * *

16

17

18

19

20

21

22

60

1

2

3

4

5 C E R T I F I C A T E

6

7

8 I, ELLEN REACH, a Stenotype Reporter

9 and Notary Public of the State of New York do

10 hereby certify that the within transcript is a

11 true and accurate record of the Public Meeting of
12 the U.S. Election Assistance Commission, held on
13 June 30, 2005.

14

15

16

17

18

19

20

ELLEN REACH

21

22

1

2

3

4

U.S. ELECTION ASSISTANCE COMMISSION

5

PUBLIC MEETING

6

7

8

Taken at the Marriott Hotel

9

1535 Broadway, New York, New York

10

11

On the date of Thursday, June 30, 2005

12

13

14

15

COMMISSION MEMBERS:

16

Gracia Hillman, Chair

17

Paul DeGregorio, Vice Chair

Ray Martinez, Commissioner

Tom Wilkey, Executive Director

18

19

20

21

Start time: 11:00 o'clock, a.m.

22

Taken before: ELLEN REACH, a court reporter

1 TESTING LABORATORIES' PERSPECTIVES
2 ON THE PROPOSED VVSG

3

4 CHAIR HILLMAN: If we could get
5 assembled, please, so the hearing can begin.

6 We are going to begin this hearing.

7 If I could remind you please to turn
8 off your - or at least silence - your cell
9 phones, pagers and any other electronic devices
10 that might make noise and distract from the
11 proceedings.

12 Thank you very much.

13 If I could please ask everyone to
14 please stand and join me in the Pledge of
15 Allegiance.

16 (Assembly in Pledge of Allegiance)

17 CHAIR HILLMAN: If we might have the
18 roll call, please.

19 MS. THOMPSON: Certainly, Madam
20 Chair.

21 Commissioners, please respond by
22 saying here or present when I call your name.

1 Gracia Hillman, Chair?

2 CHAIR HILLMAN: Here.

3 MS. THOMPSON: Paul DeGregorio, Vice
4 Chairman?

5 VICE CHAIR DeGREGORIO: Here.

6 MS. THOMPSON: Ray Martinez,
7 Commissioner?

8 COMMISSIONER MARTINEZ: Here.

9 MS. THOMPSON: Madam Chair, there
10 are three members present.

11 CHAIR HILLMAN: Thank you.

12 Commissioners, we have before us the
13 agenda for today's public hearing. If there are
14 no adjustments to the agenda, it would be
15 appropriate to move adoption.

16 COMMISSIONER MARTINEZ: Move, Madam
17 Chair.

18 VICE CHAIR DeGREGORIO: Second.

19 CHAIR HILLMAN: Thank you very much.
20 We have our agenda adopted.

21 The purpose of today's hearings is
22 for the Election Assistance Commission to receive

1 testimony and comment on the proposed Voluntary
2 Voting System Guidelines.

3 For those who were with us earlier
4 this morning at our meeting, you did hear several
5 minutes of discussion about the guidelines, our
6 acknowledgement of the work of the Technical
7 Guidelines Development Committee that produced a
8 recommendation and delivered that recommendation
9 to us on May 9th.

10 Our former Interim Executive
11 Director, Carol Paquette, will make a brief
12 presentation that will put this hearing in the
13 context of where the Election Assistance
14 Commission is today with respect to the proposed
15 guidelines that we have now made public.

16 Ms. Paquette.

17 MS. PAQUETTE: Yes, Madam Chair and
18 Commissioners, thank you very much.

19 Section 202 of HAVA directs the
20 Election Assistance Commission to adopt Voluntary
21 Voting System Guidelines and to provide for the
22 testing, certification, decertification and

1 recertification of voting system hardware and

2 software by accredited test labs, among many
3 other duties that are assigned to the Commission.

4 To assist the Commission with the
5 work of developing the guidelines, HAVA also
6 provides for the establishment of a body of
7 subject matter experts, called the Technical
8 Guidelines Development Committee, otherwise known
9 as the TGDC.

10 The composition of this 15 member
11 committee is drawn from a variety of
12 organizations, again, and specified by HAVA.
13 These organizations include the National
14 Association of State Election Directors, the
15 Access Board, the IEEE, the American National
16 Standards Institute, and other representatives as
17 designated in the statute.

18 The TGDC is chaired by the Director
19 of the National Institute for Standards and
20 Technology, NIST, and NIST is charged with
21 providing technical support to the work of the
22 TGDC.

1 In this fiscal year, EAC has
2 provided nearly \$3 million to fund this work of
3 the TGDC and NIST.

4 The statute tasks the TGDC with
5 developing recommendations for Voluntary Voting
6 System Guidelines and providing those
7 recommendations for the consideration of the
8 Election Assistance Commission.

9 The TGDC and NIST have been hard at
10 work at this task for nine months, the time
11 period which is allocated by HAVA, and have
12 delivered a very good product to the EAC for us
13 to begin our review on May the 9th.

14 The recommendations provided to the
15 Commission by the TGDC essentially augment the
16 2002 Voting Systems Standards, most particularly
17 in the areas of accessibility, usability and
18 security.

19 This includes new requirements for
20 accessibility, voting system software
21 distribution, system setup validation and the use
22 of wireless communications.

7

1 Since some states have required the
2 use of voter verified paper audit trails, the
3 recommended guidelines also include performance
4 specifications for this capability.

5 We would note for the Federal

6 certification purposes of voting systems, these
7 are optional. They have been included for use by
8 those states that have added this as an
9 additional requirement for their voting systems.

10 We would also note that paper audit
11 trails is only one of several technical
12 approaches to providing voters an additional
13 means to verify their ballot in addition to the
14 DRE summary screen. And the Commission plans to
15 work with the TGDC and NIST to address the
16 development of similar specifications for audio,
17 video and cryptographic approaches to voter
18 verification.

19 Having received the recommendations
20 on May 9th, the EAC has been, in the intervening
21 weeks, performing its due diligence requirements
22 as the responsible Federal organization for HAVA,

8

1 to thoroughly review these recommendations.

2 In particular, we have performed a
3 legal analysis of the proposed guidelines and
4 recommended guidelines to ensure that they are
5 fully in compliance with the Help America Vote
6 Act.

7 This has resulted in some changes,

8 particularly in the accessibility provisions.
9 And I would note as an example requirements 2.2.5
10 and 2.2.6, dealing with voter verified paper
11 audit trails, that if the normal procedure is for
12 voters to submit their own ballots, then the
13 accessible voting station needs to provide the
14 same capability for voters who are blind.

15 That is an example of where the
16 Commission changed a 'should' recommendation to a
17 'shall', to be in conformance with Section 301 of
18 HAVA.

19 In addition, the Commission has
20 revised selected portions to reflect the new EAC
21 process to carry out the HAVA mandate for the
22 national certification of voting systems. We

9

1 have also made some updates throughout the
2 document to include the new terminology that has
3 been specified by HAVA.

4 For example, the testing of voting
5 systems used to be called a 'qualification'
6 process and HAVA now uses the the term
7 'certification' process.

8 We have made these changes in the
9 document because this is a document that will

10 have a substantial life in being used for the
11 testing and certification of voting systems, both
12 at the Federal level and at the state level.

13 That was the principal rationale for the changing
14 of terminology, to put in an appropriate floor
15 for the terminology that will be used as this
16 document is used as a reference for testing
17 purposes in the coming years.

18 We certainly expect to have many
19 more changes coming in over the course of the
20 summer and we will certainly be summarizing at
21 the end of that comment period the further
22 changes that have been made to the document and

10

1 how the various comments have been handled.

2 The Federal Register Notice on the
3 availability of the guidelines for public comment
4 was published yesterday, June 29th. And that
5 begins the 90 day public comment period.

6 In the Federal Register Notice and
7 also on our web site we provide fairly extensive
8 information on how parties can obtain a copy of
9 the document and also how they can provide
10 comments.

11 The document is a very substantial

12 document. It's about 250 pages. And to
13 facilitate ease in getting the document, we have
14 published it on our web page. It is available in
15 both PDF and HTML formats, so that those parties
16 who use assistive devices will be able to access
17 the document.

18 We have also posted it in a manner
19 so that the entire document can be downloaded or
20 selected sections can be downloaded, again, to
21 make it easier for people to deal with this
22 fairly substantial document.

11

1 We will also provide copies in hard
2 copy or on CD-ROM.

3 If people wish to send requests by
4 e-mail or by mail to the Commission, we have
5 provided a number of mechanisms for people to
6 submit comments.

7 On our web page we have included an
8 application so that people can log on to the web
9 page and go to the comment screen and provide
10 their comments directly to the web page.

11 Supporting that comment page is a
12 data base where all the comments will be stored
13 and allow for the comments to be posted and for

14 anyone to also look at comments that have been
15 provided to the document.

16 We have established a special e-mail
17 address: votingsystemguidelines@EAC.gov, for
18 those individuals who prefer to send us comments
19 by e-mail.

20 We, of course, will also receive
21 comments by mail. We ask that those be provided,
22 addressed specifically to Voting System Guidelines

12

1 Comments, so that they can identified and handled
2 expeditiously.

3 We are providing, in the data base
4 of comments, the ability for the comments
5 received by e-mail and by mail to also be entered
6 into the data base so that we will have one
7 reference source, where comments from all sources
8 will be collected and posted, both for our own
9 review and analysis, as well as the review by
10 other interested parties.

11 I would also note that we are having
12 three hearings in addition to the one just
13 convened. We are holding a second hearing on
14 July 28th at the California Institute of
15 Technology, and a third hearing in August in

16 Denver.

17 And further specifics will be
18 forthcoming as we get that meeting planned.

19 Are there any further questions?

20 CHAIR HILLMAN: Before I turn the
21 mike over to my colleagues, can you just state
22 for the record where the California Institute of

13

1 Technology is located. I know it's in
2 California, but --

3 MS. PAQUETTE: It's in Pasadena.

4 CHAIR HILLMAN: Thank you very much.

5 Commissioners, before I turn the
6 mike over to you, I just want to acknowledge that
7 we have with us today members of the Technical
8 Guidelines Development Committee and from the
9 National Institute of Standards and Technology.

10 And I would just like to acknowledge
11 from the TGDC Sharon Turner-Buie, who is a member
12 of the EAC Board of Advisors and Director of
13 Elections for Kansas City, Missouri. And we
14 also have Brit Williams, who is with the Center
15 for Election Systems - I probably messed that up,
16 Brit, but forgive me - at Kennesaw State
17 University, in Georgia. Thank you for being with

18 us.

19 And from the National Institute of
20 Standards and Technology, which is a part of the
21 U.S. Department of Commerce, we have Craig
22 Burkhardt, who is actually counsel with the

14

1 Department of Commerce, and has been working with
2 NIST on the development of the guidelines, the
3 proposed guidelines, and Allan Eustis, who is
4 with the National Institute of Standards and
5 Technology.

6 An important part of the comment
7 period is that the EAC Board of Advisors, which
8 is made up of 37 members, and the EAC Standards
9 Board, which is made up of 110 members, will each
10 go through a process to review the proposed
11 guidelines and offer comments to us.

12 And we have with us, in addition to
13 Ms. Turner-Buie, we have Wes Kliner from, I
14 believe, Tennessee, but I thought I heard you
15 moved, so I am going to acknowledge Tennessee.
16 Thank you very much. As a member of the Board of
17 Advisors, thank you very much for being with us.

18 And I think we might have a member
19 of the Standards Board still with us, Mr.

20 Szczesniak - is Ed Szczesniak still here - from
21 the Standards Board. Thank you.

22 This has been a very wonderful labor

15

1 of love or labor of something that we have been
2 through to produce these guidelines. So if we
3 get emotional about this, it's because we are
4 very, very attached to both the process and the
5 document.

6 And, Mr. Vice Chairman, it would be
7 appropriate if you would like to give some
8 comments to or ask some questions of Ms.
9 Paquette. I know your name, Carol.

10 VICE CHAIR DeGREGORIO: I think
11 labor is an apt description since it was a nine
12 month process to get done. And we know that to
13 have a child it takes nine months. And this was
14 a big child of the EAC to come forth from the
15 Technical Guidelines Development Committee.

16 And I know I made some comments
17 earlier at our meeting this morning, a few
18 minutes ago.

19 But I do think that this has been a
20 very important process that the Help America Vote
21 Act spells out to give the voters of this country

22 a greater trust in our voting systems. And it's

16

1 the first time that the Federal Government has
2 put real money behind it.

3 Our Chair mentioned that nearly
4 \$3 million has been appropriated by the EAC to
5 NIST for this process. And it is the first time
6 we have had some scientists look into this and
7 provide us their guidance.

8 And I think as we go through this
9 over the next 90 days we will see the fruits of
10 their work come forth as we see the human factors
11 and security and other aspects that have been
12 changed since the 2002 standards and that have
13 been enhanced since the 2002 standards were
14 developed, that have improved this product and
15 made it better for the public out there, election
16 officials.

17 And I look forward from hearing from
18 the testing laboratories, from the vendors and
19 from the advocates and from the public, and to
20 hear their feedback in this process as we
21 finalize this document and then move forward with
22 this, because we know that it's going to have a

1 major impact out there. And we want it to be a
2 positive impact.

3 So all the input that we can get to
4 make that happen is important to me as a
5 Commissioner, as has been since we started this
6 process in June 2004.

7 So thank you, Carol, for providing
8 that history of where we are with this and I look
9 forward to the testimony we are going to hear
10 today.

11 CHAIR HILLMAN: Thank you.

12 Commissioner Martinez.

13 COMMISSIONER MARTINEZ: Thank you,
14 Madam Chair.

15 I will be very brief. I do have one
16 quick question for Carol. But just as an
17 introductory statement, I guess I said earlier in
18 our public meeting portion of this day that this
19 is, I think, perhaps the most significant thing
20 that this Commission has done thus far in our
21 short 18 months or so of being in existence.

22 So my thanks to all of our partners

1 in helping to developing this first draft of
2 Voluntary Voting System Guidelines: our partners
3 at NIST and the Department of Commerce and, of
4 course, all of the members who served on a
5 voluntary capacity with the Technical Guidelines
6 Development Committee. We are so grateful and
7 indebted for your service and we thank you for
8 it.

9 I guess for me, there was a poll
10 that was taken a few weeks after the November
11 2004 election, which was not too long ago, by NBC
12 News and the Wall Street Journal, and it said
13 something like a quarter of all American
14 surveyed, that a quarter of those surveyed in
15 that poll did not believe in the accuracy of the
16 voting systems that they were using to cast a
17 ballot in November of 2004.

18 And as a Commissioner - really, as
19 an American - we should just be troubled, I
20 think, by such a high level of lack of confidence
21 in the very machinery and the tools that help our
22 democracy to continue to exist.

1 And that's why, again, I point to
2 this as being among the most significant
3 accomplishments that we have undertaken here at
4 this Commission.

5 So I hope, Madam Chair and Mr. Vice
6 Chairman, that at the end of this process what I
7 hope and I know will be a very transparent and
8 very open and, yes, at times perhaps even an
9 emotional process for us to go through, because
10 there are so many things at stake here, from
11 accessibility for individuals with disabilities,
12 to folks who believe strongly that there ought to
13 be mechanisms in place to ensure better accuracy
14 of ballots that have been cast --

15 I think this is one of our
16 panelists, welcome.

17 So, Madam Chair, I would simply say
18 that I think we have undertaken a significant
19 project and it's one that I know that we will all
20 feel better about at the end of the process.

21 Carol, if I could, there was a
22 clarification I think that I wanted to make to

1 one of the things that you said.

2 You were giving an example of our
3 legal analysis and you were talking specifically
4 with the functionality of voting systems where
5 the voter has to cast the ballot aside from, for
6 example, on a DRE you can punch a button that
7 says 'cast ballot'. But there are other voting
8 systems, like optical scan systems, for example,
9 where the functionality of casting a ballot
10 requires a voter to do something other than
11 hitting a button on a touch screen. And you
12 refer to that as VVPAT.

13 But I think what you meant to say is
14 that we changed this 'should' to a 'shall' when
15 it comes to the functionality of those type of
16 systems and not necessarily when it comes to
17 VVPAT, because VVPAT contemplates that a voter
18 gets to see something behind a screen, but not
19 walk away with a particular ballot and have to go
20 cast it in another location.

21 So in describing that example, when
22 we made a change from a 'should' to a 'shall',

1 you said that "in the context of VVPAT," but I
2 think what you meant it in was the context of the
3 functionality, for example, an optical scan
4 voting system.

5 MS. PAQUETTE: You are correct,
6 Commissioner.

7 COMMISSIONER MARTINEZ: That's it.
8 Thank you, Madam Chair.

9 CHAIR HILLMAN: Today's hearing is
10 in four sections. We have Panel Number 1,
11 presentations from the testing laboratories. And
12 presenting this morning will be Mr. Joe
13 Hazeltine, Senior Director, Eastern Test
14 Operations with Wyle Laboratories, and Ms.
15 Carolyn Coggins, Director of ITA Operations at
16 SysTest Labs.

17 Following Panel 1, we will take a
18 lunch break. And when we reconvene at about
19 1:30, the second panel will make presentations
20 and these will be people representing vendors and
21 we will have presentations from people
22 representing ES&S, Vote Here, Sequoia Voting

1 Systems and AccuPoll.

2 Panel 3 will be presentations about
3 the specific section of the guidelines or
4 sections of the guidelines that address voter
5 verifiable paper audit trails and perspectives
6 will be presented by four individuals.

7 And then the final section, which I
8 don't know if the mike is - the final section
9 will be public comment period. And we do have
10 people who have registered in advance requesting
11 an opportunity to make a comment.

12 So, can people hear me? No, I
13 didn't think so. I am not sure. Here we go.

14 I am going to repeat that anyhow. I
15 was just explaining the make-up of the four
16 panels for today.

17 So thank you very much to Mr.
18 Hazeltine and Ms. Coggins.

19 And, Mr. Hazeltine, if we could call
20 on you first.

21 MR. HAZELTINE: Thank you, Madam
22 Chair and members of the Commission.

1 I have been asked to speak on the
2 Voluntary Voting System Guidelines, the impact
3 from the --

4 CHAIR HILLMAN: The mike isn't on
5 here.

6 MR. HAZELTINE: Thank you, Madam
7 Chair and members of the Election Commission.

8 I have been asked to speak on the
9 impact of the Voluntary Voting System Guidelines
10 from a testing laboratory standpoint. And you
11 have a copy of my presentation. I am just going
12 to kind of go through that.

13 I guess, first, in talking about the
14 impact, one is to discuss what's the same in this
15 document as the 2002 Voting System Guidelines.

16 And when we look at Volume I,
17 Sections 2.1 through 2.2.6 and then 2.2.8 to
18 2.6 - which is System Functional Capabilities -
19 have remained the same.

20 Section 3 on hardware, Section 4 on
21 software requirements are the same.

22 Section 5 on telecommunications are

1 the same.

2 Section 6.1 to 6.6.4.3 on security

3 are the same.

4 Section 7 on quality assurance and

5 Section 8 on configuration management

6 requirements are the same.

7 So, the bulk of the document remains

8 the same as before.

9 In Volume II, we see even more -

10 Sections 2, 3, 4, 5, 6 and 7, which would be

11 Description of the Technical Data Package,

12 Functional Testing, Hardware and Software, System

13 Integration and Examination of Configuration

14 Management Practices - have all remained the

15 same.

16 Appendix A, the Description of the

17 National Certification Test Plan is the same, and

18 Appendix B, the Description of the National

19 Certification Test Report.

20 So, again, the bulk of the documents

21 remain close to as it was before.

22 But there been of some changes and

1 they are significant.

2 In Volume I, Section 1 has been
3 redone. Primarily it is new text on the program
4 that clarifies the requirements.

5 In Section 2.2.7 is probably the
6 largest change to the document, where there are
7 many new requirements on Human Factors and
8 compliance with HAVA 301(a)(3) were added. And,
9 certainly, that's an important revision to the
10 document.

11 Section 6.6.4 to Section 6.8.7.5
12 added many new requirements dealing with
13 security, wireless and the verifiable voting
14 paper audit trail.

15 Appendix A was added, which is a
16 very good thing, adding a glossary.

17 Appendix B, adding references,
18 again, a good thing.

19 Appendix C added best practices for
20 election officials and Appendix D added
21 independent dual verification systems.

22 We also added Appendix E, which was

1 the NASED Technical Guide, Number 1, dealing with
2 colorblindness and some of those issues.

3 Volume II had two changes.

4 Section 1, the revised National
5 Certification Testing Guidelines, shifting over
6 from NASED to the Elections Assistance
7 Commission.

8 And then Appendix C, where we added
9 the National Certification Test Design criteria,
10 the revision, in the back of that.

11 So kind of what was changed, in a
12 nutshell.

13 So if we look at what the impact is
14 to a testing labs, or to us, the Volume I Section
15 1 change, we are --

16 CHAIR HILLMAN: Technology always
17 challenges us, always.

18 MR. HAZELTINE: We are back on.

19 Volume I Section 1, the
20 introduction, there is a new certification that
21 is required for independent testing authorities
22 that would now come through the National

1 Institute of Standards and Technology, through
2 their NVLAP program, so it's a new certification,

3 similar to what we already have. But it will
4 require some additional work.

5 In Section 2.2.7, Volume 1, Human
6 Factors Assessment, accesibility changes were
7 made. And certainly those are major changes with
8 a major impact to the work that we will have to
9 do.

10 In Volume 1, 6.6.4 of the software
11 security, that's relatively small changes, which
12 is mostly administrative. Their impact to us is
13 minor.

14 And 6.7 of Volume I, wireless
15 requirements, would have an impact if that
16 technology were implemented. There are several
17 places where expert staff is needed. There are
18 cryptographic (sic) issues and other things
19 which would require quite a bit of additional
20 work.

21 In Section 6.8 of Volume I, the
22 Voter Verifiable Paper Audit Trail, I would

1 consider those to be relatively small. They are
2 administrative type changes. For us the impact
3 is not all that difficult from a testing
4 laboratory.

5 Certainly, Volume I, Appendix A, B,
6 C, with the glossary, references and best
7 practices, there is no real impact to us. It
8 certainly adds to the clarity of the document and
9 allows you to understand terminology being
10 addressed much better.

11 Appendix D, where the Independent
12 Verification Systems comes into Volume I, that
13 would be a major impact when implemented because
14 it really requires two systems. So you are
15 basically doing the testing twice, so it would be
16 an impact as far as the work.

17 Appendix E, the NASED Technical
18 Guide is small, mostly administrative changes for
19 us.

20 In Volume II, Section 1, the
21 National Certification Program Guidelines, there
22 were some clarification text added. There is no

1 real impact added to us. That is the same
2 practices the 2002 standard required.

3 Appendix C, the National
4 Certification Test Design Criteria, really no
5 impact to us in as far as conducting a normal
6 test program. If the specimen did fail, there

7 would be some additional testing requirements to
8 work with. But if the system passes, it would
9 pretty much would be a very similar process.

10 I am talking about possible issues
11 where we get into a little more detail of areas,
12 as we went through it where - I wouldn't say
13 concerned - we were just identifying.

14 We will need guidance on the
15 summative usability test required for partially
16 blind, blind, persons with limited motor control,
17 persons with limited command of English, and the
18 general population.

19 I have given some of the references
20 of where that would be in the document. But we
21 will need guidance on how to conduct those tests
22 in the future.

30

1 For the accessible voting station,
2 guidance with personal assistive devices is too
3 broad. We would need to know exactly what we are
4 talking about there and what devices could be
5 connected and what our requirements would be to
6 evaluate those.

7 I noted that the voter control of
8 contrast must be reset after the vote was cast.

9 They do have the ability to reset contrast. But
10 I didn't see anywhere else in the document where
11 it would reset back to some nominal value for the
12 next voter.

13 Synchronized audio with those
14 scrolling screens, that could be an issue with
15 testing. That would have to be defined exactly
16 what we mean there.

17 The Auto Tactical Interface
18 requirements will require more testing,
19 certainly, because it's a new feature. Certainly
20 a good feature, but a new one.

21 The audio qualification to ANSI
22 C63.19 would require more testing. That's where

31

1 we have to classify the actual microphones and
2 system ratings.

3 Our recommendation at Wyle would be
4 that we consider EIA/TIA 968, which was the old
5 FCC Part 68 document which regulated telephony
6 (ph) and has much - I don't know - I would say
7 are better rules - that are rules which are well
8 known, have been in place for a number of years,
9 does include hearing aide compatability and does
10 include a process that is somewhat better

11 understood by testing laboratories.

12 The guidance on testing cochlear
13 mounted hearing devices that we needed in here,
14 that could be an issue because I imagine that
15 there are a number of different types. So that's
16 an area of concern.

17 The frequency range of 315 Hz to
18 10 kHz, that requires now equipment of the new
19 testing techniques. Once again I would suggest
20 looking back at the ITA/TIA 968, the old FCC Part
21 68 document where the frequency range was not
22 quite so broad and test equipment already exists

32

1 for it.

2 Another document would be TIA 470,
3 which would address the acoustic performance as
4 well.

5 The rate of speech control where you
6 are allowed to, actually adjust or advance how
7 fast or how slowly the audio playback is would
8 require more testing and we would need some
9 guidance on that. It says within reasonable
10 levels. Well, reasonable can be interpreted in
11 different ways, so we would need some help on
12 that.

13 Confirmation of the blind paper
14 ballot would require some additional testing,
15 additional skill. We need someone who could read
16 those ballots to make sure the system is
17 performing properly.

18 The actuation force requirement test
19 required in test fixtures so that we can do, I
20 believe that is 22 newtons of force, so we would
21 need some additional devices to run that test.

22 We would need a wheelchair to be

33

1 provided so that we can evaluate the clearance
2 requirements in Section 2.2.7.4. And there are a
3 number of those. They are good requirements,
4 there are just a number of them.

5 And for the English illiterate voter
6 machines, would require interpreters be present
7 during some parts of the testing. The required
8 languages should be specified. Right now it's
9 quite broad and that would require some
10 additional work on our part.

11 Wireless documentation in accordance
12 to 6.7.2.1.3.1 - there are a lot of numbers
13 there - but requires a "subject area recognized
14 expert." So that would need to be identified and

15 provided to us.

16 If wireless systems currently don't
17 exist, but if they do, that would be be an issue.

18 The wireless system requires that it
19 be able to operate with or without the wireless
20 capability. So that would require us testing it
21 twice, with and without.

22 Encryption verification also

34

1 requires an expertise in the field and we would
2 need some help there.

3 Again, the Voter Verified Paper
4 Audit Paper Trail testing poses no significant
5 testing issue. It does involve more time, but
6 it's not a technical challenge for us.

7 Am I going too fast?

8 SIGNERS: We can't hear you.

9 CHAIR HILLMAN: If you could move
10 closer to the microphone.

11 MR. HAZELTINE: When I taught I
12 always had two hours of notes and one hour of
13 speech, so I learned how to speak quickly.

14 CHAIR HILLMAN: Mr. Hazeltine, we
15 know you live and breathe this stuff, but some of
16 us are running to catch up.

17 MR. HAZELTINE: I'm sorry.

18 CHAIR HILLMAN: No problem.

19 MR. HAZELTINE: Witness IDV Systems,
20 again, will have twice the amount of testing
21 because there are two devices. I had mentioned
22 that earlier.

35

1 The bottom line, from our viewpoint,
2 is to be Wyle's viewpoint, we consider the
3 Voluntary Voting System Guidelines to be a
4 significant improvement over the past two
5 documents, the 2002 and 1990 versions,
6 particularly in Human Factors, Accessibility and
7 Security.

8 It's quite well done. There are
9 some issues, but they are resolvable.

10 Prior to implementation, further
11 clarification would be required, but I don't
12 believe it's all that difficult to get that data
13 to us.

14 The current 2005 Voting System
15 Voluntary Guidelines that are out are in need of
16 some corrections and formatting, primarily in
17 correct references and page numbering. Section
18 2.2.7 is probably the one that would need the

19 most work there.

20 Independent testing laboratories do
21 have some cost requirements through the
22 accreditation through NIST which is not an issue.

36

1 It's just a thing to be noted.

2 We will need some guidance for
3 testing laboratories in several areas, which I
4 have identified in the presentation.

5 There will be some new testing. It
6 will add costs to the certifying of the voting
7 machine.

8 From Wyle's standpoint we are
9 already training our staff to the new document.
10 I know it's a draft, but it's probably going to
11 be fairly close to the final format. We will be
12 ready to implement by the end of the 90 day
13 comment period. We are quite confident on that.

14 And we feel that the mandatory
15 implementation date of 24 months after the
16 comment period is both reasonable and do-able.

17 And I'd like to thank you once again
18 for your time. I have provided my contact
19 information for you on the last sheet and I am
20 certainly willing to answer any and all

21 questions.

22 CHAIR HILLMAN: Thank you.

37

1 Commissioners, if we could just
2 agree that we will let Ms. Coggins make her
3 presentation and then open it up for questions to
4 both. Thank you.

5 Ms. Coggins.

6 MS. COGGINS: Thank you. Thank for
7 inviting me here today to provide some comments
8 on the proposed Voluntary Voting System
9 Guidelines.

10 First let me say that it is my
11 perception that in view of the HAVA January 2006
12 deadline, there is significant concern in the
13 states and the vendors in how the Human Factor
14 requirements stack up against the current testing
15 of accessibility to the 2002 standards.

16 I think Joe has done a really good
17 job of talking about impact in the long term. I
18 thought I may address my remarks a little to the
19 transition period of providing a little bit of
20 insight as to where the differences are for
21 people are going to have to be making some
22 decisions for January 2006.

1 First I just want to say this
2 release was made available late last week so
3 these comments are based on my preliminary review
4 of the guidelines and should not be considered
5 complete research.

6 Also, there has not been really a
7 peer review on the comments, which is our normal
8 process, in view of the time frame. These are my
9 initial interpretations of the guidelines and
10 shouldn't be considered a formal in-depth
11 analysis. We actually are going to make a
12 recommendation that maybe the EAC consider
13 providing this as a service to the states and the
14 vendors in the interim.

15 Third, in identifying those
16 differences, it does not mean that the systems
17 qualified to the 2002 standards do not contain
18 some of these required features. It means that
19 they weren't required to contain these features
20 when they were tested to the 2002 standards.

21 A vendor may have incorporated some
22 of these features into their systems. In that

1 case, the ITA would have been tested to them.

2 The first group of changes is audio.

3 And in the 2002 standards it did not identify
4 specific decibel volume settings for the initial
5 volume or minimum volume control. The VSS did
6 specify maximum, so things were tested to that.

7 In the 2002 VSS it did not identify
8 specific frequencies over the audible range. So
9 that would be something that would need to be
10 tested.

11 The 2002 VSS did not stipulate the
12 use of human recorded speech rather than
13 synthesized speech. There are 2002 qualified
14 systems that use synthetic speech.

15 And there appears to be a
16 contradiction in this requirement to the
17 underlying principle that you don't dictate a
18 design.

19 And it seems within the discussion
20 on this requirement, it is preferred not to use
21 synthesized speech. But that may be an issue as
22 to systems that are out there.

1 The 2002 VSS did not stipulate that
2 voters control the rate of speed. And now also
3 the voting system guidelines indicate this as a
4 'should' and not a 'shall'. So I'm not clear
5 whether or not the intention is that that will be
6 a requirement or if that's just --

7 A 'should' is normally optional when
8 you are looking at a requirement. And there are
9 vendors out there who have addressed this issue.

10 The next group of changes deals with
11 controls. The 2002 VSS did not stipulate that
12 mechanically operated controls or keys on the
13 voting system shall be tactilely discernible
14 without activating those keys. I'm not sure that
15 that is a really significant issue as far as
16 current systems out there. It doesn't pop to
17 mind that that seems to be a problem.

18 2002 VSS does not stipulate that the
19 status call logging or toggle control keys, such
20 as shift keys, shall be visually discernible and
21 discernible either through touch or sound. That
22 was not stipulated. Nothing comes to mind as

1 being really an issue with that though.

2 The 2002 VSS did not stipulate that
3 controls shall not require direct bodily contact
4 or for the body to be part of any electrical
5 circuit. Additionally, it did not stipulate that
6 the voting system shall provide a mechanism to
7 enable non-manual input that is functionally
8 equivalent to tactile input. This would be along
9 the lines of CIVNTOP (ph).

10 And, also, this is stated as a
11 'should' and not a 'shall'. But there are
12 systems out there, 2002 qualified, that did
13 incorporate this type of technology.

14 And the same with the next
15 requirement, that the VSS stipulates voters who
16 lack fine motor control or use of their hands
17 perform submission of ballot.

18 Again, that's something that vendors
19 have addressed, some.

20 Also the guidelines, as Joe had
21 said, are changing the physical reach. They are
22 much more detailed and the numbers appear to

1 have changed. So that's something that may need
2 to be addressed.

3 There are systems out there that
4 have really addressed some of these issues
5 through documentation. I have not done a
6 complete analysis of all the changes that went
7 into effect and the measurements. But in some
8 cases this may actually be -- It's an issue of
9 setup and it may actually be something that can
10 be handled from documentation levels.

11 CHAIR HILLMAN: You will need to
12 speak into the mike directly. You are turning
13 away from it and I think they can't hear you.

14 MS. COOGINS: I'm sorry. I am
15 usually so loud, they usually tell me to quiet
16 down.

17 Visual sight impairments is the next
18 group, the final group. The 2002 VSS did not
19 stipulate a system adjusted by the voter or poll
20 worker, including font size, color and contrast
21 shall automatically reset to the default after
22 each voter.

43

1 This was actually addressed in a
2 NASED bulletin. So it is my feeling that most
3 systems should have tested that.

4 The NASED bulletins were part of --

5 The implementation program is this mechanism for
6 having additional bulletins for clarification,
7 were part of the --

8 CHAIR HILLMAN: Tap it and see what
9 you are getting.

10 MS. COGGINS: Is that any better?

11 CHAIR HILLMAN: Yes. Just have it
12 as close to you as you can.

13 MS. COGGINS: Okay.

14 CHAIR HILLMAN: Okay. There you go.

15 Do you want to start over and repeat
16 everything --

17 No, I'm only kidding.

18 MS. COGGINS: Do you really want to
19 hear it?

20 So in terms of the NASED Technical
21 Bulletin Number 1, that was a mechanism that was
22 part of the 2002 implementation program that

44

1 there would be additional bulletins for updates.

2 So that should have been tested.

3 The 2002 VSS did not stipulate that
4 all tests intended for the voter during the
5 voting session be presented in sans serif font.

6 It did state that there should be a clear font.

7 I don't know -- I am under the
8 impression that states do actually stipulate
9 certain fonts on their ballots. So is this
10 perhaps an issue with compliance with state laws
11 or are all states using this font.

12 If this is a common thing, I'm not
13 aware of that.

14 The 2002 VSS did not stipulate
15 minimum figure to ground ambient contrast ratios
16 for text to informational graphics. So that
17 would be something that would have to be tested.

18 And, lastly, the VSS did not
19 stipulate a minimum size for sensitive touch
20 areas. So that would be something that, although
21 I haven't researched the actual sizes, but I
22 don't think that that will wind up being greatly

45

1 significant to systems that were already
2 qualified.

3 And, as I said, I understand that
4 the guidelines are just out for public comment.
5 But in view of the phone calls that I have
6 received from states - asking me, oh, my God, I
7 have a system; I want to buy it. Am I going to
8 be in trouble if I buy this system because it's

9 2002 qualified? What does this mean? - I would
10 recommend that in order to keep the states and
11 the local jurisdictions informed and the vendors
12 and public, that the EAC at least initiate
13 publishing a formal gap analysis between the 2002
14 voting system standards and the proposed voting
15 system guidelines.

16 In doing so, I believe that will
17 help states ask vendors about specific questions
18 about their voting systems. Also, vendors with
19 2002 VSS qualified systems that support things
20 that are proposed in the guidelines could request
21 the lab to provide independent verification of
22 any supported gap-identified functionality and

46

1 that this could then go as addendums to their
2 reports.

3 Let's see. There are actually -
4 because of time - there are a number of items and
5 I think Joe went through a number of items.

6 In an overall comment --

7 Am I off again?

8 CHAIR HILLMAN: Yes.

9 MS. COGGINS: I didn't touch it.

10 CHAIR HILLMAN: He's working on it.

11 MS. COGGINS: I think rather than
12 going through each individual issue that we
13 thought, there is kind of an overall comment that
14 I would like to make.

15 One of the criticisms of the 2002
16 standard was imprecise language. And I will be
17 submitting these comments directly through the
18 comment process.

19 But there are cases in here where we
20 are seeing imprecise language. In some instances
21 we are seeing - I'll give you an example - the
22 audio system should allow voters to control,

47

1 within reasonable limits, the rate of speech.

2 Reasonable limits is not testable.

3 What's reasonable to you/what's
4 reasonable to me, is a lawsuit.

5 So that's the one thing that I would
6 say.

7 We need those kind of things
8 tightened up, providing us with limits.

9 There is one instance in the Voter
10 Verified Paper Audit Trail, it appears in the
11 guidelines that either the paper or the
12 electronic ballot could be the ballot of record.

13 And in Section 152 of the VSS, which has not
14 change in the guidelines, it actually says that a
15 paper based voting system can't record, store or
16 tabulate selections.

17 So this seems to be a conflict.

18 And I may be misinterpreting what is
19 in the new and changed guidelines. But that just
20 seems to be something that maybe should be looked
21 at.

22 So in terms of just the imprecise

48

1 language, we would like to see that addressed.

2 Lastly, there is one item that we,
3 as the labs, in the NASED technical committee
4 meeting, had discussed: issuance of a
5 clarification bulletin that addressed some of the
6 issues encountered in interpretation with the
7 code review standards, and specifically the
8 application of the term in module in various
9 requirements.

10 But, also, the VSS gave us very
11 broad language on some security requirements and
12 code review. Well, just basically, security
13 requirements. And it allowed the labs on their
14 own to interpret some coding practices as

15 insecure.

16 The problem is, these practices are
17 not explicitly identified and that leads to
18 inconsistent application. A good example of this
19 is the bar coded password.

20 The labs hope that more explicit
21 requirements for security review would be part of
22 this release. And that's something that I think

49

1 I would like to see in the security requirements
2 of best practices or here are the things in code
3 review that we want to make sure exist.

4 Again, as I said, the imprecise
5 language is really one of my concerns, is that
6 all requirements really have testable criteria.

7 Overall, the standards are good and
8 we look forward to testing to these and we will
9 submit specific comments on these through the
10 comment process.

11 CHAIR HILLMAN: Okay, thank you.

12 While the little problems that we
13 are having with the technology here don't disrupt
14 our meeting, you can imagine it wouldn't be funny
15 if we were encountering these little problems
16 with voting machines on Election Day, pointing

17 clearly to the need for good guidelines, testing
18 and certification and re-testing and
19 recertification as necessary.

20 I thank both of you for your
21 comments this morning. The responsibility for
22 accrediting test labs and the whole certification

50

1 process is one that the Federal Government,
2 through the Election Assistance Commission, is
3 embracing for the first time. It is a
4 significant and rather awesome responsibility.
5 And it absolutely is important for us to receive
6 your comments against the guidelines as you have
7 noted.

8 The purpose of this hearing, the
9 purpose of the entire 90 day process, is for us
10 to receive this kind of critical input and for us
11 to have an opportunity to explore some of the
12 comments that you have made and we welcome this
13 opportunity to do that.

14 Commissioners, I think we have
15 sufficient time. We have about, in total, 30
16 minutes. And so I guess if we divvy it up 10/10
17 and 10, that does include responses back. So we
18 beg your indulgence to confine your responses to

19 questions, if it appears we are bumping up
20 against the time limit.

21 Thank you.

22 Commissioner, Mr. Vice Chairman.

51

1 VICE CHAIR DeGREGORIO: Thank you,
2 Madam Chair. And thank you both for the
3 excellent presentation and the written comments
4 that you have provided us.

5 We certainly recognize that this is
6 a first cut for you since these guidelines were
7 just published in the Federal Register and we
8 recognize that over time you will probably add to
9 these comments.

10 But, initially, they are well done
11 and they certainly raise a lot of important
12 issues for us to look at over the next 90 days,
13 because you are the ones that will have to test
14 the equipment to these guidelines. And you have
15 certainly raised some issues here that are
16 important for us to consider.

17 One thing that I have heard from
18 election officials around the country about these
19 new guidelines is the time that may be required,
20 the additional time that may be required to test

21 this equipment against these new guidelines for
22 the equipment to be qualified or certified.

52

1 And do you see, because you have
2 been in this business for quite a while now, that
3 these guidelines will add additional time to the
4 process to qualify a voting system when it is
5 presented to us and when you have to test it
6 against these guidelines?

7 Mr. Hazeltine, you can certainly --

8 MR. HAZELTINE: Mr. Vice Chair, yes,
9 I do. Off the top of my head, I am looking at
10 probably one to two weeks. There are additional
11 activities. They are not tremendous, but there
12 are additional activities.

13 VICE CHAIR DeGREGORIO: What is the
14 average time? You say one or two weeks
15 additional, so what --

16 MR. HAZELTINE: Well, the average
17 time for a system, from start to finish, is
18 normally a three to four month time frame. So we
19 are not talking about an order of magnitude
20 change.

21 VICE CHAIR DeGREGORIO: What about a
22 cost increase to the client? As I understand it,

1 it's going to be the vendors that will pay you
2 all to test their equipment against these
3 guidelines. Is there going to be a significant
4 cost increase as a result of this --

5 MR. HAZELTINE: I wouldn't say there
6 would be significant. Yes, the activities will
7 go up, so that the time we spend will go up and
8 corresponding new costs.

9 MS. COGGINS: I would say it will
10 add a small amount of time. It's not really
11 significant. Whether they pass or fail is, a lot
12 of times, whether it takes longer or not.

13 So if they come and they have to
14 actually retest, then it takes longer and it
15 costs more.

16 So it's hard to necessarily put a
17 number. You always talk about a number that is
18 successful. But a one week test may require a
19 two month re-engineering effort. So that would
20 be the situation.

21 And you have a very different, a new
22 vendor has a very different experience from a

1 vendor who is in the market and has deployed
2 voting systems and has been doing this a long
3 time.

4 So one person it may take just an
5 extra day for a test. It also depends on what
6 the systems themselves contain.

7 So if we have already tested for
8 some of these things, then there really wouldn't
9 be any additional testing because the VSS
10 requires that we test to their own requirements
11 in certain optional functionality or additional
12 functionality.

13 There I went again.

14 CHAIR HILLMAN: It will be fixed
15 during our break so that we don't have to go
16 through this. So our apologies to the two of
17 you.

18 MS. COGGINS: Not at all.

19 So that's basically it. There are a
20 lot of variables that are involved in it. It
21 depends on the vendor.

22 It will add some time; it will add

1 some expense. And I think also in terms of some
2 people, there will be significant times of
3 engineering. That I think would be more of the
4 time that I see, is engineering the products to
5 reach some of these requirements.

6 But in terms of testing, it probably
7 would be a 5 to 10 percent increase.

8 VICE CHAIR DeGREGORIO: Previous
9 standards have had an implementation period.

10 When the 1990 standards were developed, there was
11 a several year implementation period. And in
12 2002 there was, I believe, a two year
13 implementation period.

14 We have proposed in this draft a 24
15 month implementation period, which would take us
16 to the fall of 2007, before these guidelines
17 would take effect and have to be --

18 Is that a reasonable approach in
19 your view, Mr. Hazeltine?

20 MR. HAZELTINE: Mr. Vice Chair, as I
21 said earlier, I think that is both reasonable and
22 do-able.

1 There are some things which I think
2 need to be on the fast track, which would be the
3 Sections 2.2.7, the accessibility requirements.

4 MS. COGGIN: The market will not
5 wait for them to be put into place. The market
6 will dictate to us that we have to move faster on
7 these.

8 So while we may have - we will have
9 vendors who will be competing to try and get
10 there before others. So at the lab, we will be
11 trying to get there as quickly as possible.

12 So two years is, it's a good cutoff.
13 Because as we found in 2002, there were
14 situations where people weren't ready to get
15 there. But I don't know that people will
16 actually --

17 Somebody will be ready to go three
18 months from now, in my interpretation.

19 VICE CHAIR DeGREGORIO: If a state,
20 for instance, chooses to adopt a VVPAT portion of
21 this and have its implementation effective for
22 next year, for next year's election, the

1 equipment they are going to use, because their
2 state law or state regulation requires them to
3 use the VVPAT if they use DRE equipment, so you
4 would be prepared then to test this equipment
5 against the VVPAT section of these guidelines,
6 again, if the states chose to adopt that and have
7 a different implementation date?

8 MS. COGGINS: It depends upon --

9 In terms of our dealing with the
10 vendor, it's really, we would be working on what
11 their requirements would be.

12 If they are designing their system
13 to a particular state's requirements, then we
14 would need to design test cases for that.

15 The good news would be that,
16 ultimately, we probably are going to be able to
17 re-use that with other vendors. But, initially,
18 getting out there --

19 You actually are to look -- There's
20 very much custom work that's done in every ITA
21 qualification because no two systems are truly
22 the same. So while you can work off a really

1 high level set of requirements, when it comes
2 into an implementation - and, in fact, we have

3 this discussion sitting in a lot of cases where
4 we are sitting in a room and we are testing
5 something on one voting system and we go, oh, my
6 gosh, this is so much like such and such. Did we
7 test them for that? Oh, no, but they don't do
8 this piece, they don't do write-in's the same.
9 Whew, okay, we are covered. Yes, we tested it to
10 the correct standard in that particular case.

11 So every system actually has a great
12 deal of customization on the test cases.

13 So I think it's actually our normal
14 process that we really have to be responsive to
15 the system. And while the good news will be that
16 we will be able to repeat processes more
17 consistently across various vendors, at this time
18 we actually have to respond to whatever a vendor
19 design is, because that's what the VSS says that
20 we do.

21 MR. HAZELTINE: Relative to the
22 Voter Verified Paper Audit Trail, I see no real

59

1 issues with it.

2 The major thing that we need - I
3 have already talked to Mr. Wilkey about this - is
4 the compliance matrix. And we have begun

5 discussing having a meeting later this month to
6 do that.

7 Once that's in place, we are ready
8 to go.

9 VICE CHAIR DeGREGORIO: Thank you,
10 Madam Chair.

11 CHAIR HILLMAN: Okay. Thank you.

12 For your entertainment pleasure, we
13 are raising and lowering the blinds, as you can
14 see. Kind of looks like we are now in a
15 submarine and submerging at any moment now.

16 Seriously, for the people on this
17 side of the room, even though the sun is
18 filtered, it was getting kind of warm and then
19 little technical glitches with plants and other
20 things being in the way.

21 So, hopefully, you were entertained
22 for a moment. But we should be squared away now.

60

1 Thank you.

2 Commissioner Martinez.

3 COMMISSIONER MARTINEZ: Thank you,
4 Madam Chair.

5 My thanks to both of you as well for
6 making the time and the effort to be here. And

7 as the Vice Chair has noted, we were trying to
8 get this out as soon as we could. And,
9 unfortunately, it took us a little bit longer to
10 do our internal due intelligence. So it was just
11 out last week.

12 And we appreciate that you have done
13 a rather hasty, but I think a very excellent,
14 analysis for us to begin to think about with
15 regard to --

16 There goes my mike. Am I back on?
17 Everybody hear me?
18 -- with regard to the Proposed
19 Voluntary Voting System Guidelines.

20 I want to start with a general
21 question for the both of you.

22 And that is, one of the things that

61

1 we have to contemplate right now at the EAC,
2 along with our partners at NIST and of course
3 with the TGDC, is the idea of what happens after
4 this initial, after this first draft is adopted
5 in full or in final form.

6 And that is to say that there has
7 been, we have deliberated internally and talked
8 amongst ourselves with NIST and the TGDC about

9 whether this is a Version I versus a Version II
10 coming out at some point in the near future.

11 And I wondered, from your
12 perspective, since you actually have to do the
13 use of the requirements and the actual testing of
14 the voting systems, what life would mean for the
15 testing labs if we were to embrace a chronology
16 that says we go final with VVSG in 90 days with
17 this version and then soon thereafter, let's say
18 six months after that one goes final, we come out
19 with a Version II, another set of, again, revised
20 Voluntary Voting System Guidelines.

21 Is that problematic from your
22 perspective? What opinion would you like to

62

1 offer us so that we can be better informed in
2 trying to make a decision about the timing of
3 what comes after this, if anything?

4 Mr. Hazeltine.

5 MR. HAZELTINE: Thank you,
6 Commissioner Martinez.

7 From a testing laboratory
8 standpoint, we can be ready in 90 days as to the
9 standards, and if you decide to revise it 90 days
10 later, we can probably be ready for that one as

11 well. From a reality standpoint, test, the
12 vendors will not be --

13 CHAIR HILLMAN: Your mike.

14 MR. HAZELTINE: Once again, we can
15 be ready from a testing laboratory standpoint.
16 But I do think the vendors would have some
17 problems with that. It would be a continuing
18 ratchet of requirements that the systems need to
19 have.

20 I frankly think that we need to
21 reach some point of stability that people can
22 design to and then if we want to move from

63

1 forward from that.

2 COMMISSIONER MARTINEZ: Ms. Coggins.

3 MS. COGGINS: I would agree also in
4 terms of, in all quality systems, management of
5 change is one of the important factors. So as a
6 test lab, that's one of our mandates, that we
7 need to be able to do that.

8 I also agree with Joe in that I
9 don't think it's just the vendors. I think it's
10 also the states.

11 There is paralysis if you have
12 got -- Maybe it's better that it comes in six

13 months or maybe it's better that you defer the
14 first one six months.

15 But the basic issue is, people don't
16 know what to do. They don't know whether to buy;
17 they don't know what's going to happen; are they
18 going to lose their HAVA funds?

19 That's information that I am getting
20 from the states where they are calling me and
21 asking me, you know, what does this mean. What
22 does it mean these changes of standards?

64

1 COMMISSIONER MARTINEZ: Is there a
2 process right now with the current 2002 VSS and
3 the NASED process where if they want to add
4 something to the existing standards, it is done
5 via an amendment of some kind to the 2002 VSS?

6 Or is there a process, if they
7 identify something that needs to be addressed - I
8 think you mentioned something about a bulletin
9 that might be issued by NASED or something like
10 that - so there is a process right now.

11 Can you say something a little bit
12 about that real quick, Mr. Hazeltine.

13 MR. HAZELTINE: Commissioner
14 Martinez, yes. NASED over the years has issued a

15 number of technical guidances that kind of
16 attaches, kind of like an appendix, if you will,
17 to the standard and provide guidance to us and
18 also to the vendors on what the requirements of
19 the system are.

20 That is a kind of a stop gap way of
21 adding things in small pieces.

22 MS. COGGINS: The problem in the

65

1 process at this point is you have this transition
2 between NASED and the EAC, so we are in
3 paralysis, an example being this bulletin that we
4 talked about about a year ago, can we get this
5 out.

6 And at this point NASED is
7 anticipating giving this over to the EAC. So,
8 yes, the method is there, but the will is not
9 there, in my belief. I'm not trying to speak for
10 anybody else or anything here.

11 But there is just, people are in
12 this flux and they are not quite sure. If I put
13 out a bulletin today, what's the impact?

14 COMMISSIONER MARTINEZ: Right. I
15 guess what I am trying to get at, if I am trying
16 to make a decision about what happens next, is

17 the process working the way it exists now, in
18 that if there is a deficiency that's identified,
19 that you don't have to go through a whole
20 promulgation process again of redoing or revising
21 the entire VSS, but instead you would address
22 those particular deficiencies via a bulletin or

66

1 via some sort of a more responsive mechanism.

2 And it sounds like that is working right now.

3 So as we contemplate how to
4 structure ourselves - since we are, by law,
5 supposed to take over this process - that is
6 something that we should be informed about,
7 basically.

8 MS. COGGINS: The system is there.

9 It's just not currently working -- It's not,
10 nothing is going on, it really is. But, yes,
11 there is a mechanism.

12 COMMISSIONER MARTINEZ: And one that
13 works, Mr. Hazeltine?

14 MR. HAZELTINE: Yes, I believe it
15 does.

16 COMMISSIONER MARTINEZ: In your
17 testimony, Mr. Hazeltine, you have referenced the
18 fact that in some areas - for example, in the

19 BBSG - the section dealing with wireless
20 technology, that you would need to acquire
21 subject matter expertise. Is that available? Is
22 it even out there?

67

1 MR. HAZELTINE: Commissioner
2 Martinez, I am not sure and we have not
3 researched that.

4 I am sure there are experts in blue
5 tooth and 80211 or BT (ph) whatever.

6 COMMISSIONER MARTINEZ: So there is
7 personnel that you can get.

8 MR. HAZELTINE: There is. And we
9 have a good bit of expertise in the same thing as
10 well.

11 Frankly, wireless, I'm not sure if
12 the technology is ready for implementation,
13 primarily from a denial service viewpoint.

14 COMMISSIONER MARTINEZ: Do you
15 agree? Are there some areas that it's going to
16 be necessary to acquire some additional
17 expertise?

18 MS. COGGINS: Yes, I think that one
19 of our comments about imprecise language is that,
20 it's saying you are becoming a subject matter

21 expert but it's not identifying the
22 qualifications of the subject matter expert.

68

1 That may be something that is going
2 to be addressed in the accreditation criteria.
3 But we would like to see in the voting guide that
4 it actually references a subject matter expert
5 who is accredited by the lab or whatever is the
6 specific thing.

7 But, yes, that is some of the
8 imprecise language that we would like to see
9 clarified.

10 COMMISSIONER MARTINEZ: I guess
11 going back to something that my colleague, the
12 Vice Chair, was talking about earlier, one of the
13 things that we had certainly emphasized - and I
14 know that the members of the TGDC were in
15 agreement with this - and that is to try to
16 deliver - with the VVSG - to try to deliver a
17 product that could be responsive to the upcoming
18 Federal election cycle next year, if at all
19 possible.

20 And, in particular, what we were
21 dealing with was the fact that - I think at last
22 count - something like 16, maybe 17 states, now

1 have madated, via legislative action or
2 administrative rule, the use of VVPAT technology.

3 And for those states that have moved
4 in that direction - and for perhaps others that
5 will move in that direction between now and the
6 next election cycle - that there would be a means
7 to be able to test --

8 For example, if I use a DRE in a
9 jurisdiction right now, but the vendor in the
10 area has developed a VVPAT technology that could
11 simply be, essentially, plugged into that
12 existing DRE, that the plug-in, the added device,
13 the VVPAT component, can be tested in an
14 objective repeatable manner, that would happen,
15 obviously, through your test labs.

16 And what I you hear you all saying
17 is that you can be ready to do that once we go
18 final with the VVPAT section of this VVSG. Is
19 that correct, Mr. Hazeltine?

20 MR. HAZELTINE: Commissioner
21 Martinez, that is correct. Of the requirements
22 in the document, that was probably some of the

1 most straightforward and easiest to implement.

2 COMMISSIONER MARTINEZ: Ms. Coggins,
3 do you agree?

4 MS. COGGINS: Yes. In fact, we are
5 already testing that because vendors have already
6 addressed that.

7 COMMISSIONER MARTINEZ: So,
8 irrespective of whether a state decides to pull
9 down that section of the VVSG early, a vendor
10 might come to you after we go final with that and
11 say we want to be among the first to be tested
12 against the new VVPAT requirements, you all are
13 going to be ready to do is so is what I am
14 hearing you say.

15 MR. HAZELTINE: Yes, sir.

16 MS. COGGINS FOGEL: In fact, I think
17 we have been contacted by a vendor already who is
18 anticipating this and has asked us if they can
19 start testing sometime this month.

20 COMMISSIONER MARTINEZ: I will take
21 this opportunity, I think we will talk more about
22 this this afternoon, that we go out of our way in

1 this document, in the VVSGV, to add language - I
2 think it's in the appendix right now, in Appendix
3 D - but to say to the general public and to the
4 reader of the VVSG that VVPAT is but one of many
5 ways to achieve what is termed independent
6 verification by NIST and by the TDGC. That other
7 ways to achieve independent verification - aside
8 from using VVPAT technology - is out there.

9 And at some point perhaps - or
10 perhaps it's usable now - but that there are
11 other means to achieve this.

12 And at some point down the road -
13 perhaps through an amendment process to the VVSG
14 when they go final, perhaps in the next iteration
15 of the VVSG - there would be other testable
16 requirements for other means of achieving
17 independent verification.

18 Are you following what I am saying?

19 MR. HAZELTINE: Yes. If I were to
20 understand what you are saying, I don't think you
21 want to do anything which would stifle
22 technology.

1 COMMISSIONER MARTINEZ: Right.

2 MR. HAZELTINE: Let the vendors be
3 creative and come up with other ways of meeting
4 the requirements.

5 The requirements, I think, are well
6 stated in the document.

7 COMMISSIONER MARTINEZ: Right. But
8 what you said in your testimony is getting to
9 other means, testing the requirements for other
10 means of independent verification will require
11 additional major effort on your part.

12 MR. HAZELTINE: As stated in
13 Appendix D, the dual system where you have got
14 the one system and you go back and you repeat the
15 count on the second system, that is two pieces of
16 hardware; that's twice as much testing.

17 There are other ways to do that.

18 COMMISSIONER MARTINEZ: Right.

19 Any comments, Ms. Coggins?

20 MS. COGGINS: No. In terms of
21 testing, it's going to be nothing really
22 different from what we are currently doing now.

1 COMMISSIONER MARTINEZ: And I am
2 getting a bad stare from the Chair.

3 CHAIR HILLMAN: Excuse me, not a bad

4 stare. I am just letting you know we're a little
5 over time.

6 COMMISSIONER MARTINEZ: I will do
7 one quick, perhaps more of a statement, and you
8 all can do a quick comment, if you want.

9 The gap analysis that you have
10 suggested for the following reason: the current
11 set of voting system standards, the 2002 VSS, was
12 promulgated by our predecessor agency, the
13 Federal Election Commission. It was promulgated
14 over a two or three year period and it went final
15 sometime - I don't remember the exact month in
16 2002 but perhaps one of you can tell me.

17 MR. HAZELTINE: Effective January 1,
18 2004. At that point everything had to comply.

19 COMMISSIONER MARTINEZ: Right. But
20 the FEC Commissioners voted --

21 MS. COGGINS: It was actually
22 published in April 2002.

74

1 COMMISSIONER MARTINEZ: That's the
2 date I was looking for.

3 MS. COGGINS: It was released in a
4 meeting in May in Colorado.

5 COMMISSIONER MARTINEZ: The point

6 that I would make, then, to go to your suggestion
7 on the gap analysis, is that, HAVA came along
8 after the 2002 voting system standards went
9 final.

10 So HAVA, like it or not, HAVA has
11 some voting system standards itself in Section
12 301, which are nothing at all voluntary, in fact,
13 they are mandatory on 1/1/06 - or, actually on
14 1/1/06 - upon all jurisdictions covered by HAVA.

15 So the gap that you have,
16 essentially, is that you have current voting
17 system standards that were promulgated before
18 HAVA was even close to its final form.

19 So if you are a vendor, you get
20 tested to the 2002 standards, you still don't
21 have anybody to tell you - other than perhaps
22 your own internal counsel and your own

75

1 deliberation and your own specifications that you
2 would impose upon yourself as a vendor - whether
3 your system is compliant with what Congress came
4 out with in the Help America Vote Act, in Section
5 301, particularly 301(a)(3), which is the
6 accessibility language.

7 Would you all agree with that?

8 Mr. Hazeltine, go ahead, or whoever.

9 MR. HAZELTINE: Mr. Martinez, I

10 would agree with that.

11 I believe the common sense way of
12 looking at this, there are voting systems that
13 are out there now which are complying with the
14 majority of this document other than the HAVA
15 requirements.

16 HAVA work station, the voting
17 stations, will probably end up being an
18 independent voting station at the polling place.

19 So it is actually almost a separate piece of
20 hardware.

21 COMMISSIONER MARTINEZ: Ms. Coggins,
22 you were going to say something.

76

1 MS. COGGINS: I would say that it's
2 not just that -- You have partial compliance at
3 this point, based upon the vendors. You are
4 correct, yes, you had a gap between the time when
5 the standards were there and when HAVA was
6 imposed.

7 And, truly, that gap actually is
8 until today, because this is really the first
9 time those standard are there. So it has been, I

10 don't know what, is it three years or something?

11 COMMISSIONER MARTINEZ: Right.

12 MS. COGGINS: So that's truly what
13 the gap is.

14 COMMISSIONER MARTINEZ: Right.

15 MS. COGGINS: So, yes. And you have
16 had people who have tried to anticipate this and
17 have tried to get there. So in terms of what
18 they are looking - the information - I would
19 absolutely suggest that this information be put
20 out for the benefit of everyone.

21 COMMISSIONER MARTINEZ: Thank you.

22 Thank you, Madam Chair.

77

1 CHAIR HILLMAN: Okay.

2 Our Executive Director has a
3 question or two that he wants to ask, so I am
4 going to share my time with him.

5 But I am going to exercise my
6 prerogative to go first. So if we run out of
7 time, you don't get to ask your question.

8 I'm only kidding.

9 What does it mean to you that the
10 language has been changed and we are now talking
11 about guidelines instead of standards? What, if

12 anything, in the field does that mean?

13 MR. HAZELTINE: Madam Chair, I am
14 aware of a number of documents. Sometimes they
15 are called guidelines; sometimes they are called
16 standards.

17 They are called -- That's the
18 requirements requirement. So that really the
19 name is no major consequence.

20 MS. COGGINS: I agree. We are being
21 asked to test requirements and the vendor is
22 actually, when they come to us to initiate a

78

1 contract, they are specifying test us to this.
2 And so that's what we are testing now, that's our
3 interpretation.

4 CHAIR HILLMAN: So the quality has
5 no effect on it?

6 MS. COGGINS: No.

7 CHAIR HILLMAN: I was momentarily
8 interrupted, I believe, when you were responding
9 to the Vice Chairman's question about the length,
10 the anticipated length of time it would take to
11 test under the guidelines.

12 Could you just tell me, ballpark,
13 what that was.

14 MR. HAZELTINE: Madam Chair, my
15 response, right now, our initial review, is maybe
16 one to two weeks. It is not a tremendous --

17 CHAIR HILLMAN: In total?

18 MR. HAZELTINE: One to two weeks on
19 a program which probably takes normally about
20 three months.

21 CHAIR HILLMAN: So we are talking
22 three to four months.

79

1 MR. HAZELTINE: It would probably
2 end up adding a half a month to it.

3 MS. COGGINS: One of the things that
4 is a little difference between the last, that,
5 and this initiative, still kind of up in the air
6 where we are going, SysTestLabs is both a
7 hardware and software test lab.

8 So our test cycle may be longer
9 because we have a bigger scope.

10 Currently, Wyle is a hardware ITA
11 and SysTest is a software ITA, the initial
12 software ITA.

13 So that may be -- There is a
14 different scope of testing that goes on.

15 For us the test effort is - it can

16 be two months to - we have had people go 18
17 months. So it just depends on the quality of the
18 system that's brought to mark.

19 THE CHAIR: Did you want to correct
20 something, Mr. Hazeltine?

21 MR. HAZELTINE: Yes, ma'am.

22 We would certify for both.

80

1 CHAIR HILLMAN: I think I heard you
2 correctly say that there would be an increase in
3 the cost of testing, but it wouldn't be a huge
4 increase.

5 All things are relative. So, is it
6 5%, 10%?

7 I know we are ballparking here. But
8 I'm trying to get an appreciation as to whether
9 the cost of testing is going to increase 25%,
10 50%, 10%?

11 MR. HAZELTINE: Madam Chair, it's
12 not in those ranges.

13 Just using this straight map, you
14 say it's a three month program - and to your 12
15 weeks, you are adding two.

16 So 8 to 10%, somewhere in that
17 range, doing it as an engineer.

18 CHAIR HILLMAN: Even with some of
19 the other things that you said you would have to
20 bring into the testing process because of the new
21 requirements?

22 MR. HAZELTINE: There are new

81

1 requirements; they require new tests, primarily
2 the functionality of things.

3 Once you have gone through it the
4 first time, you have all the fixtures and the
5 knowledge. So it becomes somewhat repetitive.

6 But the first time through it will
7 always be a bit of a challenge.

8 The accreditation is an additional
9 cost for us. It's not necessarily something
10 which the vendors would be picking up.

11 CHAIR HILLMAN: Ms. Coggins.

12 MS. COGGINS: Would you repeat the
13 question.

14 CHAIR HILLMAN: It was just about
15 the increase in cost to test against the new
16 guidelines.

17 MS. COGGINS: I would not see it as
18 being a significant cost, relative to the overall
19 cost of an effort.

20 It is, again, it's really dependent
21 upon the system that is brought us, independent
22 conditions, as to the length of the time and the

82

1 cost.

2 CHAIR HILLMAN: My final question is
3 for you, Ms. Coggins,

4 You said in the beginning of your
5 presentation, you were talking about the quick
6 time that you used - and we appreciate it - to
7 review the guidelines and that your normal peer
8 review process could not be engaged.

9 And then you talked about the gap
10 analysis.

11 You said something about providing
12 this as a service to the states. So my question,
13 if you can remember, is, what is the 'this'?

14 MS. COGGINS: The gap analysis.

15 It's basically providing information
16 so that the people understand, here are the
17 likely things you need to be looking for. Ask
18 your vendor, do they have an alternative method,
19 a non-tactile method for entering the voting
20 system.

21 If they have got that, check off the

22 box; we've got one. And is it in their report.

83

1 That's basically it.

2 The other thing, too, is, states may
3 have the opportunity to request additional
4 documentation on specific issues, if they are not
5 seeing these clearly identified in the
6 qualification reports that have been issued.

7 So that might be something so
8 that --

9 I know they are all concerned.

10 CHAIR HILLMAN: Thank you.

11 Mr. Wilkey.

12 THE EXECUTIVE DIRECTOR: I will
13 stick to the time limit. I don't want to lose my
14 job before I get my first paycheck.

15 First, I want to make just a quick
16 comment to both of you - and I wish that the
17 other ITA was here also.

18 I have had the distinct honor and
19 pleasure of working with you in a prior life over
20 the past number of years and you have always
21 shown a very high level integrity, of
22 professionalism in everything you have done, as

1 well as all of the members of the NASED Board,
2 who have given hundreds of hours of time or
3 talent, without remuneration, without any kind of
4 assistance whatsoever.

5 I just have one question, and
6 primarily for you, Carolyn.

7 You made some general comments about
8 it needs to do this or it needs to this
9 throughout your document. Is it your intent,
10 when you go back, to give us some suggested
11 language that you would like to see?

12 And, Mr. Hazeltine, you could also
13 answer this.

14 CHAIR HILLMAN: Just a second.
15 Could you please repeat your question, Tom,
16 because the signers are having a hard time
17 hearing you.

18 THE EXECUTIVE DIRECTOR: I think you
19 made a number of general comments that it needs
20 to do this or it needs to do that, without giving
21 some specific language that you think would make
22 it better.

1 I ask you this because I don't think
2 there is anyone who has seen this equipment up
3 close and personal as you have.

4 So I think if you could give us some
5 specific language that you would like to see, it
6 would be very helpful.

7 Is it your intent to do that?

8 MS. COGGINS: I think in terms of,
9 in trying to say that something needs to be more
10 detailed, okay, it may be that the language we
11 can provide is, we need a limit. I can't tell
12 you the limit. I can't say - because that's
13 defined in the voting systems. It doesn't allow
14 me to do that.

15 So we can't actually set the
16 standard, per se, but we can indicate, yes, this
17 language, I need a little more detail on what is
18 the limit here. Or, in some cases, like we have
19 seen, there is issues where it's talking about
20 unacceptable font. It would be helpful if you
21 provided, okay, give us four - I'm sorry, not
22 font, format - give us four acceptable formats

1 and then say you can also do it in publicly
2 acceptable ones. Honing things down a little bit
3 makes it easier not only on us, but makes it
4 easier on the entire community.

5 Now we have two standard methods of
6 file transfers.

7 MR. HAZELTINE: I have no problem
8 providing additional guidance. I think we can
9 give you some additional guidance to work with.

10 CHAIR HILLMAN: Thank you. Thank
11 you all very much.

12 And we will break now for lunch.

13 I will ask if there are any
14 announcements before we do this.

15 MS. THOMPSON: Madam Chair, you just
16 may want to make the announcement again about the
17 restrooms.

18 CHAIR HILLMAN: Just a reminder that
19 the public restroom facilities are on the 8th
20 floor. They are not on this floor.

21 And we will begin again at 1:30.

22 Thank you very much.

2

3

PRESENTATION FROM VENDORS

4

REGARDING THE PROPOSED VVSG

5

6

CHAIR HILLMAN: The United States

7

Election Assistance Commission's hearing on the

8

proposed Voluntary Voting System Guidelines will

9

resume.

10

Panel Number 2, presentations from

11

vendors, those companies that manufacture the

12

equipment hardware and software that compose

13

voting systems.

14

We have with us today Mr. John Groh,

15

President of Election Systems and Software

16

International, also known as ES&S; Mr. Jim Adler,

17

CEO Vote Here; Mr. Alfie Charles, Vice President

18

of business development, Sequoia Voting Systems;

19

and Mr. Dennis Vadura, CEO of AccuPoll.

20

We will engage with this panel until

21

about 2:45 and then we will take a short break so

22

that we can set up for Panel Number 3.

88

1

Gentlemen, thank you for being with

2

us. And without any further ado, I will go in

3

the order that I introduced you. So if we could

4 start with Mr. Groh.

5 I think what we will do is receive
6 your presentations and then we will ask questions
7 following the fourth presentation. Okay.

8 MR. GROH: Thank you, Chairman
9 Hillman.

10 Again, for the record, my name is
11 John Groh. I also serve as Senior Vice President
12 of Election Systems and Software, Inc., which is
13 our American side company.

14 Today I brought along with me,
15 though, a peer of mine, Ken Carbolito, who is
16 Senior Vice President of product development and
17 software development for our company.

18 We want to thank you for inviting us
19 to be here today to present ES&S's views
20 regarding the proposed Voluntary Voting System
21 Guidelines, Version I.

22 I want to acknowledge first the

89

1 leadership and the hard work that the EAC and
2 your staff has accomplished. It is remarkable to
3 many of us that are in this business that you
4 have been able to make as much progress and so
5 soon.

6 Now let me get into a little bit of
7 the topic today about Version I. But indulge me
8 a little bit to allow me to share a little bit of
9 history on our company, because I think it sets
10 the stage of why we would be someone that could
11 speak to this.

12 For over 35 years, ES&S has been at
13 the forefront of driving election systems
14 innovation and working with election officials to
15 enhance the voting experience for all.

16 We are the largest and most
17 experienced provider of election systems and
18 services, supporting elections across the country
19 and throughout the world.

20 We are very proud of the fact that
21 twice now we have been the first major election
22 systems vendor to certify our entire product line

90

1 against the Federal Voluntary Voting System
2 Standards, first in 1990 and again in 2002.

3 In our opinion, the adherence to
4 standards and the rigor of the certification
5 process is critical to maintaining the integrity
6 of our elections. Therefore, we will tell you,
7 we embrace this process wholeheartedly.

8 I offer this background because it
9 underscores the fact that ES&S is not new to the
10 standards or the certification process. We
11 understand a dynamic standards process is key to
12 motivating innovation and continued enhancement
13 of the voting technology.

14 That is why ES&S has been
15 enthusiastically providing input during the TGDC
16 and NIST portion in written form and by attending
17 and participating in all meetings throughout the
18 current guidelines development.

19 Let me give you some general
20 observations. Through this lens of our
21 experience, we are pleased to offer some initial
22 thoughts regarding Version I. Because the draft

91

1 guidelines are extensive and were just issued
2 this week, it will take some time to complete a
3 thorough review.

4 Much like the former presenters
5 today, we too will have a peer review of this and
6 will provide very detailed written commentary on
7 this.

8 In reviewing the draft guidelines,
9 there is nothing more important than giving the

10 process the time and the deliberation it deserves
11 to get it right. And I want to say this again,
12 because we think this is the most important
13 component of this, giving all of us enough time
14 to get this right and deliberate on it correctly.

15 One criteria for us has been
16 paramount, as we look at the process we have been
17 engaged in, and that's feasibility, and that's
18 feasibility for many areas.

19 Technical feasibility because the
20 guidelines must be implemented and have to have
21 any real effect and also in the guidelines, the
22 feasibility of achieving the EAC deadlines of

92

1 implementation and covering the additional costs
2 associated with substantial upgrades to product.

3 The EAC and NIST and the TGDC
4 rightly determined that an interim step in the
5 guideline development process may be necessary,
6 with the very specific and limited goal of only
7 addressing significant limitations in the 2002
8 standards.

9 All along ES&S understood that the
10 objectives of this interim process was a
11 complement to the 2002 standards, not really

12 meant to replace them.

13 So our first observation about the
14 proposed guideline, particularly given the
15 intention to pursue a second version soon, is a
16 belief that, in sum and content, Version I may
17 have gone beyond the original intent and scope as
18 defined by the EAC.

19 As proposed, the Version I would
20 impose a substantially new expectation on vendors
21 and election administrators alike. That raises
22 some challenging technical issues I will try and

93

1 address.

2 But it also means that the
3 implementation will take significantly more time,
4 add costs and complexity.

5 On this point we appreciate the
6 Version I effective date provision, clarifying
7 that the guidelines will go into effect 24 months
8 after their final adoption by the EAC.

9 Certainly, given all that must be
10 done to develop the new product and testing
11 authorities, we believe it will take at least the
12 afforded time to accomplish this task as a
13 supplier or a vendor. In fact, when you consider

14 that it took five full years to develop the
15 implementation of the 1990 standards and then
16 three years to do the same in 2002, this proposed
17 timeline for Version I is aggressive.

18 However, and again recognizing how
19 firmly we support an evolving standards process,
20 and how committed we are to continued voting
21 system enhancement, know that we will move
22 forward aggressively in that direction.

94

1 The effective dates provisions are
2 important because they begin to send messages to
3 states and localities that they can move forward
4 with purchasing new systems to meet the HAVA
5 requirements, especially in Section 301, before
6 these new guidelines are in full force.

7 In other words, what we are
8 recommending is the need for a strong
9 reaffirmation that voting systems certified to
10 the 2002 standards achieve the objective laid out
11 in HAVA, providing a substantial improvement over
12 older voting technologies.

13 Every election official who is
14 working to comply with the January 1, 2006
15 deadline must know that they can purchase

16 certified 2002 systems with the confidence that
17 these systems will fulfill the mission and
18 mandate of HAVA.

19 In addition, they should know that
20 they will be able to continue to use these
21 systems for years to come, that they will not be
22 required to replace HAVA-required technology with

95

1 new products that meet the proposed Version I
2 until it is necessary.

3 If, in fact, this could be a
4 requirement in the future, they also should know
5 that funding may be provided to cover the cost of
6 a second upgrade of equipment.

7 Without sending a strong message to
8 state and local election administrators along
9 these lines, we believe that some may opt for
10 missing the HAVA deadlines to wait for
11 implementation of Version I, and we think that
12 would be a mistake.

13 Now to the technical issues. The
14 technical context of the Version I, here again
15 with an eye towards feasibility, first, just to
16 reiterate - if the proposed Version I is
17 implemented as it is drafted today, you should

18 know that compliance will or may require
19 comprehensive product development.

20 For those of us who embrace
21 continually evolving standards and who work hard
22 to meet the challenges of updated guidelines,

96

1 this is a substantial undertaking. At ES&S we
2 have a passion for this innovation so we don't
3 want to say compliance is impossible. But,
4 without question, it will take time and add
5 significant cost and complexity.

6 Take, for example, the setup and
7 validation requirements of Section 6.4, calling
8 for hardware and software verification systems
9 provided through third-party vendors which must
10 perform their function without utilizing the
11 voting system software. This will require a
12 whole new approach to voting system hardware.

13 In addition, to comply, ES&S would
14 have to sacrifice a key security feature of our
15 current voting systems product, the inability to
16 interface with any outside components.

17 We intentionally developed our
18 products without any ports or other connection
19 points, to eliminate the potential for tampering

20 via connected sources.

21 Now under Section 6.4, the only way

22 we can comply would be to incorporate the very

97

1 connection port we have excluded from our design.

2 Similarly, the voter verifiable
3 paper audit trailer, or VVPAT provision, raises
4 serious concern.

5 To be clear, ES&S applauds EAC's
6 attempt in the proposed Version I guidelines to
7 provide some guidance on this point.

8 Our position on VVPAT has always
9 been that while we have absolute confidence in
10 the reliability, accuracy and the security of our
11 voting systems, we know that many election
12 officials and the public, for that matter, want
13 the added benefit that VVPAT brings.

14 We also understand that this is an
15 important consideration for raising the public's
16 overall confidence in the voting process.

17 For vendors and election
18 administrators who have already started to
19 address the issues of VVPAT, the proposed Version
20 I is overly prescriptive and could very well
21 erode the progress many of us have already made.

22 Specifically we are concerned about

98

1 the requirement defined in Section 2.2 as it
2 relates to 6.8, which relates to maintaining
3 voter anonymity and providing accessibility for
4 the visually impaired.

5 We support both of those goals.
6 However, to fulfill the specific Version I
7 requirements, including that voter receipts must
8 be shuffled or reorganized in some way, we would
9 have to go back to the drawing board on our VVPAT
10 solution. In fact, we think most, if not all,
11 vendors would be in the same predicament, because
12 many of us - of the available systems today -
13 have used a paper roll.

14 In addition, there is an issue of
15 general inconsistencies between provisions of the
16 proposed guidelines. In considering the Version
17 I as a whole, we have found several instances
18 that we will comment on where the requirements of
19 one section may conflict with the requirements of
20 another.

21 Consider, for example, the following
22 two requirements.

1 In Section 2.2.2.2, it requires that
2 any audio-tactile interface shall allow the voter
3 to have the information provided by the system
4 repeated. But then in Section 5.4.2, it requires
5 that no key or control on a voting station shall
6 have a repeat feature enable. We will need
7 guidance on this.

8 In our more detailed written
9 responses we will provide some additional
10 examples of this same occurrence. Therefore,
11 before finalizing the Version I, some
12 clarifications and revisions in several instances
13 may be necessary.

14 Going to recommendations, taking
15 into consideration feasibility, time
16 requirements, and added complexity associated
17 with implementing Version I, we have three
18 recommendations for the EAC.

19 One, allow election officials to
20 confidently move forward with the current
21 standard; clarify through a safe harbor statement
22 that states and localities that, one, in need to

1 make purchasing decisions today to comply with
2 HAVA, can do so under today's standards and that
3 systems purchased today will not have to be
4 replaced in the future or when the next version
5 comes out.

6 My second recommendation - I would
7 like to indulge a little bit of the EAC's ability
8 for me to amend my proposal or recommendation in
9 a follow-up further recommendation - but we have
10 stated in two, that because of the time and added
11 complexity and cost of implementing Version I,
12 you may wish to consider to combine Version I
13 with upcoming Version II.

14 This would eliminate confusion in
15 the marketplace and allow all of us the time we
16 need to effectively develop and implement very
17 clear and understandable standards. Today, at
18 this moment, I know much more from this morning's
19 sessions that would require me to say I want to
20 amend this because I think I have more clarity on
21 what you mean by the 24, and then having Version
22 II follow after that 24 month period and not in

1 series, as opposed to overlapping in great
2 extent.

3 Our third recommendation is for you
4 to carefully consider the comments from those who
5 must implement and run the elections: the
6 election administrators that are out there and
7 those who design, develop, build - and the ones
8 you have heard from this morning - test, and
9 deliver this very unique specific technology.

10 So, in conclusion, we thank you
11 again for this opportunity to share our
12 perspective on Version I, its content and
13 challenges around the implementation.

14 We also hope, as you gather input
15 over the 90 days and consider the feedback, that
16 you will call on all of us to assist in any way.

17 Certainly there are aspects of the
18 areas that will require modification and others
19 that raise substantial concern. However,
20 overall, this is a step in the right direction.

21 And, again, we applaud you for it.

22 Again, we will be following up with

1 additional and more specific written feedback

2 almost weekly. In the meantime, please accept
3 these comments as a first contribution to this
4 process.

5 CHAIR HILLMAN: Thank you.

6 Mr. Adler, before you begin, I want
7 to make a clarification here for the benefit of
8 the record.

9 The proposed Voluntary Voting System
10 Guidelines that the Election Assistance
11 Commission has put forth, we do not consider this
12 a Version I. We are not thinking about this in a
13 Version I, Version II.

14 And I understand there was earlier
15 language that may have led people to believe
16 that.

17 But our responsibility was to issue
18 guidelines and the Technical Guidelines
19 Development Committee did put forth
20 recommendations that would augment and update the
21 2002 standards, as well as covering some
22 additional components.

103

1 We recognize that it was almost
2 impossible, in nine months, for the Technical
3 Guidelines Development Committee and NIST to have

4 done a thorough covering of everything that needs
5 to be addressed. And so we expect and do plan
6 that we will add to the proposed guidelines.

7 But we do not discuss it -- We
8 aren't, at this point, discussing it as a Version
9 I/Version II. We don't want to confuse anybody
10 that we are going through all this effort on a
11 Version I that might be replaced in very short
12 order by a Version II.

13 There will be one version of the
14 guidelines and they will be updated and augmented
15 as the Technical Guidelines Development Committee
16 and NIST has time to do work on, but not in any
17 way to have people think that this will be set
18 aside and totally replaced.

19 MR. GROH: And I thank you for
20 clarifying it. That is one of the major intents
21 of coming to meetings like this, to have this
22 interface.

104

1 We get clarification where there may
2 be some, as we have interpreted, a wrong
3 misinterpretation.

4 CHAIR HILLMAN: No problem. I just
5 wanted to make sure that we were all --

6 The other point that I meant to
7 address before the panel presentation began is
8 how we determined what the presentations from the
9 vendors would be today.

10 We were looking for a blend. There
11 are many vendors who make voting systems.

12 And I am just going to call on our
13 General Counsel, Juliet Thompson, to give a brief
14 explanation as to what we were seeking to
15 accomplish by the diversity and representation on
16 this panel.

17 MS. THOMPSON: Thank you, Madam
18 Chair.

19 And, as you aptly pointed out, there
20 are many voting system vendors out there and we
21 expect to hear from all of them during the
22 process of this comment period.

105

1 But for the purposes of this panel,
2 we applied several factors, one of which was the
3 types of voting systems that they manufacture:
4 to include optical scan; to include touch screen;
5 and to include full face DRE voting systems, as
6 well as components.

7 And the second set of factors would

8 be, of course, to be representative of those
9 vendors that are out there in the marketplace,
10 some large vendors, some small vendors.

11 CHAIR HILLMAN: Thank you.

12 Mr. Adler.

13 MR. ADLER: Thank you, Madam Chair,
14 Vice Chair DeGregorio, Commissioner Martinez.

15 Am I on?

16 THE CHAIR: Yes,

17 MR. ADLER: I am now.

18 THE CHAIR: Just move the mike
19 closer.

20 MR. ADLER: Mr. Wilkey, Ms.
21 Thompson.

22 Thank you for having me here today.

106

1 My name is Jim Adler and I am President of Vote
2 Here, a company I founded in 1998 with a vision
3 to create for more transparent and auditable
4 elections. We provide independent verification
5 technology for both electronic and paper ballot
6 processing, to prove the voting machines, ballot
7 processing and back-end tabulation systems are
8 performing properly.

9 In the U.S. and abroad, our

10 technology has served more than 12 million
11 voters. I currently coach the IEEE Voter
12 Verifiable Standards Committee. I have
13 testified before the U.S. House Government Reform
14 Subcommittee or TGDC, your TDGC, the National
15 Institutes of Standards and Technology and many,
16 many, many State Legislatures

17 Since you will be hearing a lot
18 about what is wrong with these standards in the
19 coming months, I thought it might be a good
20 opportunity to tell you what's right about them.

21 After being involved with the IEEE
22 voting system standards for the better part of

107

1 two years, I understand what a daunting process
2 this really is. Given the time constraints and
3 contention around some of these topics, I think
4 getting this body of work completed on time is
5 really a huge accomplishment.

6 It is comprehensive, well-organized
7 and thorough. You, the TGDC, NIST should all be
8 commended on getting to this point. It's a great
9 accomplishment.

10 To respect the time constraints, I
11 won't make any detailed comments today. But, as

12 many others have said, follow up.

13 I would like to touch on two broad
14 topics, primarily with regard to the issue of
15 independent verification, one on classifying what
16 you are calling independent dual verification
17 solutions, and the other on component
18 certification. So let me deal with those in
19 turn.

20 In the April 2005 Voluntary Voting
21 System Guideline submittal to EAC, NIST and TGDC
22 widely settled on defining independent dual

108

1 verification - and I will use the acronym IDV for
2 that - as a new class of voting system component.

3 In the original submittal to EAC,
4 TGDC defined independent verification, even set
5 requirements for all IDV systems. And then in
6 subsequent sections they defined requirements for
7 a split process IDV systems, witness IDV systems
8 and cryptographic IDV systems and VVPAT IDV
9 systems.

10 In the introduction to the VVPAT
11 requirements, the original TGDC standards say,
12 "VVPAT is a form of independent verification
13 system." This was an excellent classification.

14 It defined a variety of safety
15 equipment, if you will, for voting systems, just
16 like Federal standards define automotive safety
17 equipment - like seat belts, airbag, windshield
18 safety glass, and other safety innovations that
19 improve passenger safety.

20 Specifically, in the IDV sections,
21 in this instance the TGDC did a great job of even
22 establishing detailed requirements on IDV

109

1 alternatives.

2 This classification was consistent
3 with public comments by the EAC Commissioners,
4 previously and today, on the availability of
5 other IDV methods to accomplish the goals of
6 election, confidence and audit.

7 However, in the proposed VVSG, the
8 classification has been lost. In Section 6 the
9 VVSG now sets VVPAT requirements in a vacuum.

10 The other IDV alternatives available
11 today are put in an appendix in the back of the
12 bus, and the VVPAT standards are provided outside
13 this appendix with no context.

14 The VVSG doesn't say what the VVPAT
15 is or what it intends to accomplish. It just

16 says that the requirements are provided for
17 system certification, testing for those states
18 that have decided to include VVPAT.

19 Understandably, this is a nod to the
20 political activism that has gripped many State
21 Legislatures on this issue, but the standard is
22 needlessly silent on the context.

110

1 And there is a larger issue here.

2 As we talked about today, these
3 standards will establish guidance now and policy
4 for years to come. Several states are now
5 recognizing the need for IDV but are savvy enough
6 to perceive the unintended consequences of VVPAT.

7 Specifically, they see the erosion
8 of voter privacy through the current reel-to-reel
9 VVPAT designs, the lack of an accessible VVPAT
10 for disabled voters, the dilemma faced when VVPAT
11 ballots are mishandled and don't match the
12 election results, and even question the
13 effectiveness of VVPAT in bolstering voter
14 confidence when in early tests voters are not
15 even checking the VVPAT printout or voters want a
16 receipt they can take home, just like at the ATM.

17 My point is not that VVPAT is all

18 bad. But the harmful thing about recent activism
19 and legislation is that these issues of efficacy,
20 privacy and accessibility have not been carefully
21 considered, which means that VVPAT may very well
22 undermine the same confidence its supporters have

111

1 aimed to bolster.

2 Any election solution, especially an
3 IDV solution, should be required to demonstrate
4 real measurable effectiveness before it is
5 legislated or established as a standard that
6 stands alone without equal.

7 So I would urge you to revert back
8 to the classification that the technical experts
9 at NIST and the TGDC recommended in their
10 original submission last April. This will allow
11 for best solutions that meet these efficacy,
12 privacy and accessibility requirements needed for
13 all voters, as well as will minimize the costs
14 and administrative burden.

15 Of course the objective that is
16 often raised is that other methods of IDV are far
17 into the future and have not yet been Federally
18 qualified, certified.

19 Well, the fact is, IDV approaches

20 have been researched for the last 25 years and
21 have been put into products over the last seven.

22 The real problem is that IDV

112

1 solutions can't get independently certified,
2 which brings me to my next comment.

3 The VVSG establishes IDV standards.

4 But current NASED policy and VVSG Volume II don't
5 allow for certification of independent
6 components.

7 This policy allows for a complete
8 voting system to be certified. And I would ask
9 that you reconsider this policy as Federal
10 testing is transferred to the EAC.

11 The effect of this current
12 system-only certification policy is that
13 components like IDV components can only be
14 certified within an entire voting system, a
15 policy that leads to a classic Catch 22
16 conundrum.

17 With the current policy, voting
18 system vendors won't integrate and certify best
19 of DRE components unless customers demand them.

20 But jurisdictional customers are
21 reluctant to demand them or statutorily can't

22 demand them unless they are Federally certified.

113

1 The dynamic is especially accute in
2 several states right now that want IDV choices
3 but can't get them because the current process
4 does not allow for component level certification.

5 I think Carolyn Coggins talked about
6 the paralysis that is out there on this issue.
7 This is one of them.

8 So I would like to make a modest
9 proposal for component level Federal testing to
10 help rectify the situation and allow market entry
11 for best-of-breed specialties.

12 Component level Federal testing
13 would be in two phases. The first phase would be
14 component level certification testing, which
15 would require component vendors to deliver a
16 technical data package and a test harness. The
17 test harness would be used to test the component
18 against the component vendor's TDP and the
19 applicable EAC standard. When successful, a
20 component level certification number would be
21 given.

22 The second phase would test the

1 integrated voting system with the pre-certified
2 component. This would test for a successful
3 integration of the certified component into the
4 voting system.

5 And when successful, the voting
6 system would be given a certification number that
7 included the certified component.

8 Assemblance of this process already
9 does exist today when a vendor of a certified
10 voting system submits, say, an audio component
11 for Federal certification. That component is
12 evaluated on its own merits at the component
13 level and then as part of the entire voting
14 system at the system level.

15 The new policy would remove the
16 current barriers to innovation by allowing
17 Federal certification of components and allow
18 interested states and counties to escape their
19 Catch 22 deadlock. It provides jurisdictions
20 choice and assurance that components meet Federal
21 standards, while getting the bulk of Federal
22 testing done early.

1 As you know, jurisdictions face
2 looming immovable deadlines. I know, I guess
3 it's a requirement that every panelist must say
4 that.

5 So anything to expedite testing
6 would help.

7 So in conclusion, I would like to
8 make a comment about the use of technology in
9 elections. Frankly, there is a distinct
10 anti-technology movement that has gripped
11 election reform. Given the current polarized
12 political climate and general technology fatigue,
13 the backlash is understandable.

14 However, in my home state of
15 Washington, we all witnessed the recent
16 Governor's race that dragged on for six months.

17 An election where 90 percent plus of
18 the ballots were cast on paper, it is often said
19 by voting critics that a voting system must prove
20 to the loser that they lost.

21 Well, the paper trail, as tested in
22 Washington, did not meet that standard.

1 After watching this, it is clear
2 that election officials simply just don't have
3 the technological tools to deal with the
4 increasingly close races and heated scrutiny and
5 heightened public attention.

6 It's like we are asking them to
7 accurately weigh a flea on a bathroom scale.
8 It's just not a fair position to put them in.

9 The current VVSG IDV standards are a
10 step toward providing these tools. But
11 expediency is key.

12 In many ways Federal agencies are
13 not geared to build airplanes while they fly
14 them, but this is the unenviable position you
15 find yourselves in.

16 Delays like the 90 day comment
17 period and the 24 month effectivity date are
18 necessary and unavoidable.

19 The comments I have made today will
20 help immediately by providing guidance to
21 jurisdictions that are currently looking for more
22 effective IDV, and by providing a Federal testing

1 policy that can expediently and responsibly

2 certify them.

3 As you deliberate on the testimony
4 you hear today, it is important to keep in mind
5 that your policies will have one of two possible
6 outcomes, especially in the area of independent
7 dual verification.

8 Either IDV competition will be
9 discouraged with jurisdictions being locked into
10 VVPAT, or jurisdictions will have choice in
11 their IDV solutions, fostering a climate of
12 innovation.

13 The VVPAT movement, I am afraid, has
14 largely ignored the competing requirements of
15 privacy, accessibility and voter confidence.

16 A climate for innovative IDV
17 solutions just won't be able to get away with
18 ignoring these competing requirements because the
19 competitive market pressures just won't allow it.

20 So, again, I thank you for the
21 opportunity to speak to you today. I certainly
22 will be following up with more detailed comments

118

1 and, of course, happy to answer any questions.

2 CHAIR HILLMAN: Thank you.

3 Mr. Charles.

4 MR. CHARLES: Good afternoon, Chair
5 and Commissioners.

6 Sequoia Voting Systems has a 100
7 year history of providing election equipment,
8 supplies and support for state and local
9 officials.

10 We print ballots, manufacture
11 optical ballot readers and provide two different
12 types of direct recording electronic voting
13 systems.

14 During the 2004 Presidential
15 election, Sequoia was the largest provider of
16 electronic voting machines in the nation. And we
17 were the first national company to provide a
18 voter verifiable paper record on electronic
19 voting equipment in a major election.

20 We appreciate the opportunity to
21 participate in this hearing today and commend the
22 EAC, the TGDC and NIST on moving quickly under

119

1 under tight timetables to assemble the latest
2 draft of the amended Voluntary Voting System
3 Guidelines.

4 My comments today will focus on the
5 following key areas: first - the content of the

6 guidelines generally; second - the timeline
7 required for compliance with the guidelines and
8 the expectations of the marketplace; the
9 effective date of the regulations; the Federal
10 testing and certification process; the state
11 testing and certification process; and, finally,
12 the need to evaluate and revise the guidelines
13 over time.

14 While we will reserve detailed
15 comment on the specific components of the
16 guidelines for our written submission, we believe
17 that by and large the draft addresses the types
18 of issues that needed refinement from the 2002
19 standards, particularly in the development of the
20 optional requirements for voter verifiable paper
21 records in the inclusion of human factors and
22 security criteria.

120

1 We will, however, provide the
2 Commission with a lengthy set of written comments
3 that address areas that we believe warrant
4 correction, clarification or revisions.

5 Our primary concern regarding this
6 draft of the guidelines is the inclusion of
7 requirements that are not necessarily testable by

8 the voting system testing labs because they are
9 either ambiguously worded or because they rely on
10 the manner in which the system is implemented, by
11 local administrators, rather than a design of a
12 system itself.

13 These standards and the systems that
14 result from them are but one piece of the
15 successful conduct of elections. The policies,
16 procedures and people that conduct elections are
17 of equal importance. But to the extent possible,
18 that document should address technology
19 requirements and leave the proper implementation
20 of the system to state and local statutes,
21 procedures and best practices.

22 Our written remarks will attempt to

121

1 point out those areas which we believe are better
2 suited for best practices guides and local
3 procedure than inclusion in these technology
4 guidelines.

5 Through no fault of the Commission,
6 many observers and officials have operated under
7 the false assumption that the adoption of these
8 voluntary guidelines at the national level will
9 somehow be required before they could comply with

10 the statutory mandates of HAVA.

11 With the 2006 deadline for
12 compliance rapidly approaching, it is important
13 now more than ever for the Commission to help
14 election officials realize that these standards
15 will not be in place and operational prior to the
16 date that equipment purchase decisions will have
17 to be made for compliance with HAVA.

18 Once the guidelines are finalized
19 and ready to be approved later this year,
20 technology providers will develop and implement
21 any required revisions to hardware and software,
22 the testing authorities will need to be certified

122

1 to test against the new criteria, and the EAC
2 will need to finalize its process for managing
3 certification requests and interpreting the
4 guidelines as testing gets under way.

5 Once Federal and state testing is
6 completed and the products are available, local
7 officials will need to acquire the updated
8 systems, companies will need to manufacture and
9 deliver equipment, software upgrades will need to
10 be deployed, poll worker training manuals and
11 courses will need to be modified and voters will

12 need to be educated about the changes.

13 There simply isn't enough time for
14 that all to happen prior to the 2006 primary
15 elections in many cases.

16 The last time standards were
17 modified, it was a full three years before
18 equipment tested to the new standards was
19 available in the marketplace. While many of the
20 new features and requirements in this draft are
21 already incorporated into many systems, testing
22 against these standards will not be possible for

123

1 some time.

2 Fortunately for election
3 administrators, time required to meet these new
4 standards should not be confused as an impediment
5 to state or county compliance with HAVA mandates
6 for 2006. There are a large number of voting
7 systems available in the market today, both with
8 and without voter verifiable paper records, that
9 have been tested under both the 1990 on 2002
10 standards and will allow election officials to
11 meet the demands of Section 301 of HAVA.

12 One of the most important decisions
13 facing the Commission will be selecting the

14 appropriate timelines and details associated with
15 the implementing of the new guidelines.

16 The draft discusses a 24 month
17 period after adoption before the guidelines will
18 be in full effect.

19 But it is unclear if that will
20 result in the decertification of all non-
21 compliant systems that have been successfully
22 tested to earlier standards, or if the

124

1 implementation date will simply prevent future
2 certification of non-compliant systems.

3 The ramifications of the way the
4 effective date is implemented warrant
5 considerable review and discussion with state and
6 local officials.

7 Continued ongoing changes to
8 standards may be important and useful, but they
9 will also require continued funding to modernize
10 equipment at the local level. It's funding that
11 isn't currently contemplated at the Federal level
12 and I don't think most states and counties have
13 anticipated funding on an ongoing basis.

14 The EAC should consider the
15 reasonable likelihood of Federal funding before

16 determining the manner in which this and future
17 standards will need to be implemented.

18 Voting systems are comprised of a
19 series of components that can be tested against
20 existing standards. Components can include the
21 voting machines, the software, ballot activators,
22 et cetera.

125

1 When qualified components are
2 combined to create a system, the entire
3 end-to-end system is tested before a Federal
4 qualification number is assigned. When any
5 aspect of a component is revised, that component
6 in the entire system must be tested together.

7 If components have been tested to
8 different sets of standards, the complete system
9 is only qualified to a particular version of
10 standards when every component of that system has
11 been tested to that same level.

12 For example, the complete system is
13 only certified to the 2002 standards after all
14 components are qualified to the 2002 standards.
15 If one out of 10 components is qualified to the
16 1990 standards, then that standard still carries
17 the 1990 qualification number.

18 If in setting the effective date of
19 these guidelines the EAC no longer allows
20 modifications to the older systems in use today
21 without bringing out pieces of hardware and
22 software up to new standards, local officials who

126

1 have a 1990 or 2002 system could be significantly
2 affected when local/state law changes occur.

3 If a county needs to modify one
4 component of their system to comply with the new
5 state law, it could be faced with a possible
6 replacement of an entire voting system that would
7 otherwise be perfectly functional and compliant
8 with prior standards, state needs and HAVA
9 mandates.

10 However, if provisions to individual
11 components can be tested to the latest standards
12 while the complete system retains a certification
13 number reflecting the standards against which it
14 was originally qualified, there shouldn't be any
15 significant fiscal burden imposed on local
16 officials. State law changes will be able to be
17 accommodated more readily.

18 Some states accept Federal
19 guidelines for certification; other states

20 conduct their own testing process; still others
21 combine Federal testing with state reviews. The
22 multiple layers of often duplicative review are

127

1 costly, time consuming and delay the latest
2 innovations from getting into the market.

3 In developing test policies, we
4 encourage the EAC to invite states to provide
5 Federal testing authorities with a checklist of
6 local requirements so that duplicative
7 examinations can be streamlined and state
8 resources can be saved through concurrent state
9 and Federal testing.

10 Once the guidelines and testing
11 procedures are in place, the EAC will need to
12 evaluate them over time to identify and correct
13 potential weaknesses. We suggest this review
14 should not begin until after the newly qualified
15 systems are deployed and in use for at least two
16 elections.

17 One of the greatest mistakes this
18 Commission could make would be to revise
19 standards too frequently without providing ample
20 time for a particular version of the standards to
21 be put in place and studied.

22 Many election officials will tell

128

1 you that it takes at least two elections to work
2 through all of the logistical and procedural
3 issues that come with the transition to a new
4 voting system.

5 The guidelines before you today are
6 the result of work that started before even one
7 major election was subjected under the 2002
8 standards.

9 We recognize that with the passage
10 of HAVA, Congress charged you with the duty to
11 provide for the certification and decertification
12 of voting systems and that state policy decisions
13 created a need for VVPAT guidance.

14 But we strongly suggest that once
15 these standards are adopted, they are given time
16 to be tested in the field before a new batch of
17 requirements are developed.

18 The rapidly changing standards
19 process has required companies in our industry to
20 spend an inordinate amount of time revising
21 technology to meet changing guidelines, when that
22 time could have well been spent adding the

1 features and benefits, like VVPAT, that have been
2 demanded by the market in many places.

3 Sequoia Voting Systems believes that
4 when completed, the voluntary systems guidelines
5 will continue to ensure that voting technology is
6 reliable, secure and accurate.

7 To assist the EAC to make the most
8 of this project, we respectfully offer the
9 following recommendations:

10 First, as you are doing today and as
11 you have done throughout the policy decisions
12 this Board has made, solicit comprehensive verbal
13 and written comments from all stakeholders;

14 Second, provide a detailed public
15 timeline to help local officials understand how
16 we get from the draft regulation phase of this
17 process to the eventual use of VVSG compliant
18 equipment at the polls;

19 Third, rather than waiting 24 months
20 to implement the proposal, allow the regulations
21 to take effect immediately upon adoption or as
22 soon as testing authorities are able to review

1 the systems, provided, however, that individual
2 components in the systems may still be qualified
3 against prior versions of standards, as long as
4 they are appropriately noted as such on testing
5 reports and on published lists of certified
6 equipment;

7 Fourth, facilitate concurrent
8 Federal and state testing through the development
9 of a checklist of state-specific criteria which
10 can be tested by the federally approved
11 laboratories, as necessary, to help streamline
12 the state certification process;

13 Fifth, allow equipment tested under
14 these regulations to be deployed and monitored
15 for at least two elections before initiating a
16 new set of Federal criteria.

17 We appreciate the invitation to
18 provide our thoughts to this hearing and welcome
19 the opportunity to continue to work with the
20 Commission on this project and we plan to submit
21 our detailed written comments on a line-by-line
22 basis within the next couple of weeks.

1 Thank you.

2 CHAIR HILLMAN: Thank you very much.

3 Mr. Vadura, we are at somewhat of a
4 little handicap here because we don't have copies
5 of your --

6 MR. VADURA: I understand.

7 CHAIR HILLMAN: So if you would just
8 be so kind in making your presentation to bear
9 that in mind.

10 I mean, like he speaks fast but I
11 can read fast, so I was able to keep up with him.
12 So just bear with us as we take notes from your
13 presentation.

14 MR. VADURA: That's fine. Can
15 everybody hear me?

16 Flight schedules last night
17 prevented me from printing them, so I will
18 provide copies to the staff.

19 Good afternoon, Madam Chair and
20 Commissioners. My name is Dennis Vadura. I am
21 co-founder and chairman of AccuPoll and AccuPoll
22 Holdings. We are the only public company in the

1 space that is dedicated solely to voting.

2 And I would like to thank the EAC
3 for inviting AccuPoll and myself to participate
4 in this panel.

5 AccuPoll has been promoting a voter
6 solution that includes a voter verified paper
7 audit trail, or what's now called VVPAT, since
8 AccuPoll's inception.

9 Our view is that VVPAT is to
10 electronic voting what stairs are to tall
11 buildings. It is the essential safety net that
12 allows for emergency action in the event of a
13 disaster.

14 The key to a legitimate democratic
15 government is a trusted election process.
16 America works hard to promote democratic ideals
17 all over the world and with HAVA we are making
18 sure that we provide trusted and private
19 elections for all of our citizens.

20 AccuPoll is all about promoting
21 trust, accessibility and practicality in the
22 voting process.

1 In this regard we welcome the
2 updated standards for voting systems and would
3 like to offer the following comments with respect

4 to these new proposed standards.

5 We believe that it is possible to
6 create a VVPAT that is both accessible and
7 private. The disability community has fought
8 hard for HAVA and have gained the right under
9 HAVA to vote unassisted and in private. We see
10 no reason that a voter verified paper trail needs
11 to be engineered such that it removes any of
12 these rights. We welcome the inclusion of these
13 HAVA requirements in the revised standards.

14 AccuPoll has recently made changes
15 to its voting system such that we can demonstrate
16 today a practical VVPAT solution that is both
17 accessible, private and, based on our current
18 understanding of the standards, essentially
19 compliant with the proposed standards.

20 We will be demonstrating our
21 solution at the upcoming NASS conference and
22 encourage all that are interested to come and

134

1 view our approach.

2 The key features of our approach is
3 audio feedback of the VVPAT for every voter,
4 whether they are sighted or not, provisions for
5 privacy of the voting process and of the VVPAT

6 for the voters that require additional assistance
7 as they complete the voting process, and still
8 maintain their privacy.

9 AccuPoll essentially agrees with the
10 disability community that optical scan ballot
11 marking systems are not accessible voting systems
12 and are, therefore, not compliant with HAVA
13 accessibility requirements.

14 Optical scan systems on their own do
15 nothing to help a disabled voter vote in private
16 and provide no easy and accessible confirmation
17 that a voter's intent was correctly read or
18 recorded.

19 Ballot marking systems that
20 complete an optical scan ballot for a disabled
21 voter do nothing to assist a voter that is not
22 able to handle a paper ballot on their own and,

135

1 therefore, may create a privacy issue for a
2 disabled voter.

3 AccuPoll does, however, have issues
4 with certain aspects of the proposed voting
5 system standards. Given the recent update, like
6 our colleagues here, we will be providing a
7 detailed set of comments regarding specific

8 issues that we see with the current draft of the
9 standards.

10 Most notably, we see some possible
11 ambiguities and a need for additional clarity
12 with respect to certain certification issues and
13 limits as were discussed by Carolyn earlier.

14 In keeping with the practice of the
15 Federal Voting System Standards that set
16 requirements and not implementation choices, the
17 current standards for voting systems must set
18 requirements rather than mandate engineering
19 solutions. In this way the standards would allow
20 the marketplace to develop the most cost
21 effective and practical solution while ensuring
22 compliance with the standards and with HAVA.

136

1 We are also concerned with too many
2 changes or evolution cycles and amendments to the
3 standards.

4 While it may take the ITA's a short
5 period of time to ramp up and test against new
6 standards, it takes at least six months for
7 vendors to update and certify their systems to be
8 compliant, after which there are renewed state
9 certification requirements before the revised

10 changes can be made available to customers.

11 The state certification process may
12 take in excess of an additional six months.

13 We, therefore, suggest that the
14 revised standards be finalized, issued and not
15 altered for at least two years. This excludes
16 interpretation bulletins that would clarify an
17 interpretation of the requirement, rather than
18 modify or add new requirements.

19 We owe it to our customers and to
20 the ITA's to maintain stability in the
21 requirements so that products can be engineered
22 and marketed on reasonable timelines and costs in

137

1 what really is anything but a traditional
2 marketplace.

3 In our view, it is better to wait
4 six months and issue a document that is well
5 thought out, rather than issue early and amend
6 later. Thank you.

7 CHAIR HILLMAN: Thank you very much.

8 Commissioners, we are running a
9 little bit late on this panel. So what I propose
10 we do is to make up our time into our break
11 period.

12 We will still plan to have the third
13 panel start its presentation at 3 o'clock and we
14 will need a few minutes to just set the table up
15 for the third panel and that would give us the
16 ten minutes per Commissioner questioning, that
17 will allow you time to engage with the panelists.

18 So, if that works, Commissioner
19 Martinez.

20 COMMISSIONER MARTINEZ: Thank you,
21 Madam Chair.

22 My thanks to all of you for making

138

1 the time and the effort to be here and to testify
2 and certainly I look forward to receiving more
3 comprehensive, as I know you all will provide,
4 written testimony during the 90 day comment
5 period on the proposed VVSG.

6 John, let me start, if I could, from
7 your perspective. I think one of the things that
8 you have identified is the difficulty in the
9 language in the current draft of the VVSG, which
10 would require randomization of the VVPAT paper,
11 as opposed to, I guess, the current technology of
12 reel-to-reel.

13 Just, if you can talk a little bit

14 on that from your perspective, why that is
15 such a significant change from the vendors'
16 perspective.

17 MR. GROH: Well, again, I will speak
18 for to us and not try and speak for others. But,
19 you know, all of us see each other's technology.

20 And as we approach this and try to
21 target getting a solution out there as we
22 anticipated this coming, we all looked at what

139

1 would be a best practice from the standpoint of
2 making it easy for the poll worker to use, very
3 easy for the voter to interface with and look at
4 and understand that there were limitations with
5 how to interface with our technology.

6 One of the major concerns we had is
7 how do you handle this at a precinct when you run
8 out of paper or have a paper jam. So I think all
9 of us chose to use a reel type of voting system
10 where paper is going to roll up in a rolling
11 process.

12 If we are required to shuffle it, we
13 will have to basically scrap that and start with
14 something else that will be much different than
15 what we initially perceived and that will take --

16 that takes some time and a lot of expense to it.

17 COMMISSIONER MARTINEZ: Is the
18 difficulty that you perceive one of technological
19 feasibility or is it more that you designed it in
20 a way that you thought would be more poll worker
21 friendly, if you will?

22 MR. GROH: As Mr. Adler has talked

140

1 about, there are other methodologies of doing
2 this. So this is one. And understanding we do
3 not adhere to this as the only prescriptive way
4 to do it, but if you are going to offer it as one
5 of the solutions, you also must recognize that
6 poll workers and election administrators need to
7 manage this and handle it.

8 And, as we know, loose pieces of
9 paper have a tendency to get lost.

10 Paper rolls then that are going to
11 have to be cut and also be kept for cancellation
12 on ballots if somebody wants to cancel that
13 ballot or that record on there, when you start
14 having them now cut and commingle, we just saw
15 the inevitable problems with those.

16 COMMISSIONER MARTINEZ: I appreciate
17 that, John.

18 Anybody else on the panel would like
19 to comment?

20 Mr. Adler.

21 MR. ADLER: I think that every
22 election system has to meet simultaneous

141

1 requirements of privacy and accessibility and
2 effectiveness and election administration.

3 And if you relax any of those
4 requirements, you run into problems.

5 I mean, one of the objectives we had
6 was to simultaneously solve all of these issues.

7 And if you start to relax them, you start to
8 either infringe on people's civil rights or their
9 expectation of privacy or you start to create a
10 system that can't be administered.

11 And, hence the plea for a climate of
12 innovation.

13 COMMISSIONER MARTINEZ: Mr. Charles.

14 MR. CHARLES: We deployed a system
15 in Nevada that had reel-to-reel design. And what
16 we found was that it was much easier for poll
17 workers to administer that approach and more
18 prone to successful use throughout the day.

19 I think that the language in the

20 existing draft is permissive. It may permit you
21 to or -- It doesn't state that you have to cut
22 those ballots and shuffle them.

142

1 But I think if you added language to
2 it that permitted administrative procedures to
3 ensure the protection of the anonymity of those
4 ballots, that would go a long way to resolving
5 that concern.

6 Because what we see is a
7 self-randomization of those records. When the
8 voter comes into the polls, the voter can use any
9 machine in the polling place.

10 When those records come back, they
11 are sealed and stored and not accessible to the
12 people who may have seen how someone voted.

13 So if you can incorporate
14 administrative procedures into that or at least
15 allow the use of administrative procedures to
16 help assure that randomization and privacy, I
17 think you accomplish two goals.

18 One, you allow the most functional
19 and reliable technology to be used. But you also
20 solve the concerns about voter privacy.

21 COMMISSIONER MARTINEZ: Mr. Vadura,

22 any comment?

143

1 MR. VADURA: Our current solution
2 doesn't use a reel-to-reel, but still maintains
3 the voter privacy issues.

4 And I think the particular
5 requirement requiring the shuffling of the pieces
6 of paper is both probably unnecessary and
7 overburdensome and also probably too costly.
8 There are cheaper solutions to get that done.

9 So, administratively, in the polling
10 place, I believe in another section of the
11 standards it says that you can't, polling
12 officials can't have access to that paper trail
13 during the election day.

14 But if you have a paper jam, you
15 have to have a practical way to clear that paper
16 jam in that kind of scenario. So I think there
17 are some issues with the standards with respect
18 to that particular requirement.

19 MR. GROH: Commissioner Martinez,
20 this morning -- I want to answer a question that
21 you asked this morning and make sure all of us
22 would respond to it.

1 You had asked in the responses, will
2 you make recommendations. From our perspective,
3 as a developer, we will make recommendations in
4 ours for language. So we will try and give you
5 some words or language around that that will help
6 you get your arms around it.

7 COMMISSIONER MARTINEZ: Thank you.

8 The next question, I want to go back
9 to something that I was talking about this
10 morning with the testing labs. And I don't know
11 if everybody, if all four of you were in the
12 audience. I think Jim and John, I think you were
13 both here, so you all heard the exchange.

14 The topic that I brought up was the
15 issue of a Version II, which our Chair talked
16 about a little earlier.

17 And I just want to get - because
18 actually the response from the system, from the
19 testing labs was - it really doesn't impact us
20 greatly. But they thought certainly the vendor
21 perspective and perhaps even the state and local
22 election administrators, et cetera, that it could

1 have a greater impact.

2 Just a quick comment or two about
3 the issue of -- Because I know I am having to
4 contemplate what happens next.

5 Already we are thinking about, all
6 right, so if we go through the next 90 days and
7 we end up with the final product that we adopt as
8 the next iteration or the latest voting system
9 guidelines, then what happens?

10 Obviously, the Help America Vote Act
11 creates this umbrella organization - the
12 Technical Guidelines Development Committee -
13 which I think has brought tremendous expertise to
14 the table.

15 The question becomes how do we
16 utilize that, as well as our partnership with
17 NIST? And what happens next? Do we begin
18 working right away on a full blown version or
19 full blown revision, if you will, of what we have
20 just adopted in final form? Or do we --

21 That's why I was trying to get
22 myself educated to the current process, and that

1 is, that when we find deficiencies in the current
2 product, that we address them to an amendment
3 process, for example. And is that perhaps easier
4 to deal with from every perspective - vendor,
5 election administrator, et cetera?

6 Any comments?

7 Mr. Charles, you have heard the
8 exchange. Any comments about that whole topic?

9 MR. CHARLES: I think it's important
10 to distinguish between the ease of the testing
11 laboratories in testing the equipment and the
12 difficulty it takes for us to make the
13 modifications and submit them to the test.

14 So there is a much lengthier time
15 for to us to do the work we need to do before we
16 get it to them.

17 I think the first step ought to be,
18 develop a way to judge any gaps in these
19 standards by observing the elections after these
20 standards are adopted in the field.

21 I think develop a criteria for
22 reviewing what happens in elections, determine if

1 there are pieces of these regulations that are

2 overly burdensome or areas that are missing and
3 develop that framework so you can study.

4 And then once you have studied them
5 in practice in an election, then you can apply
6 that to the next round.

7 But I think revising them before we
8 see them in the field is working more on theory
9 than on practical application. And that may not
10 be the best use of the time.

11 COMMISSIONER MARTINEZ: Mr. Groh,
12 any comment on that?

13 MR. GROH: Well, the competitive
14 nature of this market means that many of us are
15 already working on these.

16 But, again - and somebody used the
17 analogy of, we are trying to build a plane while
18 it's running down a runway.

19 And for us, as a vendor community,
20 there is one component I want to remind
21 everybody. We are going to run, from our
22 company's perspective, about 5000 elections

148

1 between now and next November. And that also
2 keeps us very busy.

3 So running these parallel paths, I

4 don't have the luxury of stopping, working on the
5 elections, fixing small things that are changes
6 in election rules.

7 So we are aggressively pursuing
8 them, but it will take us time.

9 I agree with Ms. Coggins's comment
10 this morning, that the vendors that have gone
11 through this numerous times are at a great
12 advantage because we understand it.

13 But I can tell you the difficulty
14 that we have of submitting something that we feel
15 fits and meets what the requirements are and then
16 when it is tested there are things that are found
17 that we hadn't thought of. And that's part of
18 the process that you go through to flush those
19 out.

20 But that's what takes the 18 months,
21 the 16 months to do, it's the back and forth.
22 And we can't just stop and say let's hold

149

1 elections for four years, get all this done, and
2 get a final product out there.

3 We are at the same time trying to
4 supply the election sites.

5 COMMISSIONER MARTINEZ: Mr. Adler,

6 Mr. Vadura, any comments?.

7 MR. ADLER: I think there is two
8 buckets here. There is quite a bit of election
9 technology that is well understood and is going
10 to change in a much less frequent rate than say
11 the side of business that, where you are focused,
12 which is on voter verified paper audit trails and
13 independent verification systems, where things
14 are theoretical right now, quite frankly.

15 And these devices are just starting
16 to move into the market and having a mechanism to
17 be able to adjust, where in many respects the
18 states are now laboratories in this field, in
19 this area. And being able to have guidance and
20 being able to draw on NIST experts and your own
21 experience to help states navigate that and have
22 a real mechanism to help the certification

150

1 process would be very valuable.

2 COMMISSIONER MARTINEZ: Mr. Vadura,
3 any comment?

4 MR. VADURA: Yes. I will speak for
5 us. We just completed our 2002 certification on
6 our complete system with, including a VVPAT. And
7 we got through the Federal certification process,

8 that took some amount of time.

9 We then have to now go through state
10 certifications in various other states, which is
11 fine; that's the way the business works.

12 But the issue is if you make too
13 many changes too frequently, we are in a constant
14 state of certification somewhere at that point.

15 And I don't think that benefits anybody.

16 It doesn't benefit the customers; it
17 doesn't benefit the vendors.

18 COMMISSIONER MARTINEZ: My final
19 question, then, again going back to something I
20 brought up this morning, and that is - maybe it
21 will be more in the form of a comment.

22 If somebody wants to jump in, you

151

1 can do so very quickly.

2 But the whole notion, there is
3 clearly a gap here. I just want to make sure
4 that you all don't disagree with the exchange
5 that we had this morning that I had with the test
6 labs, and that is, the gap is that the current
7 voting system standards that we operate under -
8 the 2002 VSS - were developed before HAVA was
9 even close to being in its final form. So we all

10 agree with that.

11 To get a system through the testing
12 process and to say we are certified to the 2002
13 VSS does not necessarily mean that you are HAVA
14 compliant, because the 2002 VSS does not test to
15 the language of Section 301 in HAVA.

16 Now I understand that many vendors
17 will take a look at, obviously, what is in
18 Section 301 and build a system to be, from their
19 perspective, compliant with HAVA. But, in fact,
20 there are no voting system standards currently
21 that test to the language of Section 301,
22 specifically to the language of Section 301(a)(3)

152

1 dealing with accessibility.

2 Any comment about that? And I think
3 my time is out, so any quick comment about that.

4 MR. CHARLES: I think, very quickly,
5 there are systems that meet the plain language of
6 HAVA without being tested as a standard. You can
7 look at those and determine that they are
8 accessible, they do those things, that you can
9 check and change your ballot, all those pieces,
10 under the 1990 standards as well as the 2002.

11 But, you are right, there is not a

12 HAVA certification of a system.

13 MR. GROH: I would concur with that.

14 COMMISSIONER MARTINEZ: Thank you
15 all very, very much.

16 Thank you, Madam Chair.

17 CHAIR HILLMAN: Thank you.

18 Mr. Vice Chairman.

19 VICE CHAIR DeGREGORIO: Thank you,
20 Madam Chair.

21 Actually, to follow up on what
22 Commissioner Martinez just brought up, and Mr.

153

1 Groh, you specifically, in one of your
2 recommendations, your first one here, you talked
3 about the EAC should clarify through a safe
4 harbor statement that states and localities that
5 want and need to make purchase decisions today to
6 comply with HAVA can do so under today's
7 standards and that systems purchased today will
8 not have to be replaced in the future.

9 Are you suggesting, through some
10 kind of statement that we would issue, some kind
11 of safe harbor statement, that these systems
12 would not have to be compliant with 301(a)?

13 MR. GROH: No, not at all.

14 But, again, we are in that gray area
15 which Commissioner Martinez just pointed out: we
16 are not testing to that.

17 But I think a common sense
18 approach - and there has been a DOJ opinion that
19 goes back to, I think, 2003, on DRE with the
20 VVPAT, of providing and meeting the level of
21 compliance that 301 requires. And I think that
22 that is do-able, but it hasn't been tested to it.

154

1 VICE CHAIR DeGREGORIO: And I
2 recognize there is no guidelines for this because
3 it is new to HAVA.

4 But I don't see 301(a)(3) as a gray
5 area. It is in the statute and states have to
6 comply with this.

7 MR. GROH: And the gray area to me
8 is it hasn't been tested under the 2002. But it
9 doesn't mean that some of the systems don't have
10 the elements in it that if there were a test, it
11 would pass it.

12 VICE CHAIR DeGREGORIO: Mr. Adler,
13 could you just tell us, your IDV system, your
14 independent dual verification system, how does
15 that work?

16 MR. ADLER: It's a unit that is
17 connected to an electronic voting system and it
18 gives, when the voter votes, the voter goes
19 through their confirmation process and then once
20 they confirm their vote, that vote goes into the
21 unit, and as the VVSG talks to, maintains a
22 separate copy of the vote.

155

1 The voter then has an opportunity to
2 get a receipt, to probe that ballot to make sure
3 that it did, in fact, reflect their intent. And
4 then they could actually, if the jurisdiction so
5 desires, give them an opportunity to use that
6 receipt to make sure the vote is actually in the
7 count.

8 So the model is very similar to an
9 ATM transaction. You get a receipt. You take
10 out your \$20; you make sure the receipt matches
11 the \$20. And then you take that receipt and
12 clear it against your statement at the end of the
13 month.

14 The statement at the end of the
15 month in the election context is the transcript
16 that the results are certified against.

17 So it actually provides the ability

18 for the voter to do that.

19 There is also the ability for the
20 election officials to gather these receipts and
21 verify that, in fact, the confidence in the
22 election results are there.

156

1 And this really goes back to what we
2 discussed at the NIST symposium back in December
3 2003, I believe, where, talking about trust and
4 confidence in election systems, where you can
5 actually prove that the voting system - either on
6 the back end - tabulation data base - or the
7 voting machine itself is not making mistakes.

8 You can prove it. You don't need to
9 assert it; you can actually prove it.

10 VICE CHAIR DeGREGORIO: Is your
11 system a standalone system or meant to be used
12 with another system?

13 MR. ADLER: It's meant to be used
14 with an electronic voting system, a minimal level
15 of interaction.

16 VICE CHAIR DeGREGORIO: Just wanted
17 to make sure I understood how it worked. Because
18 you make great reference to it in your comments
19 here regarding the guidelines that the TGDC came

20 up with.

21 And I want to make sure I understand

22 exactly how you envision this working.

157

1 MR. ADLER: The appendix, talking
2 about end-to-end cryptographic verification,
3 actually has a comprehensive set of detailed
4 requirements that goes through how the system
5 like this one works.

6 VICE CHAIR DeGREGORIO: Mr. Charles,
7 you, in your comments, talk about recommending to
8 us that instead of waiting 24 months to implement
9 this, that we should do it immediately upon
10 adoption or as soon as testing authorities are
11 able to review the system. But you still want
12 individual components to be qualified under the
13 2002 standards.

14 Are you suggesting that instead of
15 testing a whole system, that a system, part of
16 the system was qualified under 2002 and tested by
17 and ITA to be qualified, if something was added
18 to it, just that component should be tested
19 against these guidelines and that's something
20 that could be done right away instead of waiting
21 the 24 months?

22 MR. CHARLES: It would be faster and

158

1 less expensive, especially if it relates to older
2 systems where a county or state may have a 1990
3 model system, a 1990 standard system, and they
4 want to add a printer to it.

5 Some of that hardware may not be
6 economically upgradable to the 2005 or 2002
7 standards. But you could add a printer to it and
8 it's functioning for some time and be able to
9 test.

10 Right now you can't test a component
11 and add it to a 1990 system to help a state meet
12 state law without putting the entire system up to
13 2002.

14 That places a pretty significant
15 burden on states or counties that may have a
16 statewide 1990 system and cannot afford to
17 implement the hardware at the necessary level.

18 It's really not just for this
19 version but, in going forward, I don't think that
20 there is a reason, that the different versions of
21 standards cannot co-exist, as long as when you
22 are testing things, you are trying to test them

1 to bring them up and you qualify - and the
2 certification numbers or components of systems -
3 what level that system has passed so that
4 purchasers of equipment will know what level.

5 But that way, if possible, it would
6 be nice to help states avoid replacing entire
7 systems of hardware because the standards may
8 change in the future.

9 VICE CHAIR DeGREGORIO: But when you
10 add new components like that, even if it's just a
11 printer, sometimes doesn't that affect the whole
12 system or could affect the whole system?

13 Sometimes you add a new printer and
14 it's the wrong driver because the driver is ten
15 years old with the old system. And you are
16 getting in there and you are changing the driver
17 on the software on a system that has been
18 certified.

19 MR. CHARLES: But you still test
20 that system end-to-end. So you would confirm
21 that that 2002 standard printer matches up with
22 the 1990 equipment and you could do an end-to-end

1 test from software to election setup to election
2 operations to printer, you can confirm that that
3 works properly within that system.

4 And that's how we moved from the
5 1990 to the 2000 standards, each piece or each
6 component would get upgraded, but they would be
7 tested as a complete system. So as long as you
8 do that complete system test, you would be able
9 to ensure the reliability and durability of that
10 component.

11 VICE CHAIR DeGREGORIO: I know that
12 the three of you provided us with written
13 testimony - and Mr. Vadura you are going to
14 provide us with yours - and I appreciate your
15 testimony.

16 I have been in this business a long
17 time and know many of you for many years because
18 I was a Director of Elections in St. Louis County
19 and have been coming to IAKVIAC (ph) meetings
20 since 1986 and going to the vendors' show and
21 seeing all the new and innovative equipment and
22 meeting new people in the last few years through

1 my work that I did with IFIS (ph) internationally
2 and then in this job.

3 And I have to say, I am amazed every
4 year - and especially in the last two years - to
5 see the new products on display and how you are
6 trying to respond to the marketplace.

7 And, you know, the fact of the
8 matter is that from 2000 to 2004, 25% of the
9 country saw new equipment.

10 From 2004 to 2006 we have this
11 challenge that 30% of the country, though, is
12 using lever machines and punch cards,
13 particularly, are going to be changing over into
14 new systems, so it brings new challenge. These
15 guidelines bring a challenge to you.

16 But the Federal Government, for the
17 first time, is providingly \$3 billion to get part
18 of this, part of the equipment part of it done.

19 Are you all up to the challenge and
20 your colleagues - because you work with your
21 colleagues I know. You are friendly - you are
22 competitors but you are friendly competitors, I

1 always felt so.

2 Are you up to this challenge, do you
3 think? Is there enough vendors in the
4 marketplace to meet this demand and to serve not
5 only the needs of election officials - but, let's
6 face it - we are serving the needs of the public
7 out there, and a skeptical public - there is a
8 chunk of them.

9 And the survey data, Commissioner
10 Martinez talked about it this morning, of about
11 one-quarter of the voters that don't quite trust
12 the systems. And there is that skepticism out
13 there.

14 Are you all meeting that challenge
15 and is there anything that in these guidelines
16 that we can add, in addition to what you said
17 here, that might be helpful to you in helping you
18 to meet the challenge?

19 We will start here with Dennis and
20 go this way (indicating).

21 MR. VADURA: I think we are all
22 working really hard to meet those challenges.

1 Having a staple set of standards
2 helps to meet those challenges because you can
3 predict what needs to be done to get it certified
4 in time.

5 There is an effective barrier
6 to entry for new vendors coming into this
7 marketplace, as of today, which is certification.

8 I don't believe anybody can come
9 into this marketplace starting today and get up
10 to speed to deliver anything by 2006. So I think
11 everybody else here would agree with that.

12 So, is there enough vendors? We
13 will find out. I hope so.

14 MR. CHARLES: I think there is. I
15 think that we are not going to sleep much in the
16 next 24 months. I think we are all going to -
17 every county election official, every state
18 official and every company - will be pretty
19 heavily taxed on this. But we have been
20 preparing for it for some time, not just on the
21 manufacturing side, but making sure that there
22 are enough people trained to support the local

1 elections.

2 My biggest concern is for small

3 rural jurisdictions that really haven't invested
4 a lot of time and may not command the market size
5 to get the level of support that they may need.
6 I hope that every election official out there
7 realizes that time is of the essence. The sooner
8 they can make decisions and start, the better
9 they will be and the better that we as an
10 industry will be able to support them and adjust
11 resources accordingly so that they get the
12 support they need.

13 MR. ADLER: I think there is a level
14 of passion for elections on no matter what side
15 of this table you are on.

16 And that translates over to a level
17 of engagement with the public and putting in the
18 sleepless nights, not because you have to, it's
19 in your blood. You just want to and are driven
20 to deliver and make sure every vote counts.

21 And engage the skeptics, quite
22 frankly. I know that we have been very open to

165

1 doing that, during this more difficult period.

2 So I think the process is
3 invigorating. I think it stresses all of us out,
4 we all know that. But it's also, we are doing

5 good work here.

6 And this is not a -- This is a
7 contentious process. I think that's not all a
8 bad thing. But we just have to be honest,
9 respectful and engaged.

10 The work load over the next 24
11 months is going to be horrendous - I will tell
12 you that - no matter where you are.

13 But I think that's not surprising.
14 I am certain it's not a surprise to you, Paul, or
15 anybody else, having done elections for so many
16 years.

17 Having 30% of the country change
18 election equipment is going to be tough. And I
19 agree with Alfie here, for small jurisdictions
20 it's going to be especially difficult.

21 MR. GROH: We look at this from many
22 perspectives. And, again, this is not just a

166

1 single thread where if we deliver the hardware,
2 that solves the situation. From my company's
3 standpoint, we know we can deliver the technology
4 and get it there.

5 But what we are concerned about is
6 can the election administrators and the poll

7 workers and the voters feasibly take this
8 dramatic change that's going to happen very
9 quickly? And it is not equal across the United
10 States.

11 We have election laws that are
12 different in different places that put an added
13 burden.

14 We heard New York City, one of the
15 election administrators this morning, talk about
16 that, of trying to phase this in.

17 So our concern as a company is we
18 can deliver the best technology. But if we
19 haven't done the next step, which is really
20 shared by us, by the election administrator, it
21 can look like a failure, because it doesn't work
22 on Election Day and it's an administrative or a

167

1 poll worker or a voter issue.

2 But the first finger that will be
3 pointed will go back to us as the election
4 supplier. So we work very hard on the
5 implementation.

6 So we can do it. We will put in a
7 tremendous number of hours into accomplishing
8 this. I do not see us having a constraint in

9 that we couldn't deliver all that we could get
10 orders for.

11 But it's the project management
12 piece of it.

13 So the other component that you are
14 addressing in HAVA is that voter education, a new
15 way of looking at poll workers that need to be
16 brought on through your college program and that
17 you have that.

18 We applaud all of those, because
19 that's what is going to be required.

20 And then I think that there is a
21 common sense or a reasonable man approach to ask
22 the question, if we deliver all this at one big

168

1 time and cause a major change-over, can we
2 swallow that.

3 And I guess the analogy I would give
4 is, we all know we can start on an exercise
5 program, but that first day I don't do 50 sit-ups
6 because I won't do a sit-up for about another
7 week.

8 We can't go into this on day one
9 thinking, I am going to enter the exercise
10 program full bore. I have to work my way up into

11 it.

12 VICE CHAIR DeGREGORIO: Thank you

13 all very much.

14 CHAIR HILLMAN: Thank you.

15 In the remaining few minutes, let me
16 just ask a question and then I will give a nod to
17 my colleague, Mr. Wilkey, if he has a question.

18 I have a specific question for you,
19 Mr. Groh. No, maybe it wasn't your question. I
20 think it was for Sequoia.

21 Somebody indicated, made a general
22 reference to - it was Sequoia - ambiguously

169

1 worded and without any specific reference.

2 And could I just ask, not for you to
3 comment here, but in your follow-up submission,
4 if you would be as specific as possible, because
5 I don't know what to respond to with that.

6 You were all in business and had
7 systems in the market in 2000; is that correct?

8 Did you have something in the
9 market?

10 MR. ADLER: No.

11 CHAIR HILLMAN: You started in '98,
12 but you certainly were in the field in 2000.

13 MR. ADLER: That's right.

14 CHAIR HILLMAN: And, therefore, were
15 following the year's, following the 2000
16 Presidential election, I'm sure, with great
17 interest with respect to the discussions about
18 various voting systems.

19 So I would ask you, it's sort of a
20 two part question. But it's the second part of
21 my question that's probably where you should
22 emphasize.

170

1 One would be what your companies
2 have done to address some of the deficiencies
3 that are now, that we are trying to address in
4 the guidelines.

5 But the other part of that question
6 is, is there anything in here that's a big
7 surprise to you, given what you have heard and
8 what you have been engaged in over the past four,
9 five years? Is there anything in here that
10 surprises you that you don't think you are ready
11 for or that your company wasn't expecting or
12 preparing for?

13 MR. GROH: I will go ahead and jump
14 into this.

15 No, it hasn't been. And part of why
16 it's not a major surprise to us is because we
17 have been involved throughout the process.

18 Are there little unique things in
19 there? Yes, they are. But they don't rise to
20 the level that I am surprised or that it knocks
21 me out of my chair.

22 All of us that I think have been in

171

1 this have been trying to work on it before we
2 actually could see the target. We knew there was
3 going to be a target around the corner. I may be
4 off a few degrees and that's going to cause me to
5 have to recheck it.

6 I think our concern, from Election
7 Systems & Software, is that we not be so
8 prescriptive or come up with a specific
9 methodology to solve something that could have
10 other means of solving. Allow us, as the
11 developers of technology, to provide those.

12 That's been one of the challenges,
13 that ES&S has done as an innovator, we have had
14 our customer base say I want a paper verifiable
15 audit trail.

16 We have attempted to do that in a

17 format that we think is usable and we want to
18 introduce that and have that be tested.

19 We have had our customer base say we
20 want to stay with paper base. Can you provide us
21 with a solution that will allow us to meet 301
22 and allow accessibility but still maintain and

172

1 utilize a paper base system. We have made that
2 effort to do that.

3 And we are learning and are trying
4 to make adjustments to that. But we are driven,
5 all of us are driven, by the competitive nature
6 of what our customers will pay for, buy and want.

7 CHAIR HILLMAN: Any comments, Mr.
8 Adler?

9 MR. ADLER: I would agree with Mr.
10 Groh, that the process has been collaborative and
11 open and has built upon the work done previously
12 in a very professional way. So there were no
13 surprises really, other than those few degrees
14 that we are addressing through this comment
15 period.

16 With respect to what we have been
17 doing since 2000, I think we are in a paradigm
18 shift in elections. I think that's what

19 generated HAVA, in many respects, and we are
20 grappling with that tectonic shift.

21 And you are leading this industry
22 through that tectonic shift. And those shifts

173

1 are not often pretty.

2 But there has been a tremendous
3 amount of innovation. There will continue to be.
4 And what I would hope and what I see is that
5 there is a real penchant for encouraging
6 innovation as we move forward.

7 We know this is not the last set of
8 election systems jurisdictions procured and there
9 will be no changes going forward. We know there
10 will be. And this is a roadmap to take us there.

11 MR. CHARLES: Just briefly, I think
12 there isn't anything in this document that is a
13 tremendous surprise and I think that the credit
14 for that goes to the TGDC and NIST in having
15 experts on there that really understand the
16 elections process and the work that they put in.

17 I know that the hours they put in
18 were incredible under a tight timeline.

19 If there was one recommendation that
20 I would have for the next version of this, it

21 would be to invite representatives of the vendor
22 community to participate on the TGDC so that

174

1 there will be somebody in addition to the testing
2 authorities and the election officials, the
3 designers of the equipment, so that we can have a
4 more direct involvement in the discussions that
5 take place.

6 But even without that, I think they
7 did an excellent job in keeping this to something
8 that was relatively expected by the industry.

9 MR. VADURA: I would argue with
10 that. There is no real surprises in this other
11 than, I think on the next round, I agree with Mr.
12 Charles, let us contribute. Because I think some
13 practicality can be brought to the process from a
14 manufacturing and design standpoint.

15 It will make a better document and
16 something that we can all live with and, frankly,
17 jurisdictions can procure at a cheaper price.

18 MR. GROH: I would like to make one
19 additional point so we can get this on the
20 record.

21 All of us need to remember and
22 recognize that when HAVA was being worked out on

1 the legislative format and it was being costed
2 out or priced out, it was based on the technology
3 that existed then.

4 This technology we have now has made
5 a leap forward, which is positive.

6 But at the time that they scaled
7 this and scoped it, it was not in today's terms.
8 It was in 2002 technology terms.

9 CHAIR HILLMAN: Thank you.

10 EXECUTIVE DIRECTOR WILKEY: I think
11 this is working.

12 Just shifting gears on a subject for
13 one minute.

14 Anyone who has heard me speak over
15 the last twenty years since we started the
16 development of the 1990 standard, I hate to admit
17 I have been around even longer than that, has
18 heard me say on more than one occasion that it's
19 great that we have these standards for hardware
20 and software testing.

21 But what we need to have is the
22 second half of that. That is 50% of the battle.

1 The other 50% is the management
2 guidelines. And I have talked about that until I
3 am blue in the face, as blue as that cap is on
4 that bottle of water.

5 Hopefully during this coming year we
6 will begin a venture with the National
7 Association of the State Election Directors to
8 finally get that moving. And we have set aside
9 some money out of our budget to begin that
10 process,

11 I would like your reaction of how
12 that fits into your plans and how you can help us
13 make that document the best that it can be.

14 MR. VADURA: I think we all have to
15 have operational guidelines as part of our
16 certification documents. And some of what's in
17 there is good stuff and can contribute to this
18 process.

19 And I think any set of formal
20 management guidelines can only help us because it
21 will help to mold further the shape of the
22 system, how it works from an operational

1 standpoint, not just a technology standpoint.

2 MR. CHARLES: I think it's an
3 excellent idea. It's, as you know, a very
4 difficult task to integrate requirements that
5 address multiple types of systems, multiple
6 vendors of those types of systems, as well as the
7 different state laws and requirements.

8 So it's not an easy task, but an
9 important one. And I think we can assist in that
10 process by offering our expertise as project
11 management and people with experience across
12 state lines. So we can help refine those and
13 develop them as they go forward.

14 But it would be very helpful - as
15 with the hardware and software, it would be
16 helpful to have state specific requirements that
17 could be tested so there is a one-stop-shop for
18 approval of voting technology.

19 MR. ADLER: I think that, too, this
20 issue of managing for change, being able to
21 implement new systems and dealing with the real
22 management challenge of conducting elections with

1 temporary workers and under tough scrutiny, that

2 takes real leadership at multiple levels.

3 So anything that could enhance the
4 leadership and management tools that our election
5 directors/election officials have, is a huge,
6 huge benefit to the public.

7 MR. GROH: Election systems and
8 software, if you approach this like you did with
9 TGDC and NIST, we would be more than happy to
10 participate. Because, again, this is that
11 missing link that I explained earlier.

12 I can deliver excellent hardware.
13 Now I am beholden upon the best management
14 practices of the election administrator. And
15 when that fails, I have then failed by virtue of
16 the public exposure to that. And I don't want
17 that.

18 So we are working hard. But as you
19 have eloquently explained, Tom, when this has not
20 be broadly embraced and there is not something
21 that is there that uniformly lays this out so
22 best practices methodology procedures can be held

1 to by County Commissioners holding their election
2 administrators to this, you don't have a way to
3 measure it.

4 The Election Center I know would be
5 a wonderful partner in this, along with the
6 vendor community.

7 We know what it takes to run our
8 technology and what it takes to run and manage it
9 well. So let us at least advise in that.

10 We will come behind it and do the
11 training in that. But it's difficult to do
12 training for people who don't want to be trained.

13 I know so many people that want to
14 go out and pick up a golf club and start hitting
15 a golf ball before they have had any lessons and
16 it just doesn't work.

17 EXECUTIVE DIRECTOR WILKEY: Thank
18 you very much.

19 CHAIR HILLMAN: Thank you very much
20 to the panelists.

21 We are not going to take a break. I
22 am just going to ask the EAC staff to move

180

1 quickly to reset the table and escort our third
2 set of panelists up to the table.

3 Thank you very much.

4

5

6 * * * * *

7

8

9 PERSPECTIVES ON PROPOSED
10 VVPAT TESTING GUIDELINES

11

12 CHAIR HILLMAN: If we could get
13 reassembled, please. I just need to get
14 everybody.

15 I will remind everybody to make sure
16 that their cell phones, pages and other
17 electronic devices are silenced. We would
18 appreciate that.

19 Our fourth panelist is here and he
20 will be joining us, running a few minutes late.
21 And I don't want to cut into the end of the day
22 by short cutting anybody else's time for

181

1 presentation.

2 This is our third panel. It is
3 Perspectives on Proposed Voter Verifiable Audit
4 Trail Testing Guidelines.

5 Presenting this afternoon will be
6 Peter Kosinski, Chief State Election Official
7 from the State of New York - welcome; Harvard

8 Lomax, Clark County Registrar of Voters from
9 Nevada - welcome, thank you for traveling; Jim
10 Dickson, who will be joining us in just a few
11 minutes; and Avi Rubin, who is a Professor at
12 Johns Hopkins University in Baltimore.

13 Thank you all very much.

14 It will be, I think, okay. I know
15 that Jim Dickson will be interested in what the
16 other panelists have to say. But Mr. Kosinski,
17 if you would be so kind as to get started with
18 us.

19 And I don't believe we have any
20 written remarks.

21 MR. KOSINSKI: No.

22 CHAIR HILLMAN: I know we invited

182

1 you very late so this is not --

2 MR. KOSINSKI: Quite all right.

3 CHAIR HILLMAN: I just want to make
4 sure I'm not missing anything.

5 MR. KOSINSKI: You are not missing a
6 thing.

7 CHAIR HILLMAN: But ask if you would
8 also indulge us to speak slowly so we can take
9 notes.

10 MR. KOSINSKI: I will do my best.

11 If I am speaking too quickly, let me know.

12 CHAIR HILLMAN: And I would ask that

13 people please summarize, particularly if you have

14 submitted written statements, so that we might

15 have ample time for questions.

16 Thank you.

17 MR. KOSINSKI: Thank you,

18 Commissioner. I will try to summarize, even

19 without my written statement, to move the program

20 along.

21 First of all, I'd like to thank you

22 for inviting me today and I'd like to welcome

183

1 everyone to New York.

2 I know my friend John Ravitz was

3 here this morning to welcome everyone. But I

4 would also like to welcome you on behalf of New

5 York and hope that you can take advantage of some

6 of what we have to offer in the City.

7 I'd also like to congratulate the

8 Commission on their wise choice of their

9 Executive Director.

10 And I certainly would like to note

11 that Tom Wilkey used to be the Director of our

12 State Board of Elections and we feel you made an
13 excellent choice in picking Tom as the Executive
14 Director.

15 And, of course, we worked closely
16 with Tom. I personally worked closely with Tom
17 for many, many years and he is excellent in his
18 job and we have a great deal of faith in his
19 ability to carry forward on this.

20 I'll just spend a couple of minutes
21 speaking a little bit from the administrative
22 standpoint, I think, on how the voter verified

184

1 receipt affects us, I believe, and a couple of
2 comments regarding this.

3 The State of New York I think
4 decided early on in this process that they would
5 enact and require, as part of any voting system
6 in New York that would be part of the HAVA
7 project, would have a voter verified receipt
8 attached to it.

9 Our legislation, as I am sure you
10 are aware, has just recently passed our State
11 Legislature. But in the very first drafts of the
12 legislation that was proposed in New York, way
13 back two years ago, the voter verified receipt

14 was part of those pieces of legislation in both
15 House of our State Legislature.

16 And I don't think there was a great
17 deal of discussion or certainly dissension
18 regarding that as being a component of any new
19 voting system in New York. And, in fact, the
20 final version of the legislation that was adopted
21 by our State Legislature - and while it hasn't
22 been signed by our Governor, we are hopeful that

185

1 it will be in the very near future - that that is
2 a part of our legislation.

3 Now, what it does not do, as you
4 might imagine, is give a great deal of detail as
5 to exactly how that is to work. And that is why
6 we are paying such close attention to these
7 guidelines as you are issuing them.

8 We think this is a very, very
9 important component, of course, of any voting
10 system. It does create some issues, though, as
11 we go through the voting process.

12 New York is a state, as I am sure
13 you know, that has had lever machines for its
14 entire voting history. And because of that,
15 paper ballots have been a very small part of

16 voting in New York State.

17 Up until the changes that we are
18 anticipating, the only paper ballots that were
19 really available in New York were absentee
20 voting, the provisional ballot voting, military
21 voting. That kind of voting was all done on
22 paper. But other than that, it was all done on

186

1 lever machines.

2 And at the end of an election cycle,
3 there would be very, very little paper; maybe 8%
4 of our total votes would be cast on paper. The
5 remaining 92% were cast on the lever machines.
6 And there was no paper that was at issue
7 regarding that particular election, at least as
8 far as the votes cast at the precincts.

9 With the new system, needless to
10 say, this will change. And having the voter
11 verified receipt as part of that system, it will
12 now greatly increase the amount of paper that the
13 state will be dealing with.

14 We think it's important that any
15 system that incorporates this kind of a program
16 have as a component to it that we ensure that the
17 voter actually does verify the votes that are

18 being cast.

19 And I think that, as I read through
20 the standards that are being put out, that it is
21 important to try to build in to any system that
22 would be engaged by the voter, that not only we

187

1 create the voter verified system, but that we
2 also try as best we can to ensure that that voter
3 actually verifies that ballot.

4 Because we realize that at the end
5 of the process, the official ballot - if there
6 becomes a dispute in an election - will be the
7 paper ballot. And so it needs to have some
8 component that, at the end of the vote, when the
9 voter - prior to leaving that voting booth - is
10 asked to verify that particular ballot, that in
11 fact that voter does that.

12 So that we have some comfort level
13 that, in fact, that voter has looked at that
14 piece of paper, has verified that piece of paper
15 as their actual votes. So if those votes are
16 contested, that we are counting the actual votes
17 of that particular voter.

18 The other issue that, of course,
19 comes up, which I think was touched on - and I

20 think Tom, in fact, touched on it as well - is
21 the management of the system. And the management
22 of the system will largely come about not only

188

1 during the election itself, but post election.

2 So once you have created this piece
3 of paper in New York State - we can have upwards
4 of seven million to eight million votes in a
5 particular election - when you are creating that
6 kind of paper, that there be a system in place
7 that will allow for the protection of that paper,
8 that will allow for the careful counting of that
9 paper, if that becomes necessary, and that much
10 of New York City's law, in fact, is devoted to
11 that.

12 For example, the amount of audit
13 that must be done to verify that the votes cast
14 on the electronic machine are matching up with
15 the votes to the verified pieces of paper. And
16 that is a very important component of the system,
17 that not only are you creating this piece of
18 paper, not only are you verifying this piece of
19 paper, but that you also have a system in place
20 for ensuring that these pieces of paper are
21 protected and they are also being utilized in a

22 way to make the public aware that the system is

189

1 being monitored and that the integrity of the
2 system is not being compromised.

3 We would certainly hope, and would
4 anticipate, that any system that would be created
5 would be accessible to the disabled. We know
6 that that's a very, very important concept. That
7 really was a lot of what drove HAVA. It was, I
8 think, a critical element in the development of
9 HAVA itself.

10 And we think it's very, very
11 important that as we create these systems, that
12 we keep that in mind.

13 And while the voter verified
14 receipt, I believe, was a component of this, that
15 really emerged following the enactment of HAVA,
16 it was not necessarily anticipated during the
17 discussions in Washington of the HAVA legislation
18 itself that since this has emerged as such an
19 important part of this particular process, that
20 we make sure that the disabled community is
21 protected; that we do not in any way compromise
22 these systems, so that they are fully accessible

1 to the disabled.

2 Other than that, I think that the
3 creation of this system is something that as we
4 work through it - it will take some time - I know
5 that that's something that has been spoken of
6 earlier here today - that as we work with these
7 systems and see how they are being utilized by
8 the people who are actually in charge of
9 utilizing them - our election inspectors, as well
10 as our voters - we can maybe fine tune these, to
11 make sure that they are accomplishing the goals
12 that we have set out for these particular
13 systems.

14 And we know that that's important,
15 that we get some opportunity to use the system
16 before we make necessarily final adjustments to
17 that system to make sure that it is being
18 adequately monitored and adequately utilized.

19 Other than that, I will just accept
20 questions.

21 CHAIR HILLMAN: Thank you very much.

22 We will hear next from Mr. Lomax.

1 And then following Mr. Lomax we will
2 hear from Jim Dickson, who is Vice President for
3 Governmental Affairs with the American
4 Association for People with Disabilities, and
5 then from Professor Rubin.

6 Mr. Lomax.

7 MR. LOMAX: I go by Larry, so I am
8 Larry Lomax from Clark County, Nevada.

9 And I was asked here because we are
10 one of the few counties that has actually used
11 the VVPAT. We used it for the 2004 primary and
12 general and then for our 2005 municipal
13 elections, primary and general elections.

14 So we do have experience. And I'd
15 like to talk about some of that experience
16 first-hand because, again, that's why you
17 actually asked me, and compare it to the
18 standards as I read them.

19 And I will point out, as I
20 understand, what's important is that the vendors
21 and the technical people understand these
22 standards, not so much that I do. But I see some

1 potential problems, anyway, that I think need to
2 be addressed.

3 First, as a user, I think it's very
4 important that we don't ever forget that the
5 standards have to be practical. And I think
6 there is some ideals that we would all like to
7 attain, but I'm not sure in some cases that the
8 ideals are realistic, or at least they may be
9 overly burdensome upon those of us that have to
10 use the voting machines and implement these
11 things.

12 Second of all, and I just point this
13 out, that Volume I, the very beginning of it
14 says, its purpose is to describe the requirements
15 for electronic components of voting systems.

16 And there's a lot of standards in
17 here that really go way beyond that into the
18 administrative procedures, especially, I saw in
19 the area of security. What they are really
20 requiring is us to perform certain administrative
21 functions that have little to do with electronic
22 components.

1 Third - and I think this has already

2 come up today in two preceding panels - I don't
3 think the standards are sufficiently clear in
4 several cases. And I will identify a few here.

5 And a good example that has already
6 come up, the gentleman from ES&S apparently
7 interprets the standard to mean that the paper
8 trail printer cannot be a spool-to-spool or reel
9 to reel printer, or it must somehow chop the
10 ballots at the end of that.

11 I talked to Alfie from Sequoia. He
12 believes just the opposite, that that is allowed
13 under these standards.

14 So these things have to be clear
15 enough so we all understand exactly what they
16 mean.

17 The standards is guidance. We don't
18 want to have to create guidance to clarify the
19 guidance because that's kind of where we are
20 after HAVA. HAVA was in there; now we are trying
21 to figure out exactly what that meant.

22 Another example I can give you is

1 there is a standard that says the paper record
2 shall be sturdy, clean and of sufficient
3 durability to be used for clarification and other

4 things.

5 Well, I had my staff read these
6 standards and they immediately came to me on that
7 issue because we use thermal paper, which is
8 sufficient for what we need this paper for. But
9 then is it really very durable? But, again, what
10 does a standard such as this mean?

11 So I don't want to find us in a
12 position later on of not being sure exactly what
13 is required and what isn't.

14 A few examples - again, looking at
15 it from the practical level, somebody who has to
16 administer these things - font size, one of the
17 first things mentioned in there. It's not
18 realistic to ask for large font size, I don't
19 believe, anyway. The bigger the font size, the
20 more paper each ballot uses up, the larger the
21 printer is going to have to be, the more
22 difficult the logistical problems are for those

195

1 of us that have to deal with it. And also the
2 greater the expense.

3 I think the goal would be, at least
4 from my perspective, is a printer where the paper
5 did not have to be replaced on the date of the

6 elections, that has sufficient capacity to deal
7 with all the voters who are going to use that
8 machine. And that means relatively small print.

9 We used a printer that printed in 10
10 point font; that's small. However, the secret to
11 this problem is magnification. We also had a
12 magnifier at every machine. So that somebody who
13 had difficulty reading 10 point font could hold a
14 magnifier up and it would bring it up to 20 point
15 font, which is pretty large.

16 I could honestly say we have had now
17 approximately a half a million voters vote in
18 Clark County using the paper trail printers and
19 this has not been an issue. People comment that
20 it's small, the print is small, but that's it. I
21 haven't had a single person complain or make an
22 issue of the fact that 10 point font is what we

196

1 are using.

2 Now, these standards require 3
3 millimeters I think, just to make it tough on me.
4 We measured that and that apparently is 12 point
5 font, which is a little bigger and that's fine.

6 But the standards also talk about,
7 you should have two choices of font there for the

8 voter. And I'm not sure in standards what
9 'should' means. I'm not sure what the vendors
10 then have to do.

11 If it says 'should', maybe that's an
12 atta boy. But it seems to me you ought to just
13 set what the minimum requirements are.

14 It looked to me that 6.3 millimeter
15 font in height is 28 point font, and that would
16 require paper this size (indicating), which is
17 out of the question.

18 There is a section in the standards
19 that talk about approve or spoil the paper record
20 and then it talks to having the ability to match
21 the spoiled paper records with the spoiled
22 electronic ballot. There are no spoiled

197

1 electronic ballots.

2 One of the beauties of electronic
3 voting is, the voter goes through the machine.
4 At any time he or she wants, they can change;
5 correct any mistakes they have made.

6 After they have made all their
7 selections, they get to a review screen, which
8 shows them the selections they have made and
9 shows them all the contests in which they made no

10 selection. They can immediately go back and
11 correct those.

12 There is even a warning notice that
13 comes up at the end that says, you didn't make a
14 choice at every place you could have. And they
15 have to go through all of that before they get to
16 the point where they print their paper record.

17 They print their paper record and
18 and then they review that. They can either
19 accept it or reject it.

20 There is three reasons they might
21 reject it.

22 First, we made a mistake programming

198

1 the machine. And there we got a disaster and
2 that would be brought to our attention very early
3 election morning and we would have big trouble.
4 But that would be a programming error on our
5 part. And if we have done our job, that's not
6 going to happen.

7 The second reason is, despite all
8 those advantages or opportunities to correct a
9 choice, they didn't catch it until they saw the
10 paper record, in which case, they can reject the
11 paper record. And remember, the electronic

12 record hasn't been recorded get.

13 They can go back and correct the
14 electronic record again, print the paper record
15 again and say okay, it's okay now, and then print
16 and finalize and cast their ballot.

17 The third reason, and this was the
18 most common in my opinion in Clark County, they
19 just want to see what happens if they hit the
20 reject button and see what the printer will do.

21 And in our case it would print VOID
22 and then they could go back and print it again.

199

1 As I've said, we have had about half
2 a million people vote and very, very, very few
3 people ever void a ballot.

4 Because the thing you have to
5 understand is the printed record will always
6 match what they picked on the voting machine, if
7 we have done our job right. It always matches.

8 I have a lot of people call me up
9 and ask what was the match, how many mistakes
10 were there? There are no mistakes; it always
11 matches. It always matches.

12 So most of the time when they are
13 doing this, they are just playing around.

14 Preserve voter privacy and
15 anonymity, another issue here. Reel to reel
16 printers, from a practical standpoint, in my
17 opinion, are the only reasonable way to go here.

18 In a county my size which is about,
19 we have about 750,000 active registered voters -
20 and we have a two week early voting period - an
21 election will generate in the vicinity of 8000
22 tapes. Now, these aren't the ballots chopped up;

200

1 these are tapes.

2 Each tape has to be maintained and
3 catalogued in a manner so that we could find any
4 tape for any given machine on any given day if we
5 needed to audit it against electronic results,
6 because in Nevada we are using an auditing
7 process for the tapes, a randomly selected
8 auditing process.

9 If you chop those tapes into little
10 five or six inch strips of ballots that will then
11 curl up because they came off a reel, and I have
12 got a half a million of those I have to track and
13 account for and catalogue in some manner so that
14 I can get them, either to audit, or if a state
15 was using them as ballots, they would have to

16 maintain those, you are really creating some
17 administrative challenges, which are going to
18 lead to problems if you chop those things up.

19 It would also, if you chop them up -
20 as far as I can imagine, anyway - it would
21 require you to manually do any recounts of those
22 things. If you are just dealing with these

201

1 little curled up pieces of paper, someone is
2 going to have to hold each one up to do a manual
3 recount.

4 At least with a reel-to-reel, there
5 is a possibility, using bar codes below the
6 ballots, of an entirely independent system going
7 through and reading, doing your recount on a
8 reel-to-reel printer.

9 So I could go into this more, but I
10 really recommend that you make your printers
11 large enough to hold everybody that is going to
12 vote on one day. And that's the way we do it
13 now.

14 They can be sealed up so that
15 workers have no access to them. They attach them
16 to the machines at the beginning of the day; they
17 just take them apart, take them off at the end of

18 the day and they bring them in. But they don't
19 have to mess with that paper; you don't have to
20 worry about storing votes at the voting place.

21 And just, administratively, I think
22 that's really key in my opinion.

202

1 There is a couple other areas in the
2 area of anonymity which I just think reflect a
3 misunderstanding, again.

4 There's a discussion about
5 protecting the privacy of people who use
6 alternative languages. In the discussion it
7 suggests that we have at least five people who
8 vote in another language on a machine.

9 We have no idea what language they
10 are going to pick when they go into a machine and
11 we certainly are not going to ask them what
12 language they plan on voting.

13 Their identity is protected
14 administratively in the same manner we protect
15 everyone else's.

16 It always amazes me, I hear a lot of
17 concern, for instance, on a reel-to-reel printer,
18 protecting the voter's privacy. And yet no one
19 ever brings up a concern that on an election in

20 Clark County we will get about 60,000 absentee
21 ballots, and those ballots will be recived in an
22 envelope with the voter's name right on it.

203

1 In fact, the voter has to sign and
2 we make sure that that was the right voter.

3 And, yet, no one is worried about
4 the voter's privacy then. And they don't need to
5 be. We have administrative procedures to make
6 sure those ballots are separated and nobody knows
7 who they are.

8 But we maintain administrative
9 procedures in the county to be sure that we
10 protect the electronic voter's privacy also, by
11 the way in which we do not record the order in
12 which they sign in in a roster book.

13 We have multiple machines in our
14 polling places and the voter picks where they are
15 going go and nobody knows where they are going to
16 go or tracks where they go. So there is no way
17 to go back and reconstruct who used what machine
18 or what order they voted on.

19 I mean, it's very easy to do and
20 everybody's privacy is protected.

21 I will just point out a few

22 additional things because I don't want to take up

204

1 too much more time.

2 Just an administrative thing. In
3 Section 2.2.7, it does say that if a state is
4 planning to use the paper record as the official
5 ballot, then they have to be sure that a visually
6 impaired person or any other disabled person
7 would be able to review the paper record as the
8 same manner that a somewhat sighted person would
9 be able to do.

10 And on that, that same language
11 should be brought back to the VVPAT Section,
12 because right now it isn't in here. It's only up
13 in front.

14 Another example of something - I
15 guess this is almost laughable in a sense. It
16 says the voting station should be physically
17 secure from intentional damage. Good luck.

18 I don't know what that means or how
19 you would ever enforce that. But if someone is
20 going to come in with a hammer and wants to smash
21 our machine, they are going to be able to do it.
22 So I'm not sure what that standard means.

1 There is another requirement in
2 there - and these are just examples of things I
3 just don't quite understand or if they have been
4 thought through - that says we are supposed to
5 put a seal to seal the connection between the
6 printer and the voting machine.

7 All right, if I have 5000 voting
8 machines that means I got to have - remember,
9 where a printer fits in, in most cases it's just
10 a plug with the two little screws that are
11 screwed in there - you know, the little twisty
12 things like on your own computer at home -

13 Why am I sealing it?

14 First I have got to buy all those
15 seals and then when they install it they have got
16 to seal it and they have got to track it and
17 somehow log it.

18 If the printer becomes disconnected,
19 the voting machine will lock up. And that's one
20 of the standards it requires. It says the voting
21 machine has to alert you if the printer is
22 disconnected.

1 I don't see any - there is no logic,
2 that I can think of, as to why you are wasting
3 your time sealing it. It's an administrative
4 requirement that sounds good, but I'm not sure
5 there is a reason behind it that I could figure
6 out.

7 I'll wrap it up.

8 But, in general, I do think that
9 there is more clarity required in these so that
10 we really understand why these procedures have
11 been developed.

12 And I do think that much of the
13 security, as Mr. Wilkey pointed out, much of the
14 security in an election, in the privacy and
15 anonymity, is a result of administrative
16 procedures and oversight at the polling place.

17 And we have accepted that for years
18 with paper ballots and we seem to have forgotten
19 that.

20 And with the electronic, it is also
21 true. And I think that's an important thing to
22 keep in mind. Thanks.

1 CHAIR HILLMAN: Thank you very much.

2 Mr. Dickson.

3 MR. DICKSON: How much time do I
4 have?

5 CHAIR HILLMAN: Ten minutes.

6 MR. DICKSON: Thank you, Madam
7 Chair, Mr. Commissioners for inviting me to
8 come.

9 You don't have my paper testimony
10 because my paper testimony is in my suitcase
11 which is somewhere lost in Delta Airlines.

12 We will be submitting this short
13 version, plus additional comments.

14 I first want to talk about the
15 context in which Congress passed and the
16 President signed the law that says people with
17 disabilities have the right to vote.

18 CHAIR HILLMAN: Get closer to the
19 mike.

20 MR. DICKSON: I want to put into the
21 context, I want to discuss the context out of
22 which Congress passed a law and the President

1 signed, that says voters with disabilities have

2 the right to vote privately and independently.

3 Twenty-one years ago Congress passed
4 a law that said polling places should be
5 accessible to people in wheelchairs, 21 years
6 ago.

7 As best we can tell, somewhere
8 around 65% of the nation's polling places are not
9 accessible to people in wheelchairs - 21 years,
10 more than half.

11 Missouri just finished - and good
12 for Missouri - a survey to see how many of their
13 polling places were not accessible. The survey
14 reports it's 71%. There is no plan in Missouri
15 for how they are going to fix them, when they are
16 going to fix them by. What good is the report?

17 And this phenomena in Missouri
18 repeats the phenomena of 18 years ago when
19 reports were sent in to the Federal Election
20 Commission that said these are the places that
21 aren't accessible.

22 Twelve years ago Congress recognized

1 that people with disabilities are registered to
2 vote at a rate considerably below the rest of the
3 public. Congress also recognized when it passed

4 motor voter, of the National Voter Registration
5 Act, that many people with disabilities have --
6 I'm not going to go to the Department of Motor
7 Vehicles. I have no reason.

8 Many of us can't even get there.
9 Many of us don't have the money to pay for the
10 license if we could get there.

11 We are sitting here in New York and
12 the NVRA said twelve years ago that community
13 agencies that offer services to people with
14 disabilities need to do the same thing that motor
15 vehicles do. Twelve years ago.

16 One state - thank God for Kentucky -
17 is obeying the law. One state, it's twelve
18 years.

19 We are sitting here in New York City
20 in New York State, and I think these numbers are
21 right. In New York City, about 56% - I'll get
22 the precise numbers if my memory is off - of

210

1 people do not have driver's licenses.

2 In upstate New York, well over 90%
3 have driver's licenses.

4 The agencies that conduct services
5 to disabilities in the city, and upstate -

6 particularly state Medicaid - are not obeying the
7 law.

8 So we come to a law now that says we
9 have the right to vote privately and
10 independently. Now, that ought to be pretty
11 here, I least I thought it was clear when
12 Congress voted on it.

13 Yesterday I was at a County Council
14 meeting in Valusha County, Florida. The
15 president of Verified Voting for Valusha, County
16 said on the record, people with disabilities have
17 75% privacy and 75% secrecy. What more do we
18 want?

19 I was not able to ask her what is
20 75% privacy. I wasn't able to ask her what is
21 75% percent of secrecy at this.

22 But that statement reflects an

211

1 attitude that three Federal laws have tried to
2 remedy, that we are treated like 75% of a
3 citizen. And this is going to stop.

4 And HAVA gives us the tools to stop
5 it.

6 I want to commend the Commission
7 because this version of the standards is

8 considerably improved. But there are still some
9 things that need to be done.

10 In the standard there is I think a
11 structural problem with how you have handled
12 disability that in 28 years of disability policy
13 I have never seen anything structured like this.

14 Usually the disability sections are
15 in one place. Makes it clear; it makes it fair;
16 it's easy for industry.

17 In this version of the standards, we
18 are scattered all over creation and gone.

19 And one result of that is that the
20 standard says that a voter who is blind shall
21 have a right to vote privately and independently.

22 In another section it says that a voter who is

212

1 paralyzed doesn't have that same right.

2 Now, I hope that that was just a
3 piece of confusion.

4 The ADA makes it crystal clear that
5 when we are talking about disabilities, we are
6 talking about all disabilities. HAVA makes it
7 crystal clear that it's the ADA that defines what
8 disability is.

9 And we cannot have standards for

10 voting systems that allow one group of disabled
11 citizens to vote privately and independently and
12 another group not to do that.

13 It's interesting to me that we just
14 had two examples of this voter verified paper
15 trail Neanderthal nonsense, and it is nonsense.

16 I understand that state legislatures
17 have passed laws. We are comfortable with what
18 Nevada has done, because in Nevada the piece of
19 paper is not the ballot.

20 We got real problems with New York
21 because the piece of paper is the ballot and I
22 know of no way that you are going to make that

213

1 piece of paper accessible with current
2 technology.

3 I'm going to say something that has
4 been on my mind for a long time that I have not
5 said before.

6 We have got this paper trail thing
7 because there is this small segment of the
8 computer world that's attitude is, you can't
9 trust computers to do anything. I think of them
10 as the cunieforn school of computer science.

11 They cooked up an idea of a voter

12 verified paper trail without testing it, without
13 measuring it, without seeing if it will work.
14 It's supposed to give the voter verification that
15 the vote was casted right. That's great. That's
16 a good idea.

17 But let's put something in the
18 polling place that actually will do that.

19 Professor Selker (ph) at MIT just
20 did a study, a scientific test, the first one,
21 that took computers and did this fearmongering
22 nonsense of the ballot is going to change from

214

1 the machine to the paper. So he had MIT graduate
2 students and ungraduate students vote.

3 And the computer did eat their vote.
4 This isn't real. And the paper printed an error.
5 Okay. So the fearmongers, this is the theory
6 that the fearmongers have said is going to
7 happen.

8 7% of the voters in the test found
9 the error on the paper - 7%. When he was there.

10 And these are MIT graduate and undergraduate
11 students.

12 Now, how effective a form of
13 verification is that going to be for the public

14 at large?

15 Professor Selker also used audio
16 verification for the same voters. Same thing
17 happened, computer ate the vote, the paper
18 printed something different. 85% found the error
19 when it was audio.

20 Now I am tickled with that. I am
21 blind. I live by audio.

22 I am not going out saying we need to

215

1 pass a law that says let's put audio into the
2 polling place.

3 I think the Commission could do the
4 nation a service, a great service, by making
5 clear that we need standards that are based on
6 science and data, not on theory that generates
7 contracts.

8 HAVA is very clear - private and
9 independent by 2006. And the reason for 2006
10 it's 21 years and we do not have wheelchair
11 accessibility, it's 12 years and we are not being
12 registered to vote under law.

13 There are some -- If a place wants
14 to have the verified piece of paper on the side
15 of the machine, that's fine, as long as it's not

16 the ballot.

17 When it becomes the ballot, it is
18 not accessible. It does not meet HAVA's
19 criteria. It does not meet the ADA. You can't
20 spend Federal money on it.

21 And I hope the Commission will make
22 that clear.

216

1 Thank you very much.

2 CHAIR HILLMAN: Thank you, Mr.
3 Dickson.

4 And we will now have Dr. Rubin.

5 DR. RUBIN: Thank you, Madam Chair
6 and Commissioners. Good afternoon.

7 My name is Avi Rubin and I am a
8 computer science professor at Johns Hopkins
9 University. My area of expertise is computer
10 security. And I have been doing research in
11 industry and in academia on computer security for
12 14 years now.

13 Since 1997 I have been applying
14 computer security towards studying voting systems
15 in elections and in 2004 I became a poll worker
16 working as an election judge in Baltimore County
17 in the primary and the general election.

18 Election security is part of
19 national security. We look around the world and
20 we see just how important and sensitive the
21 ability to vote with integrity is.

22 And I believe that many states have

217

1 come a long way since the Presidential election
2 in improving of the security of the voting
3 process. But I also think a lot of work remains
4 to be done.

5 As somebody who specializes in
6 security, I view the world through a special lens
7 of being interested in security. And I imagine
8 the reason I'm here today to talk to you is to
9 talk about security issues, that is what I do.

10 Reading through the proposed
11 guidelines, I have several comments about them
12 and most of them are very detailed and somewhat
13 technical and I'll be putting them in writing and
14 giving them to you.

15 I only had a chance in the last few
16 days to read them very thoroughly and I have
17 about four or five pages of notes to give you on
18 those, which I want to clean up.

19 But I think several important things

20 should come out now. And one of them is a
21 distinction that I would like to make, which is,
22 to distinguish between a voter verified paper

218

1 audit trail, VVPAT, which is discussed in the
2 guidelines, and a voter verified paper ballot.

3 These things, when we distinguish
4 them, both of them can be viewed as a voter
5 verified paper record, which is something that
6 can be used to audit an election.

7 But paper ballots are very, very
8 different from paper audit trails. And I think
9 if that distinction were made explicit rather
10 than implicit - clearly everyone understands that
11 there is a distinction - but if it were made
12 explicit, it might make the standards read a
13 little more cleanly.

14 And, in particular, I am concerned
15 about the possibility that a voter verified paper
16 ballot, which I view as a more secure system,
17 might not meet the standard because of the
18 wording specifying a voter verified paper audit
19 trail.

20 And so I think looking at the
21 standards again with an eye towards separating

22 out those two terms would be a useful thing to

219

1 do.

2 I am in the class of computer
3 scientists who believe that a fully electronic
4 system that's made up of software can be made to
5 do whatever the programmer does.

6 I have conducted many experiments
7 with my graduate students; I have written a lot
8 of software myself. And I know that when you
9 program a machine, that machine will do whatever
10 you program it to, with a caveat - a big caveat -
11 that there will always be a lot of bugs that you
12 didn't intend, no matter how good a programmer
13 you are.

14 Microsoft is a very well resourced
15 company, puts a lot of effort into making
16 software and they do a great job. But they
17 release security updates once a month, if not
18 more often, because it's impossible to write
19 software without having bugs in it; that's just a
20 fact of life.

21 So, as a result, many - especially
22 computer scientists - but many other individuals

1 as well, have thought about what can we do about
2 the fact that one of the tools that we have at
3 our disposal, which is electronics and computers,
4 is not entirely reliable from a security point of
5 view.

6 We can still utilize it. Computers
7 are great. I use them every chance I get for
8 everything that I can think of. But I know their
9 limitations.

10 And one of their limitations is that
11 it's very, very difficult for an outside auditor
12 or inspector to look at a large software package
13 and know everything about what it does. And it's
14 very, very easy for someone to program some other
15 functionality.

16 I have papers and experiments that I
17 have done to demonstrate that.

18 So what do we do? We say let's come
19 up with this independent dual verification.

20 When I read this proposed guidelines
21 I loved that section. I think that's the right
22 idea, let's come up with totally independent dual

1 verification.

2 My feeling is that the best one of
3 those options is paper, but not necessarily the
4 reel-to-reel variety.

5 Let me outline some of what I view
6 as the disadvantages of the reel-to-reel VVPAT
7 over the verified paper ballots, which are
8 another form of paper.

9 I think that we have to always keep
10 in mind what the purpose of the paper was. The
11 purpose of the paper is that we don't necessarily
12 trust these machines, so we want to do manual
13 audits.

14 It's important that we not only do
15 manual audits, but random audits.

16 If we do that and they match, we can
17 have confidence that wholesale fraud is not
18 likely to have taken place. With that in mind, I
19 think that the reel-to-reel systems place a
20 tremendous burden on election officials and
21 voters who have to perform those manual counts.

22 That's because I also don't believe

1 that there should be anything that's not humanly
2 readable on the ballot. I don't like bar codes
3 and that's a controversial statement. Even
4 within the verified voting community, there is
5 not uniform agreement.

6 The simple reason that I feel that
7 way is that as a voter I am a plain and simple
8 person and I see a mark that I can't read on my
9 ballot, if I'm suspicious, how do I know that's
10 not my name? It's probably not, right. But we
11 should have a voting system that is completely
12 transparent to the average citizen.

13 If you think about an oppressive
14 government that is out to get you - which is kind
15 of the point of a democracy is to avoid that
16 being possible - then we don't want to have a
17 marking on the ballot that citizens don't know
18 what it is.

19 And if we don't put bar codes and
20 other markings on the ballots in a reel-to-reel
21 system, they are very, very difficult to count
22 manually, as was stated earlier.

1 That's why I think that what we

2 really want to have are voter verified paper
3 ballot systems where the ballot itself is
4 something like what we might find in an absentee
5 ballot, something that can be marked with a
6 machine with accessibility features, can be
7 verified with machines with accessibility
8 features, or visually or through audio.

9 But what I worry about with the
10 reel-to-reel systems is that the path of least
11 resistance for an election worker in a busy
12 hectic election is not going to be to do the
13 manual recount; they'll skimp on it. And I think
14 we should design voting systems where the path of
15 least resistance is the best possible path.

16 Not saying that poll workers won't
17 do it. I'm saying we should make it as easy as
18 possible.

19 I disagree with my fellow panelists
20 about the importance of the privacy in the
21 reel-to-reel. I don't believe in reel-to-reel
22 systems that are chopped up because of the

224

1 reasons that were mentioned. But I also don't
2 like the idea of the reel keeping the order,
3 preserving the order.

4 If we are suspicious of the
5 government - in the poll site where I worked, we
6 assigned people to the stations - so I think
7 voters would accept a situation, even if it
8 wasn't the right procedure, where poll workers
9 assigned them to the machines. And at that point
10 we have got a list of how those people voted in
11 that paper trail.

12 I believe that reel-to-reel VVPAT on
13 DRE's are the unfortunate product of a
14 misunderstanding of the arguments against
15 paperless voting. But I do believe with a lot of
16 effort and vigilance they can produce a more
17 secure election than without a paper trail at
18 all.

19 I would like to give some guidelines
20 for maximizing the security and auditability of
21 elections regardless of what kind of paper trials
22 that are used.

225

1 Random audits have to take place
2 where the tallies are compared to electronic
3 totals. These have to be like truly random. I
4 am thinking like ping pong balls coming out of a
5 machine like you have in the lottery that nobody

6 could have known in advance which sites would be
7 picked.

8 If somebody could know in advance
9 which sites will be picked for the audit, that
10 manual recount is losing most of its value.

11 I think that the manual audits
12 should be done by hand, where possible.

13 And the most important point that I
14 can make about this is that we have to have pre-
15 established, in advance, before the election,
16 procedures for what to do in a discrepancy.

17 If it's the case that we get a
18 different tally on the paper than we have in the
19 electronic machine, what to do.

20 And you have to keep in mind that it
21 may be the case that the paper ballots show
22 something that's statistically ridiculous

226

1 compared to the expectation and the electronic
2 tally matches the expectation.

3 If that were to happen, there has to
4 be a procedure.

5 Also it may be the case that the
6 paper matches the expectation and the election is
7 all for one candidate, which is impossible.

8 Whatever it is that we do, it has to
9 be established in advance what the procedure is
10 for handling it.

11 I think it's important to have
12 comprehensive security reviews of the system in
13 addition to guidance or standard compliance
14 testing. If the ITA's are simply looking at the
15 standards or guidelines document that you
16 produced and matching it up with that system, say
17 yes it meets those, that's not enough. I think
18 you want to have a red team or a security review
19 that's required to go in and do a risk assessment
20 of the system in the face of various different
21 kinds of attacks. And I think that that should
22 be mandated.

227

1 I know that I am using up a lot of
2 time and you already have my written comments.

3 So I think that I will just wrap up
4 with a couple of things.

5 Let me say that the properties that
6 I would like to see a voting system that utilizes
7 paper have are that it should maximize the
8 probability that the voters will actually verify
9 their vote. And one way to do that is to have

10 them use a marking system that produces a piece
11 of paper that they then have to scan.

12 It's important that the order of the
13 votes in the paper trail be randomized. And the
14 procedures in place for what to do in the case of
15 a discrepancy, as I just said.

16 It's important that every step of
17 the way be accessible to disabled voters, such as
18 blind voters and deaf voters.

19 And, in my opinion, the paper record
20 should be the authoritative vote.

21 Now, let me just talk about two or
22 three things that I found in the standards

228

1 themselves.

2 One of them that troubled me the
3 most was the requirement that there be real time
4 clocks in the machines.

5 Maybe there is a benefit to audit,
6 but I think that has to be weighed against the
7 security risks of - if I was an attacker and I
8 wanted to write malicious code for a voting
9 machine, the clock would be a great help to me.

10 It would let me know if I was in an election or
11 if I was in a test.

12 The other thing is that I read in
13 there that there should be a time stamp on every
14 record in the machine. Well, that is now an
15 electronic version of the reel-to-reel that
16 preserves the order in which people voted. And I
17 think that needs to be weighed against the
18 possible benefit of the audit.

19 There were other technical things
20 that I found that I didn't think were actually
21 enforceable, like the requirement to know what
22 the values and the registers and the various

229

1 variables are at setup time. I'm not sure
2 technically how that would be accomplished.

3 And I agree with the statement that
4 five people in the language minimum doesn't do
5 much if you only have three people in a precinct
6 that vote in a particular language. What do you
7 do?

8 So, I will write up all of my
9 specific comments for you that I had mostly with
10 respect to security. And I'll wrap it up with
11 that.

12 CHAIR HILLMAN: Thank you so much.

13 Okay. In keeping with our schedule

14 for today, we will begin the public comment
15 period at 4:30. However, once again, we are not
16 likely to take a break between this panel and the
17 public comment period.

18 So, Commissioners, in keeping with
19 that, we will have to stick to our ten minute
20 allocation of time so that we can do justice to
21 both this panel and those individuals who are
22 signed up for the public comment period.

230

1 And I am going to give myself a
2 treat and start with the line of questioning so I
3 can get all of mine in this time.

4 Professor Rubin, when I first became
5 aware of the Election Assistance Commission
6 having been organized under the Help America Vote
7 Act, I did not hear much, a little bit of
8 conversation about paper trails. And even then,
9 I'm not so sure the term V V P A T had been
10 codified.

11 I think people were sort of
12 struggling with what to call it. Different
13 things mean different things.

14 And I really appreciate in your
15 testimony the way you have sort of identified

16 three different terms for verified paper.

17 What has evolved in the past two
18 years around this discussion, this discussion
19 being verified paper, and what of that has
20 surprised you, the change in the conversation
21 from where we were at this time 2003 to where we
22 are today?

231

1 DR. RUBIN: You know, it's true.
2 When I started working in elections, I was
3 working with the country of Costa Rica. They
4 asked us to help them design an electronic voting
5 system.

6 And I came to the problem initially
7 from the point of view, well, that's a great
8 application, we can use our computer security
9 knowledge to do that.

10 And every time when you do security
11 work, you always do it in the face of a
12 particular adversary. So let's say the average
13 adversary does this or does this or does that.

14 And every time we tried to design a
15 system that would be fully electronic and secure,
16 we hit a wall. Because we just couldn't figure
17 out what to do if the people who programmed the

18 computers themselves were the adversaries.

19 The idea of a paper trial came along
20 because it's something that's not part of the
21 electronic system.

22 So in order to cheat, it would

232

1 require much, much, much more effort and what I
2 think is a retail level of fraud, than it would
3 in an electronic system.

4 What I have seen involved is I have
5 seen conferences and workshops - many of which I
6 have attended in the computer science community -
7 where people have tried to come up with solutions
8 that wouldn't require paper. And some of them
9 are very novel - the cryptographic schemes. And
10 I'm a big fan of those schemes.

11 However, along with all the other
12 requirements of accessibility, security,
13 auditability, is one of transparency. And I
14 think that's where some of these schemes fall a
15 little short.

16 What I think has evolved is the
17 understanding that we need to move with the
18 speed - not move too quickly before we understand
19 how to assess the risks that we have.

20 The reason I really enjoyed the dual
21 verification section here is that I think it's
22 exactly the right idea. That if we had --

233

1 The more independent ways we have of
2 recording and storing the votes and truly
3 independent - meaning you don't take it into the
4 computer and then store it in audio and then
5 store it in hard drive somewhere - you actually
6 have to capture them separately, like the camera
7 idea does.

8 I think the more we open our minds
9 and look to ways of doing this, the more hope
10 there is to have good auditable elections.

11 I think that paper is the one that
12 we understand the best and the one that average
13 citizens understand the best.

14 If you have got a camera taking a
15 picture of the screen, of your confirmation
16 screen, one, was that camera controlled by the
17 software that's the software that you are worried
18 about or is it control by something else?

19 How do you store these; how do you
20 do the manual recounts?

21 These are all things that need to be

22 explored, not to mention the possible reflection

234

1 of the voter off of the screen and people's
2 paranoia about having a camera in the voting
3 booth.

4 But when I read that section, I
5 think, now people are thinking about this the
6 right way: how do you verify an audit
7 independently from the electronic tally.

8 CHAIR HILLMAN: Thank you. And I
9 have to say that you must be a pure scientist at
10 heart, because nobody else said that they have
11 enjoyed reading any section of this document.

12 So for you to say you enjoyed the
13 section, makes me feel quite giddy. Thank you
14 very much.

15 Mr. Lomax, how many times has Nevada
16 used its new system with the verified paper?

17 MR. LOMAX: We have used it for four
18 elections, it would be the primary and the
19 general election in 2004 and then we used it for
20 the primary and general municipal elections in
21 2005.

22 CHAIR HILLMAN: And you were the

1 administrator over all four elections, were you?

2 MR. LOMAX: Yes, I was.

3 CHAIR HILLMAN: Of the errors that
4 occurred, what percentage of those would be
5 assigned to human error?

6 MR. LOMAX: I'm not sure what you
7 mean by errors that occurred.

8 CHAIR HILLMAN: Whether, you know,
9 we are talking about jammed paper, something not
10 quite --

11 MR. LOMAX: Errors related to the
12 printer, is that what we are talking about?

13 CHAIR HILLMAN: Yes, yes.

14 MR. LOMAX: There were no errors in
15 the sense that the paper record did not reflect
16 what the electronic record did, either as
17 presented to us by some voter complaining or when
18 we did our random audits. It always matches.

19 Out of the half a million
20 essentially records that were or ballots were
21 cast and then records that were created, there
22 were less than 25 instances where there was a

1 paper jam in which some portion of that paper
2 record was unreadable because of the way it got
3 caught up. We didn't lose the whole ballot but
4 we lost some portion of it.

5 So that comes out to one in every
6 20,000.

7 And that also was almost always as a
8 result of human error in the sense of the way the
9 people that threaded the paper in the printer.

10 The printer is unbelievably reliable, what we are
11 using. I mean, it works. But you do have to
12 thread the paper in there correctly.

13 So what we found when we had paper
14 problems - and they were very rare to begin
15 with - but they were generally training problems
16 because the paper hadn't been put in there
17 correctly. So it is all human error is what is
18 comes down to.

19 CHAIR HILLMAN: Okay, thank you.

20 Mr. Kosinski, I believe you said
21 that the State of New York has always used a
22 lever machine pretty much. There may be some

1 areas using a paper ballot, but punch cards or
2 optical scans have you used?

3 MR. KOSINSKI: We have used punch
4 cards and optical scans for absentee voting,
5 central count voting only.

6 CHAIR HILLMAN: So for the voters of
7 New York, an experience with either an optical
8 scan or a touch screen with verified paper would
9 be a first time experience that they would be
10 voting on something at a polling place in a
11 voting booth that would produce a piece of paper,
12 whether marking a ballot or an optical scan or
13 verification on an electronic machine; is that
14 correct?

15 MR. KOSINSKI: Yes, yes, that's
16 correct.

17 CHAIR HILLMAN: Have the draft
18 guidelines that you have seen and today's
19 discussion helped you in your thinking about what
20 New York is going to be confronting with the
21 transition?

22 And I'm not going to talk about the

1 delays or 2006 or '07, or just whatever length of

2 time it takes for New York to get to the point
3 where it replaces the lever machine.

4 MR. KOSINSKI: I think it helps. I
5 think, however, a lot of what we are faced with
6 in New York is what you have probably identified,
7 which is this is something new to our voters; it
8 is also something new to our election workers,
9 you know.

10 So that without having any
11 experience in this area, it's very hard to know
12 really how these guidelines will help us until we
13 actually start to use it and see how people react
14 to it.

15 The guidelines may assist us in
16 developing a system that will work, technically
17 work. But I think then you are faced with a
18 system that has to work with the people that you
19 are going to use it on.

20 And whether that is inspectors that
21 have to use it or it's voters that have to use it
22 for the very first time, that's obviously an

239

1 unknown factor.

2 And I think that the primary thing
3 that we are looking at in that area is the

4 training and the education of the voters prior to
5 the systems being introduced into our state.

6 CHAIR HILLMAN: Thank you.

7 Mr. Dickson, you will indulge me. I
8 really don't have any questions for you.

9 I had the opportunity to hear your
10 presentations and, as usual, you are clear and
11 right to the point. And there is not much
12 confusion in my mind over what you had to say.

13 Thank you.

14 Mr. Vice Chairman.

15 VICE CHAIR DeGREGORIO: Thank you,
16 Madam Chair. I think we have a very diverse
17 group of folks in front of us. We have Mr.
18 Kosinski, who is going to be new to VVPAT and his
19 state hasn't used it yet; Larry Lomax has had
20 half a million voters use it; we have Mr. Rubin
21 who advocates for it; and Mr. Dickson who is
22 opposed to it.

240

1 So we have had a very diverse group
2 of opinions.

3 Let me ask Mr. Lomax, though, some
4 technical questions about this and about your
5 system.

6 First let's talk about the font
7 size, because you suggest that a 10 point font
8 size - using Times New Roman as the font, I
9 assume - your statement here is in 12, I'm pretty
10 sure it's 12. If I have to look at a 10 I have
11 to make sure that I've got these on and the
12 bottom part of my glasses on. It still seems
13 pretty small to me.

14 Is there any evidence, when you have
15 such a small font size, that people will just
16 ignore the VVPAT and not even look at it because
17 it's too small, whereas if the font size was
18 larger, if it was 15 or 20, then they might even
19 look at this and pay attention to it and compare,
20 whereas if it's a small font size, they might --

21 Is there any evidence or anything
22 that you have looked at --

241

1 MR. LOMAX: I have no data that
2 would reflect that.

3 I do know that in Clark County it
4 had been advertised, so to speak, that the voters
5 did not look at the paper trail.

6 There was a CD made - after we
7 caught somebody filming up there for a couple of

8 hours and they got thrown out - they did their
9 own analysis and that was their determination.

10 But I would point out that in Clark
11 County we have been doing DRE voting since 1996.
12 So adding the paper trail to the touch screen
13 machine was not nearly as revolutionary as it's
14 going to be, for instance, in New York, when they
15 go from a paper system to this whole setup, the
16 electronic voting and the printer.

17 So our voters were very comfortable
18 with the electronic machines to begin with. This
19 paper trail issue was not a big deal in Clark
20 County.

21 So I think a lot of the voters, in
22 fact, in a lot of polling places we had a lot of

242

1 our older machines without the printer and our
2 new ones with the printer, the majority of voters
3 chose to use the old machine, just because they
4 were comfortable with that and they didn't have
5 the printer.

6 They had their choice which machine
7 they wanted to use.

8 So I think we had a comfort level
9 that makes us, perhaps, a bad example to relate

10 to how many people look at the printer.

11 I don't doubt, though, that the
12 smaller font might discourage some people from
13 looking.

14 VICE CHAIR DeGREGORIO: Because I
15 was in your warehouse in February '04 and saw
16 your two different systems. And what you just
17 said here confirmed what I thought, you have two
18 systems there and voters were given a choice, if
19 they wanted to use the one with the verification
20 of the paper and ones that did not have that.

21 What percent used the verification?

22 MR. LOMAX: As I said before, we do

243

1 early voting for two weeks. During the early
2 voting period we only use the machines that have
3 the paper trail printer.

4 So during that time period 271,000
5 people voted using the printer.

6 On Election Day we had at least two
7 of the paper trail machines in every polling
8 places. And in some polling places we had two of
9 those and 20 of the others.

10 But on Election Day, about 70,000
11 people chose to use the paper trail machine and

12 that makes about 150,000 that chose to use the
13 other one.

14 VICE CHAIR DeGREGORIO: You allow
15 observers in your polling stations, party
16 observers or somebody who can sit there all day?

17 MR. LOMAX: In the Presidential
18 election, we had up to 14 poll watchers from the
19 various parties.

20 VICE CHAIR DeGREGORIO: So someone
21 could come in and make a record of every single
22 person who voted and the time they voted and

244

1 the --

2 MR. LOMAX: You can say that's true,
3 but that's absolutely not true.

4 First of all, if you come into one
5 of our polling places, you don't know who the
6 people are as they go up.

7 We vote multiple precincts in a
8 polling place. Just because you are standing in
9 there doesn't mean you have the foggiest idea who
10 all these people are going off to vote. They are
11 going off to all the different voting machines on
12 their own.

13 VICE CHAIR DeGREGORIO: Well, some

14 states have the requirement that the political
15 party observers or the candidate observers can
16 sit behind the poll workers and actually have to
17 be told the name of the person that is coming to
18 vote.

19 It may not be true in your state,
20 but some states have that requirement.

21 I just wanted to see if Nevada had
22 that requirement.

245

1 Let make get to a couple of things.

2 You make a very good suggestion here
3 on this reel-to-reel issue where you have two in
4 one polling place and people go use either one
5 and there is no way to track the sequence of
6 voting and who voted.

7 And that is, you know, a reasonable
8 solution to allow a reel-to-reel that prevents
9 anyone from - and allows, I think, the privacy of
10 the voter - that you can't determine someone's
11 vote by looking at these pieces of paper
12 afterwards because you have two and you are using
13 both of them.

14 It seems like a very reasonable
15 accommodation.

16 But if you did have one, just one at
17 a polling station, and it was reel-to-reel and it
18 was a state that required or allowed some
19 observer or someone to sit there and take a name
20 of the person and then in some kind of a
21 discovery in a recount or election contest, we
22 can actually go in then and determine who voted

246

1 for whom.

2 MR. LOMAX: I would never argue
3 that.

4 VICE CHAIR DeGREGORIO: That could
5 be problematic.

6 MR. LOMAX: I mean, you have to have
7 appropriate administrative procedures.

8 As I said before with the absentee
9 ballots, the ballot comes with the voter's name
10 on it.

11 You have to have procedures that you
12 break it apart so you can't track it.

13 You can overcome any of these
14 systems, depending on what you want to do.

15 VICE CHAIR DeGREGORIO: Thank you.

16 Let me ask the Professor here, who
17 does not believe in a reel-to-reel system - has

18 made that clear - but believes in paper.

19 And I appreciate your discussion

20 here about trying to make a distinction between

21 the VVPAT and what is a ballot and what is a

22 non-ballot, and that is helpful.

247

1 Are you suggesting here, Dr. Rubin,

2 though, an optical scan type of system would fit

3 the definition of the VVPB, the voter verified

4 paper ballot, marked by the voter, so that

5 definition would - an optical scan system would

6 qualify to that?

7 DR. RUBIN: That's right. However,

8 it doesn't mean that the optical scan ballot is

9 necessarily filled out by hand.

10 VICE CHAIR DeGREGORIO: Right.

11 DR. RUBIN: But the nice thing is

12 that whatever machine is used isn't part of the

13 trusted computing base of the system, so it

14 doesn't have to be trusted.

15 VICE CHAIR DeGREGORIO: Do you have

16 any comments on font sizes that's in these

17 guidelines when it comes to the paper trail?

18 Have you looked at this issue? Have your

19 students done any studies or anything like that?

20 DR. RUBIN: No, we have not looked
21 at that issue and the human factors.

22 VICE CHAIR DeGREGORIO: Jim, I want

248

1 to second our Chair's comments. You are a very
2 articulate advocate, spokesperson.

3 MR. DICKSON: I want to, if I
4 could --

5 CHAIR HILLMAN: He wants us to ask
6 him a question, so, Jim, please.

7 VICE CHAIR DeGREGORIO: I am going
8 to allow you the opportunity to comment on that.

9 MR. DICKSON: I really appreciate
10 the effort that Larry and his colleague took with
11 the magnifying glass and I'm sure that was
12 helpful for some.

13 But, again, we have got to really
14 look at fact and reality. The reality is that
15 sight loss and those that use/need magnification,
16 there isn't a single magnifying glass that's
17 going to work for everybody. There are too many
18 variables about the light, where the damage in
19 the eye is.

20 So it is great to have it there, but
21 we need to really understand that it will fit a

22 few, but it's not going to fit most.

249

1 And in terms of the size of the
2 population that we are talking about, for every
3 one person who you can tell is blind because we
4 use dogs or canes or are essentially totally
5 blind, there are nine whose vision is such that
6 they can't read print. So it's a lot of people.

7 CHAIR HILLMAN: Thank you.

8 Commissioner Martinez.

9 COMMISSIONER MARTINEZ: Thank you,
10 Madam Chair.

11 I will be brief in my questions.

12 I guess I want to start by
13 reiterating, at least for the purpose of
14 discussion, just what this panel is not.

15 This panel is not a discussion about
16 the security or lack thereof of DRE systems. I
17 think that discussion has to continue. I have
18 certainly had discussions with Professor Avi
19 Rubin about continuing to engage - who is
20 actually, you have been, I think, very accessible
21 to the EAC in talking about that particular
22 issue.

1 But, again, we are not here to
2 discuss the security or lack thereof of
3 electronic voting systems.

4 We are not here, either, to discuss
5 the pro's and con's as to whether VVPAT is an
6 appropriate method to increase voter confidence
7 or to increase security.

8 The position that the EAC has taken
9 is that that is a decision left solely to the
10 discretion of state and local governments.

11 What we felt was appropriate was,
12 given the fact that at least 16 jurisdictions -
13 and I guess I am learning, Mr. Kosinski, that in
14 this legislation that is pending here in New
15 York - that perhaps 17 states now, will be
16 requiring - either through legislative action or
17 administrative rule - that those states use VVPAT
18 by a date certain, most of which are 1/1/06.

19 Though some states, like Colorado,
20 which recently passed a VVPAT requirement, says
21 they don't have to implement it until 1/1/08.

22 And so, from my perspective, that is

1 a decision appropriately left to state and local
2 jurisdictions. And they, in turn, will have to
3 be held accountable to the citizens that they
4 serve.

5 Having said that, having stated from
6 my perspective what this panel is not, I want to
7 start, if I could, Mr. Lomax, with just a general
8 perspective.

9 You are, among other things that you
10 do, you are obviously the administrator there in,
11 is it Clark County?

12 MR. LOMAX: Yes.

13 COMMISSIONER MARTINEZ: -- in
14 Nevada, of the elections.

15 And I wonder if you can give us the
16 perspective of before you had VVPAT and where you
17 stand now, in terms of just a personal
18 perspective about what purpose it serves for you
19 as a local election administrator.

20 MR. LOMAX: Prior to having the
21 VVPAT, every election there was a small - as it
22 is nationally - small but very vocal minority

1 that complained to us, sent me e-mails, telephone
2 calls about the lack or of a way to verify
3 electronic voting.

4 None of this occurred prior to
5 Florida, but a lot of it occurred after Florida.

6 Since we have the VVPAT, all of that
7 has gone away. I didn't have any complaints in
8 the last election.

9 So I would still suggest that the
10 great majority of people in Clark County really
11 didn't care one way or the other.

12 But for that small minority of
13 people who passionately did care, it's made a big
14 difference. They have been very comfortable and
15 we really had no issues related to voting
16 machines in the last election.

17 COMMISSIONER MARTINEZ: Is there a
18 state law in Nevada, a requirement that you audit
19 a certain number of the paper records to the
20 electronic ballot, because that's what it is, I
21 assume?

22 MR. LOMAX: The Secretary of State

1 has put out guidelines in what we call the

2 Administrative Code. And what he requires, that
3 1% of the machines after the election are
4 randomly selected. And what we do then is we had
5 teams of people manually recount the paper
6 records and we match those results against
7 electronically recorded results from those
8 selected machines.

9 COMMISSIONER MARTINEZ: Does the
10 paper that is produced with respect to the VVPAT
11 have any legal standing?

12 I know it's not the official ballot,
13 but is it the official record for recount
14 purposes in Nevada?

15 MR. LOMAX: No, it is not. Right
16 now our recount procedures are all based upon the
17 electronic results.

18 COMMISSIONER MARTINEZ: Professor
19 Rubin, the Vice Chair alluded to this a few
20 minutes ago, but Mr. Lomax has talked about some
21 of the administrative protocols that they
22 implement to ensure that the reel-to-reel aspect

254

1 of this VVPAT technology that they use in Clark
2 County accounts for trying to maintain the
3 privacy of the voter with the use of at least two

4 machines. And I guess they don't have a sign-in
5 requirement; they don't keep a record of exactly
6 where each voter signed in, et cetera.

7 Does that help to alleviate, from
8 your perspective, some of your concerns about
9 reel-to-reel technology?

10 DR. RUBIN: To some degree. But I'm
11 still concerned about the possibility, not of
12 being able to match every voter with their vote,
13 but of being able to target a particular person.

14 If you are an observer and you want
15 to know how did that person vote and you get to
16 participate in a recount and you watch when they
17 came in and how many people went before them, you
18 will be able to tell how they voted.

19 I think the privacy you want is
20 having a sequential record of the order of which
21 people voted is a bad idea, because I think we
22 can have voting systems that are just as good in

255

1 every possible way that don't do that.

2 COMMISSIONER MARTINEZ: Thank you.

3 Mr. Dickson, I do have a question
4 for you, so you can have another shot at giving
5 us what I think is a very eloquent perspective.

6 I guess, from my - and, Jim, you and
7 I have had many discussions over the course of my
8 short time on this Commission, and certainly over
9 the past few months - and I think that the
10 dilemma for me, obviously, is that I certainly do
11 recognize the language that has been written very
12 intentionally by Congress.

13 And we have to keep in mind that
14 HAVA was passed overwhelmingly in both Houses of
15 Congress and signed quickly by President Bush
16 back on October 29th of 2002.

17 There is language, clearly, that
18 represents significant civil rights strides with
19 persons with disabilities when it comes to being
20 able to vote.

21 So I certainly recognize and give
22 due credit to the eloquence that you bring to the

256

1 table at all times in reminding us of that
2 particular language.

3 I guess my question is also, it
4 plays along those lines. And that is, as
5 somebody who has to help determine an
6 interpretation of an important Federal statute,
7 like the Help America Vote Act, is it

8 appropriate, from your perspective, for us to
9 temper our decision or be influenced by the
10 technology, the capabilities that currently
11 exist, from a technology perspective?

12 MR. DICKSON: I think you have to.
13 We have a deadline that is the law and it was put
14 there consciously. We can't--

15 There is a notion abroad in the land
16 that, well, we can just wait until something
17 better comes.

18 And I think it would be very helpful
19 if the Commission would say, very clearly, you
20 know, you got to buy it by the first of the year,
21 it has to be accessible. You can't wait for
22 something that's better.

257

1 I also think that there is an
2 underlying assumption by those who say we got
3 something better coming down the road, and that
4 is that there is going to be money to buy that
5 something better.

6 Well, I have been working for 25
7 years to try to get government to put more money
8 into elections. We have got one pot of money. I
9 hope there will be additional money coming. I

10 will certainly do - and the disability community
11 will do - everything we can to get the additional
12 money to election officials.

13 But you got to buy what's available
14 now is absolutely clear. And we can't be waiting
15 for something in the future.

16 David Dill (ph), he is the guy who
17 really lifted the paper trail up, big time. When
18 I first talked to him 2 1/2, a little, about,
19 over 2 1/2 years ago, he said that right around
20 the corner there was going to be something that
21 was going to make paper accessible. 2 1/2 years
22 have gone by and it's not here.

258

1 I have heard - and this is true for
2 most people with disabilities - I have heard
3 medical scientists say to me, right around the
4 corner is going to be a cure for blindness. I
5 have been listening to that for 35 years.

6 I not only can't see what's right
7 around the corner, I still can't see the corner.

8 COMMISSIONER MARTINEZ: I appreciate
9 that.

10 I guess two additional comments from
11 my perspective.

12 The first is that you had, Mr.
13 Dickson, talked about in your testimony the idea
14 of if VVPAT is required by jurisdiction, that,
15 for example, you complimented the Nevada
16 situation because it's not the official ballot.

17 And I do want to point out that we
18 did add language in the VVPAT requirement in the
19 proposed VVSG - and I'm sorry for all the
20 acronyms, but I think we by now are following
21 along - that says that in a jurisdiction where it
22 is being used as the official ballot, that full

259

1 accessibility shall be required.

2 And I am sure you are probably
3 familiar with that language.

4 MR. DICKSON: Yes.

5 COMMISSIONER MARTINEZ: And I guess,
6 going back to the reason that I asked the
7 question about technology, because there is
8 this - I don't know what the right word is - this
9 dichotomy, I guess, if you will, between - in the
10 VVSG - between - there is, the way it was laid
11 out, the various disabilities are dealt with in
12 different sections, and I think you pointed that
13 out that it was in different places and not all

14 in one particular spot.

15 I think that, from my perspective,
16 what I have learned in going through the process
17 and in sitting through the various meetings that
18 occurred by the TGDC - and I know that you were -
19 if not physically, then certainly via the
20 Internet technology - a part of many of those
21 sessions - a realization, if you will, from the
22 TGDC - from the Technical Guidelines Development

260

1 Committee - and the various experts that they
2 drew from at NIST and other places, that
3 technology, perhaps, is not where it ought to be
4 when it comes to ensuring that we can meet what
5 is, I think, very important language of privacy
6 and independence, for all persons with
7 disabilities.

8 And, therefore, there was this
9 difference in language between those that had
10 visual impairment versus those that had other
11 disabilities, like limited dexterity.

12 I just, again, I just wonder from
13 your perspective the appropriateness of that type
14 of an analysis and whether the availability of
15 technology is an appropriate consideration, as we

16 make those types of tough choices.

17 MR. DICKSON: I think it's
18 inappropriate to have one standard for one type
19 of disability and another standard for another
20 type of disability, particularly when we are
21 talking about sizable populations.

22 The dexterity issue isn't just for

261

1 people who are quadriplegic. We are talking
2 about voters who have Parkinsons and have such
3 tremor that they can't handle the paper - take it
4 out or put it into a slot.

5 We are talking about people who have
6 severe hand/eye coordination problems.

7 There are many people who have
8 perfectly good use of their arm, but their hand,
9 they can't pick up the paper. So I think it's
10 got to be consistent.

11 COMMISSIONER MARTINEZ: I appreciate
12 that.

13 Madam Chair, I apologize. I have
14 gone over my time. Thank you.

15 CHAIR HILLMAN: Thank you very much.

16 We are just about 4:30. But, Mr.
17 Wilkey, you had a quick question.

18 EXECUTIVE DIRECTOR WILKEY: No. I
19 am going to make this easy because two great
20 minds, the two questions and comments that I had,
21 Commissioner Martinez adequately covered both of
22 them.

262

1 I'll just comment that as a HAVA
2 baby, so to speak, as someone who really believes
3 in what this law says and did, I understand, as
4 Commissioner Martinez so eloquently said, that
5 one of the most important aspects of this law is
6 to ensure that every voter gets to vote
7 independent and privately.

8 And we need to try to reach that
9 goal. That's it.

10 CHAIR HILLMAN: Thank you.

11

12 * * * * *

13

14 PUBLIC COMMENT PERIOD

15

16 CHAIR HILLMAN: We have nine people
17 who have signed up for the public comment section
18 of our hearing.

19 I'll read those names and ask the

20 individuals to be prepared to come to the
21 microphone in the order that I'll read the name
22 and please let us know if you are here when I

263

1 read your name.

2 Bobbie Ann Brinegar?

3 MS. BRENEGAR: Here.

4 CHAIR HILLMAN: She is here, great.

5 Dan McCrea?

6 MR. McCREA: I'm here.

7 CHAIR HILLMAN: Rebecca Mercuri?

8 MS. MERCURI: Here.

9 CHAIR HILLMAN: Sanford Morganstein?

10 MR. MORGANSTEIN: Here.

11 CHAIR HILLMAN: Fernando Morales?

12 Mr. Morales, no? Okay.

13 If staff would let us know if he

14 comes in at any point during this 30 minutes, to

15 just let us know and we will make sure that he

16 gets added on.

17 Teresa Hommel?

18 MS. HOMMEL: Here.

19 CHAIR HILLMAN: Martha Mahoney?

20 MS. MAHONEY: Here.

21 CHAIR HILLMAN: And Sharon Shapiro.

22 MS. SHAPIRO: I'm here.

264

1 (inaudible)

2 CHAIR HILLMAN: Just one moment,
3 ma'am, and then we will call on you. I'm sorry,
4 I couldn't hear the request.

5 MR. CAMPBELL: Am I on the list?

6 CHAIR HILLMAN: I'm sorry. You are
7 on the list, Edmund Campbell.

8 We will start with --

9 MS. SHAPIRO: I have to catch a bus.
10 So I don't have to go first, but I need to go
11 earlier.

12 CHAIR HILLMAN: She has a
13 transportation issue, so why don't we do this,
14 why don't we let you go first so that you don't
15 miss your transportation.

16 MS. SHAPIRO: Thank you.

17 Okay. What I am going to do is I am
18 going to have my colleague read my testimony so
19 that time is used wisely.

20 I do have some comments I would like
21 to make after it is read.

22 CHAIR HILLMAN: Okay. Who is

1 reading Ms. Shapiro's --

2 MS. KAL HERSHAY (ph): I am. I am
3 Marjorie Kal Hershay and I am part of the
4 coalition of New York City/New York State HAVA
5 Coalition.

6 It is a group of organizations that
7 have been meeting over the last 2 1/2, 3 years.
8 And, thank you.

9 CHAIR HILLMAN: I'm sorry to
10 interrupt. But I did forget to state the rule
11 that each person has up to three minutes for the
12 presentation.

13 And so you will have to indulge me,
14 because of the number of people testifying, that
15 I will to keep strictly to the time frame.

16 MS. KAL HERSHAY: Sure. And you
17 have written copies of the testimony.

18 So let me just flick down through
19 the major points.

20 MS. SHAPIRO: Okay. I think I'll do
21 it since - okay.

22 My name is Sharon Shapiro and I am

1 disabled.

2 If I could go to the table, that

3 would be easier for me.

4 CHAIR HILLMAN: Sure.

5 Hello.

6 MS. SHAPIRO: I am the Director of
7 Advocacy of the Center for Independence of the
8 Disabled.

9 We have been involved in this issue
10 ever since and before the inception of HAVA.

11 We have met with New York State
12 officials. We have testified. We have written
13 papers about what people with disabilities need.

14 This morning, when the vendors were
15 giving their or saying dual comments, which I
16 found very interesting, they were saying that the
17 guidelines came or are too much too late. And
18 then later they said, oh, but we are prepared.

19 And I found that kind of
20 incongruent, because how can the guidelines be
21 too much too late and yet they are prepared? So
22 that I found somewhat incongruent.

1 I want to continue, though, by
2 saying that we are disappointed in New York State
3 in the joint bill that was presented to the
4 Governor.

5 The bill does not ensure large
6 print; it keeps the Full Faith Ballot Law, which
7 will restrict the machines that we can choose
8 from.

9 People with reach disabilities and
10 people who are using vision and hearing will have
11 trouble using the full faith ballot.

12 I also want to comment that in my
13 testimony, as you will see, I originally wrote
14 that I was disappointed that the Commission
15 didn't make access guidelines for voter
16 verification.

17 And the reason why I did that was
18 the access guidelines were in a different section
19 of the guidelines. So when I was looking up
20 voter verification access, I was looking under
21 the disability access regs and I completely
22 missed the voter verification.

1 So on one hand I'm very happy the

2 Commission has included it. On the other hand, I
3 recommend that you reference it in both places.

4 I just want to ask that New York
5 State and the Commission press upon New York
6 State to make these guidelines madatory. I fear
7 that since New York State will be having their
8 localities pick and choose machines, that they
9 won't go by the guidelines.

10 These guidelines need to be
11 mandatory now.

12 And the only other issue is the
13 voter paper trail. Right now there aren't any
14 extensive voter verified paper trails that have
15 been certified as being accessible.

16 What are we going to do?

17 And the state has, we have to get
18 machines in and yet we need access to paper
19 trails. We need to come up with a solution.

20 And I have more items, but I don't
21 want to -- I wanted to focus on the issues that
22 you are addressing today.

269

1 CHAIR HILLMAN: Thank you so much.
2 We appreciate your comments.

3 MS. SHAPIRO: I have one more

4 comment.

5 My disability is cerebral palsy.

6 The dexterity issue that Mr. Dickson was
7 referring to would apply to someone like myself.

8 We need to be able to independently verify our
9 ballots.

10 CHAIR HILLMAN: Thank you very much.

11 Appreciate it.

12 Ms. Brinegar. I don't think I
13 pronounced your last name correctly.

14 MS. BRINEGAR: Brinegar.

15 CHAIR HILLMAN: And could we, just
16 to save on time, ask people to use the stand up
17 microphones. Stay where you are, but we will
18 just ask people --

19 And, in fact, if you know you are
20 next, you can go up to the microphone to wait
21 your turn. It will help us move along.

22 MS. BRINEGAR: I am Bobbie Brinegar

270

1 speaking for the Verified Voting Foundation.

2 And I am pleased to have the
3 opportunity to provide our initial feedback on
4 the Voluntary Voting System Guidelines released
5 for comment this past Friday.

6 Our staff has been reviewing the
7 hundreds of pages of guidelines and we will
8 provide thorough written comments prior to the 90
9 day deadline.

10 Verified Voting Foundation is a
11 non-partisan, non-profit organization championing
12 reliable and publicly verifiable election
13 systems, including voter verified paper ballots
14 which enable meaningful recounts and effective
15 random manual audits.

16 We are concerned about public
17 visibility into the acquisition, regulation and
18 operation of voting systems. For that reason, we
19 petitioned the EAC to upgrade the guidelines with
20 measures that will make the voting system
21 certification process transparent and encourage
22 public participation.

271

1 The guidelines should specify that a
2 broad spectrum of representatives from non-profit
3 election protection organizations, universities
4 and the public be able to review and provide
5 comment on test plans for voting systems.

6 The test plans and results should be
7 made public before certification of voting

8 systems. And comments from test observers should
9 be published along with the official test
10 reports.

11 As a best practice, we also
12 recommend that any jurisdiction considering
13 acquisition of a voting system establish a
14 citizens' advisory board for that purpose, as
15 already occurs in some jurisdictions across the
16 nation.

17 Voting technology vendors should not
18 be able to elect a test lab and/or pay that lab
19 for testing, as it creates a clear conflict of
20 interest.

21 The test lab is not then independent
22 and has little incentive to find problems when

272

1 paid by the very voting technology vendors
2 seeking its approval for certification.

3 And test labs should conduct testing
4 using human beings in addition to automated
5 testing.

6 Additionally, Verified Voting
7 proposes a ban on wireless communication
8 capability in voting machines.

9 Our organization strongly suggests a

10 more complete treatment of ballot marking devices
11 within the guidelines, because many jurisdictions
12 are adopting this voting technology as the means
13 for providing the important disabled
14 accessibility for a verifiable precinct count
15 optical scan system based on paper ballots.

16 Finally, the Verified Voting
17 Foundation recommends the use of an accessible
18 voter verified paper ballot, which enables all
19 voters - including all disabled voters - to check
20 that their votes are recorded as intended and
21 makes it possible for election official to
22 perform meaningful recounts and effective random

273

1 manual audits.

2 Although clearly not the only
3 election reform needed, at this time electronic
4 voting systems cannot be secure, reliable and
5 verifiable without paper ballots.

6 Thank you for your dedication to
7 establishing superior voting systems guidelines.

8 CHAIR HILLMAN: Thank you.

9 Mr. McCrea.

10 MR. McCREA: Good afternoon. My
11 name is Dan McCrea. I am a Government Relations

12 Chair for the Miami-Dade Election Reform
13 Coalition. We are a non-partisan all volunteer
14 group advocating for all voters.

15 In my other life I am a general
16 contractor and a former elected City
17 Commissioner.

18 Much of what you are dealing with
19 today and the testimony that you have heard today
20 is hi tech. Let me return us to some low tech
21 best practice and suggest that it is essential
22 that the guidelines include it.

274

1 Our coalition undertook a study of
2 poll closing procedures in Miami-Dade County in
3 the November 2004 general election.

4 I have provided copies of the report
5 that we produced to your staff and we will
6 subsequently provide further written testimony to
7 you on it.

8 In that report we were -- In those
9 observations, we were particularly interested in
10 ballot accounting and electronic security.

11 Ballot accounting, when using
12 electric ballots, is particularly important
13 because there is not a fixed number of ballots

14 being issued.

15 The first step in establishing a
16 valid vote count in such elections is to know how
17 many ballots you are looking for, you are trying
18 to count.

19 Our study looked at poll workers
20 conduct of ballot accounting that is accurately
21 counting the number of voters who signed in to
22 vote and comparing that number, the total number,

275

1 of ballots counted in the precinct. We exposed
2 serious weaknesses.
3 77% of precincts did not produce a
4 match. We found that some of the 23% that did
5 produce a match forced that match. It is late at
6 night, poll workers are tired, and they would
7 enter a number that matched the ballot count,
8 even if it was not the signature count.

9 And 14% did not even count the
10 signatures, to make that important ballot
11 accounting procedure.

12 Even small discrepancies matter and
13 can hide larger problems.

14 In one egregious case, in Precinct
15 816, the number of voters and the numbers of

16 ballots cast produced a discrepancy of only two.

17 Had it been properly investigated,
18 they would have found that votes from a
19 malfunctioning machine were uploaded into the
20 certified canvass three times, causing 171 errant
21 votes in a single precinct to enter the canvass.

22 I think Professor Mahoney from the

276

1 University of Miami is going to talk more about
2 that in a minute.

3 This amounted to electronic ballot
4 stuffing.

5 And while this case appeared to be
6 unintentional, what can happen unintentionally
7 can happen intentionally.

8 The ballot accounting problems that
9 were revealed are not unique to Miami or Florida.

10 We urge you to review our report for
11 its application nationally and to ensure the
12 guidelines outline sound ballot accounting
13 procedures and point out that they are
14 particularly important where electronic ballots
15 are used. Thank you.

16 CHAIR HILLMAN: Thank you very much.

17 Ms. Mercuri.

18 MS. MERCURI: I'd like to thank the
19 members of the United States Election Assistance
20 Commission for the opportunity to address you
21 today on the proposed voluntary voting system
22 guidelines, VVSG, recently posted on your web

277

1 site.

2 For those of you who do not know
3 me - I know many of you do already - I am a
4 computer scientist and engineer who has been
5 researching, writing, testifying and commenting
6 on voting systems for the last 16 years.

7 Much of this material is available
8 on my web sit at www.notablessoftware.com.

9 Currently, I am a Fellow of the
10 Radcliffe Institute for Advanced Study at Harvard
11 University, where my research has focused on the
12 concepts of transparency and trust and
13 computational systems.

14 I have been an active member of the
15 Institute of Electrical and Electronics Engineers
16 (IEEE) P1583 working group on voting system
17 standards, a portion of whose work product is
18 embodied in this VVSG that is being now
19 considered for adoption by the EAC.

20 I can tell you first-hand that it is
21 fairly certain that the VVSG document you have
22 release would not be accepted by the IEEE

278

1 Standards Association, nor its P1583 working
2 group, should it be sent through that channel.

3 And the reason that I can make such
4 a strong statement in this regard is that I can
5 point to many specific areas of grave concern in
6 your document that have been the focus of
7 hundreds of hours of debate among the engineers,
8 computer scientists, vendors, academics,
9 usability experts and election officials who
10 comprise the P1583 working group and its larger
11 overseeing standards association balloting group
12 known as SCC38.

13 These areas directly affect the
14 fundamental aspects of accuracy, integrity,
15 security and reliability of voting systems.

16 Some of this material represents
17 legacy text that was propagated, despite
18 strenuous objections, from the Federal Election
19 Commission's earlier 1990 and 2002 voting systems
20 standards.

21 That this wording and its

22 ramifications have continued to persist through

279

1 to this stage is, in large part, due to the fact
2 that the dissenting positions of esteemed
3 scientists numerous enough to have caused the
4 IEEE's proposed standard to fail to gain the
5 majority approval necessary for its adoption -
6 it's not just a few of us; there were quite a few
7 scientists and others as well - have not be
8 allowed, this position has not been allowed to be
9 represented in the overwhelming one-sided
10 appointments to the EAC's TGDC.

11 I strenuously object particularly to
12 the sections in the proposed VVSG that include
13 the allowance for the use of wireless and public
14 network technology that provides open
15 vulnerability of U.S. elections to terrorists
16 around the planet, the blanket exemption from
17 examination for commercial off-the-shelf hot
18 (COTS) products, many of which are known to have
19 exploitable security flaws, the inadequate Mean
20 Time Between Failures Rating that translate to a
21 9% Election Day equipment malfunction rate, the
22 lack of mandated security controls that are

1 commonly applied to computer systems used in
2 aviation, banking, health care and even lottery
3 and casino gaming, and the lack of any
4 requirement that voting systems be transparent to
5 and independently auditable by the election
6 officials who must certify the results that are
7 produced.

8 Objections to many of these items
9 were provided in the comment round held by NIST
10 during their work period on this document. But
11 these serious and very real concerns appear to
12 have been grossly ignored.

13 As a footnote, I would like to just
14 add that the HAVA money will all be spent before
15 any of the equipment pertinent to these
16 guidelines will be implemented or available for
17 sale using the EAC money.

18 This document, then, is the legacy
19 of the EAC because it will be used to influence
20 future equipment that will be purchased in later
21 years.

22 Because of the limited time

1 constraints for today's presentation, I will
2 defer my comments on these highly flawed sections
3 of the VVSG to a very detailed memorandum that I
4 plan to deliver within the public comment period.

5 I hope that you will review my
6 submission closely and I urge to you communicate
7 with me in order to gain a more holistic
8 perspective of the nature of the comments that I
9 will be providing, along with the related
10 concerns. Thank you.

11 CHAIR HILLMAN: Thank you.

12 Mr. Morganstein.

13 MR. MORGANSTEIN: Thank you. Good
14 afternoon. I'm Sandy Morganstein, President and
15 founder of Populex Corporation, a vendor that has
16 a 2002 certified election system that produces a
17 voter verified paper ballot, which we think is
18 accessible.

19 It's certified 2002 and there may be
20 some objection to that. But I think when it
21 comes to the discussion of accessibility, there
22 is certain areas where we don't need to split

1 hairs.

2 For example, if a voter votes in
3 private but someone helps put the ballot in the
4 printer but privacy is maintained, we can have a
5 discussion whether or not that is still
6 accessible.

7 But I am here today to talk about
8 the challenge you have as you finish your work on
9 these guidelines.

10 I think it is pretty difficult
11 listening, as you pointed out, Commissioner
12 Martinez, and as others have pointed out, that
13 you have people on all sides of the spectrum,
14 telling you what they think you ought to do,
15 however you are the ones who have to do it.

16 The problem is that I think the
17 standards need some tweaking.

18 And I am encouraging you - as I am
19 sure you are having these hearings for this
20 purpose - to undertake that tweaking during the
21 comment period that you will have in these next
22 90 days.

1 For example, we heard a lot today

2 about the word 'verification'. If you look at
3 the standards, it is not defined.

4 Some people will consider a paper
5 ballot verifiable if it simply reports whether or
6 not you have over votes or under votes. In the
7 case of an optical scan, that's usually what
8 verification means.

9 In other cases verification means,
10 will a ballot be read the way I think I marked
11 it.

12 And there is a tweak, if you look in
13 the glossary again, verification is not defined.

14 A larger area where I think you need
15 a tweak has been mentioned. Professor Rubin has
16 talked about the difference between a voter
17 verified paper audit trail and a voter verified
18 paper ballot.

19 If you look at the glossary again
20 and the definitions, there is no definition -
21 believe it or not, despite all this discussion -
22 of a VVPAT. It is not defined.

1 Voter verified paper audit record is
2 defined. That goes on to talk about an auditable
3 record.

4 If you take the standards as they
5 are drafted today, there is a possibility that
6 systems that are being rapidly deployed today -
7 from my mouth to God's ears, maybe ours - or our
8 competitors, for example, the AutoMark - are
9 either in one case not going to be covered by the
10 standards at all, if it is considered a VVPAT
11 after all, it is a voter verified paper audit
12 trail of something that happens on a computer
13 system, either it's not covered - or worse yet,
14 it's against the rules and cannot be deployed.

15 We have provided to NIST and have
16 had discussions with NIST and to your web site
17 six or seven pages where we think these tweaks
18 need to be taking place.

19 We don't think there is any need for
20 any wholesale rewriting or any throwing out of
21 the great work that has been done.

22 We have talked to NIST about those

285

1 points already and they agree with us. And, in
2 fact, I am authorized to say - although I don't
3 speak for NIST - I am authorized to say that
4 following those discussions, they have asked that
5 you specifically call upon them again to provide

6 comments to you based on what's coming out of the
7 people who have now had a chance to review the
8 draft standards, particularly the people who have
9 been involved from NIST in writing the draft
10 standards.

11 They agree that these holes do exist
12 and perhaps they would be very easy to fill and
13 then the country will then have voting standards
14 that can last for some period of time.

15 Finally, you are up against
16 timelines, vendors are up against timelines. You
17 have talked about, Madam Chair, we are not doing
18 a Version I and we are not doing a Version II,
19 and others have said maybe we will come out with
20 clarification.

21 My recommendation to you is, if in
22 all your balancing, the time to get this done

286

1 versus the time to get it as best as it possibly
2 can, to err on the side to getting it the best
3 you possibly can.

4 There is confusion, as you have
5 heard today, what should we buy, what can we buy,
6 is it going to be grandfathered in, are we going
7 to be found out of compliance by some new set of

8 standards.

9 I encourage you, in that difficult
10 balancing act you have got - I know 2006 is right
11 upon us - to get it so the next set of changes -
12 obviously, there has to be some - will be as few
13 as possible. Thank you.

14 CHAR HILLMAN: Thank you.

15 Ms. Hommel.

16 And I do need to ask - and I
17 apologize for doing this - but the remaining
18 presenters to please keep to the three minute
19 time line. I really do hate to have to cut
20 somebody off, but we are just about at 5 o'clock
21 now.

22 MS. HOMMEL: Thank you for the

287

1 opportunity to speak before you today.

2 My name is Teresa Hommel and I am
3 Chairwoman of the Task Force on Election
4 Integrity of Community Church of New York.

5 I am also a computer professional
6 and I have worked in the field for 38 years.

7 My remarks concern the lack of
8 standards in the proposed guidelines that would
9 guarantee that no matter what kind of computer

10 technology is used in elections, that ordinary
11 non-technical citizens can appropriately witness
12 election procedures.

13 I believe that voters must be able
14 to witness that their own votes are correctly
15 recorded and cast and election observers must be
16 able to witness the storage, handling and
17 counting of votes.

18 The problem with computerized
19 voting, obviously, is that no one can witness the
20 electronic ballots or votes.

21 And the further problem is that if
22 election procedures are concealed, then an

288

1 election lacks legitimacy, the government lacks
2 legitimacy and there is no reason for the public
3 to have confidence in the integrity of the
4 announced election outcomes.

5 For these reasons, the guidelines
6 should have standards to require computerized
7 voting and vote tabulating systems to be designed
8 to facilitate appropriate observation by
9 non-technical citizens.

10 The proper use of voter verified
11 ballot printout would solve this - and I didn't

12 put this in my written testimony, but I want to
13 make clear what I say, what I mean by the proper
14 use.

15 My understanding of the voter
16 verified paper printout is that the voter can see
17 their ballot and it is the ballot of record
18 legally. And then it is counted and people can
19 watch the counting and know that the count is
20 correct.

21 If the legal ballot is the
22 electronic ballot, then nobody can watch it being

289

1 recorded or cast or handled or stored or counted.
2 And I believe that that is totally contrary to
3 any democratic principles of any legitimate
4 democracy.

5 So I believe that these guidelines
6 need to have strong suggestions, since they are
7 long term guidelines, that the voter verified
8 paper printout, whatever you call it, should be
9 easy to verify, easy to handle, easy to count and
10 actually should be counted.

11 Elsewhere, as appropriate, I would
12 urge you to deal with the problem that even where
13 state laws require voter verified paper ballots

14 to be created, no law considers these ballots to
15 be a valid record and no law requires all of them
16 to be counted.

17 For example, you heard from Mr.
18 Kosinski earlier, our New York State proposed
19 law, which has not yet been signed by the
20 Governor, requires only 3% of the voter verified
21 paper ballots to be counted and includes no
22 standards whatsoever as to when a larger count

290

1 should be done as a result of discrepancy between
2 the paper and electronic count.

3 Computerized votes and vote
4 tabulating systems also conceal election
5 procedures from our own election officials and
6 prevent them from complying with their
7 responsibilities to oversee our election.

8 For example, in HAVA, Section
9 301(a)(5), there is a requirement that equipment
10 that counts ballots should meet the FEC 2002
11 accuracy standards, which allow a maximum error
12 rate of one in 500,000 ballot positions. But
13 there is nothing in the guidelines to ensure that
14 election officials can determine what the
15 accuracy of their counting equipment is and

16 whether it is in compliance with HAVA or not.

17 CHAIR HILLMAN: Could I ask you to
18 summarize. We have got your written testimony
19 and you have passed three minutes already.

20 So if you could just summarize to
21 your conclusion and we will read your written
22 testimony.

291

1 MS. HOMMEL: I also urge you to ban
2 any communication capability whatsoever in any
3 voting and vote tabulating systems.

4 I do not believe that it can ever be
5 handled securely.

6 Earlier this year my America Express
7 card was broken into. Last week we saw in The
8 New York Times that 40 million Master Card
9 accounts have been compromised.

10 And if the most secure computer
11 installations in our country, which are the
12 financial institutions, cannot control their
13 computers, what makes you think that your local
14 poll worker can.

15 In conclusion, I urge you, the
16 Commissioners, to set forth standards to
17 facilitate meaningful observations by

18 non-technical citizens and election professionals
19 of the entire recording, casting, storage
20 handling and counting of votes.

21 And I don't mean some bait and
22 switch piece of paper which is not the legal

292

1 ballot, but the ballots themselves.

2 And I urge you to declare that if
3 this cannot be done, that computerized voting is
4 inappropriate technology for use in this country.

5 Thank you.

6 CHAIR HILLMAN: Thank you.

7 Ms. Mahoney.

8 MS. MAHONEY: Thank you. I am
9 Martha Mahoney. Can you hear me?

10 CHAIR HILLMAN: Yes.

11 MS. MAHONEY: Thank you. You have
12 been given a copy of the Miami-Dade Election
13 Reform Coalition's report on the 2004 election.

14 I want to talk to you about three
15 issues that were revealed there and their
16 implications for the system guidelines.

17 I will submit written comments in
18 much greater detail later.

19 There were three things that are

20 really notable from Precinct 816.

21 One was, there was a vote counting

22 problem in which the votes from a single machine

293

1 added 85 ballots to the canvass three times

2 instead of once, so that 945 people signed in but

3 1116 ballots were certified in the final canvass.

4 Nobody noticed and the failure to

5 notice is one of the points that I am going to

6 draw to your attention.

7 There was an inaccurate total public

8 count that has not been addressed or explained

9 anywhere that was only possible because it wasn't

10 flagged.

11 It wasn't brought to the attention

12 of poll workers by the system and there were

13 discrepancies in machine memory that have only

14 been reviewed by the vendor without independent

15 experts or independent evidence of any sort.

16 First, in the IVOTRONIC (ph) that

17 was being used, there was a known security flaw

18 had been criticized in the compu-air (ph) study

19 that would allow votes to be added repeatedly to

20 the canvass from a single machine, without

21 notifying the poll workers this was happening.

22 We don't know if that flaw caused

294

1 this or if there is an additional way to add
2 votes to the IVOTRONIC without notifying poll
3 workers.

4 At the bottom line, your Human
5 Factors need to address poll worker usability
6 more than they do.

7 I see the focus on voters. But poll
8 worker usability can be crucial to the integrity
9 of the canvass, as a system matter.

10 And I am calling on you to think
11 about these unflagged problems.

12 The guidelines emphasize recording
13 votes accurately and counting them, but they
14 don't emphasize preventing them from being
15 counted repeatedly by poll workers. This is a
16 gap.

17 Now the second problem I want to
18 draw to your attention is that there were 945
19 voters who signed in. And when you added the
20 individual public counts on the machines, they
21 should equal 945.

22 There was an ambiguous record that

1 showed one more ballot, so maybe it would have
2 reached 946.

3 But when you look at the results
4 tape at Tab 3a, you will see that the voting
5 system, not just that machine, reports a total
6 public count of 947.

7 When a machine can't add 12 numbers,
8 it should be like a student in the back of the
9 class. It should raise its hand and say,
10 teacher, I have a problem with my math.

11 We do not train human beings to
12 check the math of the machines. These machines
13 have to bring tabulation and other addition
14 errors to the attention of the poll workers or
15 the integrity of the system is at risk.

16 Finally, there were conflicting
17 records in the different memories on the machine.
18 They went to ES&S and were studied.

19 The report was not released to the
20 state and county for six months until after it
21 came out in the paper.

22 My concern here is that the vendor

1 did their evaluation without independent expertise
2 or independent evidence. And we need to call for
3 procedures or to consider the roll of the
4 independent records in a way that will help solve
5 that gap.

6 Because when you have one record
7 that says 84 ballots and one that says 85 and
8 this is not - I am not right now judging the
9 ultimate conclusion of the report. I will put
10 that in writing - there has to be an incentive
11 for the vendor to reach one conclusion or
12 another.

13 The roll of independent evaluation
14 is extremely important.

15 If you get one conclusion you might
16 conclude the system worked better or some other
17 advantage happened.

18 We need to think further about this
19 problem.

20 I will submit written comments.

21 These were things I think that no
22 one envisioned: a tape that couldn't add 12

1 numbers; machines going in repeatedly.

2 Much of what I have said comes under
3 human factors. Please consider extending it
4 further. Thank you.

5 CHAIR HILLMAN: Thank you.

6 Mr. Campbell.

7 MR. CAMPBELL: Good evening. My
8 name is Edmund Campbell. I am a union activist
9 of the South Florida AFL-CIO Central Labor
10 Council and a member of the Miami-Dade Election
11 Reform Coalition.

12 I am here to bring to your attention
13 problems that I saw while I was doing some poll
14 closing at the 2004 November election in regards
15 to early voting throughout.

16 Election Day is a 12-hour day and at
17 the end of the day there was voting verification
18 and printing of results for the precinct.

19 Early voting, on other hand, is day
20 after day of an incomplete process, which ends
21 before Election Day with equipment being taken
22 away without any results being printed and posted

1 at the polling site.

2 DRE's are left powered up for the
3 duration of the election in public areas. Early
4 voting demands physical security over extended
5 time and incremental ballot counting every day.

6 We need appropriate procedures to
7 protect security and accuracy.

8 I even heard poll workers actually
9 say, close is good enough. So what if the count
10 is off.

11 The thing that is unique about early
12 voting is that it takes up to 18 days of
13 operating in a public place, while individual
14 election officials are making rules governing the
15 new trend in American voting reform, using
16 procedures that was not meant for more than a one
17 day election, when the poll opens early in the
18 morning and closes that night.

19 We have started the convenient era
20 with early voting.

21 If the EAC hopes to create
22 guidelines designed to protect the integrity of

1 our voting system, members need to address early
2 voting separately from Election Day and call for
3 early voting best practices and procedures that

4 will directly address this unique condition.

5 Thank you.

6 CHAIR HILLMAN: Thank you very much.

7 That concludes our public comment

8 presentation.

9 Colleagues, as you can see, our

10 guidelines affect many constituencies.

11 And we encourage all of your

12 comments to come in throughout the 90 day period

13 so that we can be as informed as possible.

14 Any closing comments?

15 VICE CHAIR DeGEORGIO: No. I just

16 wanted to compliment you, Madam Chair, on a job

17 very well done.

18 CHAIR HILLMAN: Thank you. I

19 appreciate it all.

20 If there is nothing further, then

21 our hearing stands adjourned.

22 (Thereupon, at approximately 5:10

300

1 o'clock, p.m., the above meeting

2 was adjourned.)

3 * * * * *

4

5

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

301

1
2
3
4
5
6
7

CERTIFICATE

8 I, ELLEN REACH, a Stenotype Reporter
9 and Notary Public of the State of New York do
10 hereby certify that the within transcript is a
11 true and accurate record of the Public Meeting of
12 the U.S. Election Assistance Commission, held on
13 June 30, 2005.

14

15

16

17

18

19

ELLEN REACH

21

22