

**Public Meeting
of the
United States Election Assistance Commission**

Held at
1225 New York Avenue, NW
Suite 150
Washington, D.C. 20005

on Tuesday, March 17, 2009

VERBATIM TRANSCRIPT

The following is the verbatim transcript of the Public Meeting of the United States Election Assistance Commission (“EAC”) held on Tuesday, March 17, 2009. The meeting convened at 11:00 a.m., EDT. The meeting was adjourned at 11:37 a.m., EDT.

PUBLIC MEETING

CHAIR BEACH:

This meeting of the United States Election Assistance Commission will now come to order. I have a few announcements before we begin, just to give you some idea of how we’re going to work our structure today. From now until noon we’ll conduct the business portion of our business meeting and then we’ll break and return at one, and from one to three p.m. we’ll conduct a hearing on the HAVA Mandated Guidance for Voter Registration Databases.

So please stand and join me in the Pledge of Allegiance.

[Chairwoman Gineen Bresso Beach let all present in recitation of the Pledge of Allegiance.]

CHAIR BEACH:

Can I please get a roll call?

COUNSEL GILMOUR:

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

CHAIR BEACH:

Here.

COUNSEL GILMOUR:

Vice-chair Gracia Hillman.

VICE-CHAIR HILLMAN:

Here.

COUNSEL GILMOUR:

Commissioner Donetta Davidson.

COMMISSIONER DAVIDSON:

Here.

COUNSEL GILMOUR:

Madam Chair, all the Commissioners are present.

CHAIR BEACH:

Okay, wonderful. Okay, now we're going to move to the adoption of the agenda. We have before us the agenda. Are there any changes or comments?

VICE-CHAIR HILLMAN:

I do have a question. I know the public was invited to submit written comments concerning the topic for our hearing this afternoon.

CHAIR BEACH:

That's correct.

VICE-CHAIR HILLMAN:

Are we having any time set aside for the public to be able to make oral comments at the meeting?

CHAIR BEACH:

Not for this meeting, no. Okay, do you have any?

COMMISSIONER DAVIDSON:

I move we approve the agenda.

VICE-CHAIR HILLMAN:

Second.

CHAIR BEACH:

All in favor?

[The motion carried unanimously.]

CHAIR BEACH:

Okay, great. I want to thank everybody for being with us today and also wish everybody a happy St. Patrick's Day. Since the last time we met on February 4th for our public meeting one of our Commissioners, Rosemary Rodriguez, had resigned. And I wanted to take a moment just to recognize her achievements. I had met Commissioner Rodriguez back in 2007 and '08 when I had worked for the House Administration Committee, and I want to say, just watching her as Chair during her tenure, she certainly had exemplified the voters' needs were always a top priority for her, public input was very important to her and we commend her on her stated goals for transparency during her tenure. She now is working for U.S. Senator Mike Bennett from Colorado as his State Director, and I know my colleagues will wish me in joining her well on all her future endeavors.

I would also like to note that the EAC Standards Board had their meeting at the end of February in Orlando. The meeting was to hold elections for the Executive Board and to receive an update and status on the VVSG. We had representatives from NIST to discuss the VVSG and their recent UOCAVA report. We also received an update and had a healthy discussion on the threat assessments to voting systems by voting system risk assessment project. Our meeting was very productive and I want to take a moment to congratulate our Executive Board members. Two of

them were re-elected and they are Russ Ragsdale from Colorado and Dan English from Ohio. And we also have five newly elected members to the Executive Board of the Standards Board and they are Don Palmer from Florida, and he will be testifying later this afternoon, Secretary of State Beth Chapman from Alabama, Brad King who is the Election Director from Indiana, Leslye Winslow Election Director from Missouri, and Jim Silrum from North Dakota.

And finally, I'd just like to make one point of clarification regarding the EAC's role. During presentations before the Election Center in San Francisco last month, an individual who was making a presentation mistakenly stated that the EAC does take positions on federal election law matters before Congress. And I just want to make it clear that while my colleagues and I may have different philosophical beliefs on federal election administration matters, the EAC does not support or oppose legislation being considered before Congress. The EAC also does not lobby Congress. We are here to provide information and serve as a clearinghouse to election administrators, stakeholders, advocacy groups and, most importantly, the voters. So, I just wanted to make that clarification.

So, without further comments, unless there are other opening remarks from my colleagues at this time? Okay, we'll move to Old Business. The first item on the agenda is correction and approval of the minutes from the February 4, 2009, meeting. Are there any changes to the minutes or comments?

VICE-CHAIR HILLMAN:

There are a couple of technical corrections and I apologize, I did not catch these earlier. On page four of the minutes, and it

would be under the installation of new officers, there's a paragraph that begins with "Vice-Chair Hillman expressed her appreciation." The second sentence is technically incorrect. It should read that Vice-Chair Hillman noted that in, I guess we'll say, in 2009 she would be completing her sixth year and final term. I'm not in my sixth term. So, if we could make that correction.

CHAIR BEACH:

Okay.

VICE-CHAIR HILLMAN:

And then, just another minor one on page, I believe it's the last, page eight, the last sentence of the first paragraph. Just a misspelling of Vice-Chair, the "r" was left off Chair.

CHAIR BEACH:

Okay. Move to correct the minutes?

COMMISSIONER DAVIDSON:

I so move.

VICE-CHAIR HILLMAN:

Second.

CHAIR BEACH:

Okay, now is there a motion to adopt the minutes?

COMMISSIONER DAVIDSON:

I move to adopt as corrected.

VICE-CHAIR HILLMAN:

Second.

CHAIR BEACH:

Okay, great. All those in favor say aye.

[The motion carried unanimously.]

CHAIR BEACH:

Okay, next we'll move to the Executive Director's Report.

EXECUTIVE DIRECTOR WILKEY:

Thank you, Madam Chair. First I'd like to welcome everyone and thank them for being with us today. We've had a very busy month, particularly in our Voting System Testing and Certification Program.

And under that program we have certified the MicroVote EMS 4.0 voting system. Other candidates for certification are advancing in the process, and we will keep everyone updated on their progress. We recently lifted the accreditation suspension of SysTest Labs on the recommendation of NIST's National Voluntary Lab Accreditation Program, and related correspondence is posted on our Web site. The EAC Standards Board met last month and discussed a variety of issues, including the next iteration of the VVSG, as well as revisions to the 2005 VVSG. They also adopted several resolutions, which we have posted on our site along with meeting testimony. We recently posted NIST's response to the EAC Advisory Board's resolution about the VVSG. We've had two additions to the Voting System Reports Clearinghouse. California submitted a report regarding errors and deficiencies in the Diebold/Premier GEMS Version 1.18.19. The New York State Board of Elections submitted two documents regarding SysTest Labs' request for interpretation. We thank these states for sharing this information, and we urge election officials throughout the nation to read these reports. I urge, along with the Commissioners, that states and local jurisdictions submit information to the

Clearinghouse. Sharing that experience with voting systems with your peers is very important. You can go to our Web site eac.gov to get information about submitting reports.

Under HAVA Funding, we have recently posted six new advisory opinion requests; three remain open for comment through March 23. You can view all of them under the HAVA funds management section of our Web site. We also recently disbursed a requirements payment to Oklahoma for \$1.3 million. That brings the total amount of 2008 HAVA funds left for disbursement to \$97.1 million. As an aside, we recently learned that under the Omnibus Appropriation Bill that was passed by Congress and signed by President Obama that the states will receive another \$100 million in requirements payments. We have completed the calculation on those figures along with the 5 percent matching requirement, and those will be provided to you this afternoon, as well as posted on our Web site. We also have a couple of other new grant programs which I will update the Commissioners on at our next meeting as we begin to analyze and formalize those additional programs.

Under Commissioner Updates, Vice-Chair Hillman delivered a presentation to the joint meeting of the Oregon State Senate and House Committee on Rules. The presentation is posted on our Web site. The Commission held one tally vote since on our last meeting. On February 10, 2009, Commissioners voted on the appointment of the position of General Counsel to the EAC. And as Commissioner Bresso Beach mentioned, Commissioner Rodriguez submitted her resignation at the end of February and returned to Colorado. Many of you may not be aware of the process for the

appointment of a new Commissioner. First, the Senate leadership recommends a candidate for nomination to the President. Then the President nominates a candidate for full Senate confirmation. The Senate Rules and Administration Committee may hold a confirmation hearing on the Commissioner nominee. Next, the Senate Rules Committee votes to send the nomination to the full Senate, which votes to confirm the nomination. And lastly, the President appoints the confirmed nominee as the new EAC Commissioner. The Commissioner of the present vacancy will fill the remainder of the four-year term expiring December 12, 2011.

Under Election Administration Resources and Research, we have received nearly all state responses to our 2008 Election Day Survey, and are reviewing the responses now.

Under EAC Operations, we have appointed Annette Lafferty to the post of Chief Financial Officer. Annette has a wealth of federal budget experience, and we are pleased to have her in this position. In addition, we will have two additional names to announce of positions in our financial administration unit by the end of the month.

Under Inspector General, the IG recently issued two reports. One deals with the EAC's Internet usage activity, and the other is an audit of the EAC's compliance with Section 522 of the 2005 Consolidation Appropriations Act. These reports are available on our Web site, and you can sign up for automatic alerts whenever the IG posts new content.

In closing, I want to remind everyone to visit our Web site for updates on our activities and program news. You can also

subscribe to our news feed or sign up for weekly e-mail newsletter from our homepage.

Madam Chair, that is my report for this meeting.

CHAIR BEACH:

Thank you. Do either Commissioners have questions for Executive Director Wilkey?

VICE-CHAIR HILLMAN:

I do have questions. Thank you for the report, Mr. Wilkey. I was not able to attend the briefing this week about a letter you received recently from the Association for Americans With Disabilities about the MicroVote system. And so, I think it's appropriate that we have, at least, a little brief discussion today about what the concern is about MicroVote, and to clarify for me, was the MicroVote system certified to the 2002 Voting System Standards, or to the 2005?

EXECUTIVE DIRECTOR WILKEY:

This particular system was certified to the 2005. We had a very good meeting with the Association, in which we clarified some of the issues that they had raised, and what we are doing is, we are reaching out to the vendor and asking the vendor to give us some additional information that we will need before we go further on it. But we have committed to try to answer their concerns as quickly as we can. Part of the problem was that the...

VICE-CHAIR HILLMAN:

Could you just...

EXECUTIVE DIRECTOR WILKEY:

...2005, when we looked back, did not require the sip-n-puff mechanism that they had alerted us to, but required other types of features to allow disabled voters to be able to use the equipment without the use of their hands. And so, we're just making sure with the vendor that they are not able to accommodate the sip-n-puff. We understand that this particular addition, or enhancement to the equipment, would not be particularly expensive on their part, and so we want to make sure that there's a possibility that that can be done and to research some other avenues as well. But, that was not part of the 2005 standard that we adopted or guideline that we adopted. There was very broad language in there about providing for this ability to do this, but sip-n-puff was not mentioned particularly as an avenue to be able to do that. We hopefully will make sure that in the next iteration, or the addition to our 2005, that that particular feature will be a part of the standard, but as it stands right now it is a very broad terminology. And Commissioner, I can get that for you and have that information for you and the other Commissioners as well. And if necessary, we can get further information to you on this subject.

VICE-CHAIR HILLMAN:

So, election officials would be using MicroVote as an accessible machine to meet the HAVA requirement?

EXECUTIVE DIRECTOR WILKEY:

The MicroVote system has a feature to enable disabled voters who do not have the ability to use their hands, to use a feature using their head or their mouthpiece to do so, but this is not a sip-n-puff method.

VICE-CHAIR HILLMAN:

I understand.

EXECUTIVE DIRECTOR WILKEY:

Now, I understand that to do that would require some kind of a switch hook, which is easily adaptable...

VICE-CHAIR HILLMAN:

Right, but that's not the question I'm asking.

EXECUTIVE DIRECTOR WILKEY:

...to most equipment.

VICE-CHAIR HILLMAN:

I'm asking if election officials would use MicroVote, believing that it is a system that could serve as the HAVA required, at least, one accessible voting system per polling place?

EXECUTIVE DIRECTOR WILKEY:

I'm not sure I can answer that right now. One of the things that we're doing is reaching out to the election officials in the jurisdictions that presently utilize that system. We only know of two states right now that utilize the MicroVote system, and we want to make sure that they're aware of that. We also want to get that feedback from them also.

VICE-CHAIR HILLMAN:

Okay. And I do appreciate your making available the language from the 2005 Voluntary Voting System Guidelines. I have to just say that when I heard that the 2005 did not include sip-n-puff technology, I was more than surprised, I think I was shocked, because I remember extensive discussion when we were considering the elements of the 2005 about the sip-n-puff features,

and the technology and the voters who could benefit and would use that technology. And so, I am surprised to learn that it is not in there. Now, I'm not going to pretend I can remember every single thing that we discussed and decided in 2005, but I was very, very surprised to learn that. And so, I do want to sort of go back, and I will have Maisha Leek, my assistant, help me in going back through transcripts and other materials to see what happened on that, because I, for one, don't recall if we made a decision to not require sip-n-puff, why we would have done that. I can't think of any reason why we would have, and so, I would just be curious to see what led up to that exclusion.

EXECUTIVE DIRECTOR WILKEY:

Commissioner, I share your concern as well, and frankly, am as surprised as you were that we did not include that. And I have asked staff -- as you know, we had a very transparent process during the development of those guidelines, where everything was posted on our Web site, every single comment and the disposition of that comments. So, I've asked staff to review, carefully, all of those comments as well as our responses, because, as I said, it surprised me as much as it did you, particularly going back, and I think Commissioner Davidson will agree, that we had considerable discussions on some other features taking care of the disability community and seeing that their needs were met. And a lot of discussion, for example, on the read back, which we discussed at great length and took a very, very, in my opinion, noble position, good opinion in calling for that in the guidelines. So, it was a bit troubling to me, also, that we did not include that. But, I think we

need to -- and even I think some of the organizations are a bit puzzled as to whether they did or did not make any comment, but we are going to check the record, all of it, thoroughly. And thankfully, we did a good job of detailing every single comment that we received and the disposition of those comments, and the discussions that we had relative to those comments. So, we'll go through those and hopefully be able to find out exactly why that did not get included.

VICE-CHAIR HILLMAN:

I do know that we reluctantly, but practically, had to acknowledge that we couldn't accommodate every cognitive...

EXECUTIVE DIRECTOR WILKEY:

Right.

VICE-CHAIR HILLMAN:

...situation, because there was no voting system that could possibly do that. However, I do think the sip-n-puff, if it wasn't included, was certainly an oversight, and I would be very surprised if there was a particular reason why we did not include it. But thank you for that.

EXECUTIVE DIRECTOR WILKEY:

Absolutely.

COMMISSIONER DAVIDSON:

I think we're all anxious to research it, because, as you said, it was obviously part of our discussion, and I think it took a lot of us back when we really got into the VVSG and saw what the draft -- the writing that stands now. So, I think we're all going to be interested in it, and also interested in the review that they're going

to be making with the manufacturer. And I think they were even checking, if I remember correctly, with the labs, because in their test report, it does show that they, you know, had people with different types of disabilities that was checking and testing the equipment, but how that was tested and everything, I think Brian was going to check into some of that information also to get back to us.

VICE-CHAIR HILLMAN:

Thank you. I have a couple more questions for you.

CHAIR BEACH:

Go ahead.

VICE-CHAIR HILLMAN:

Under the Inspector General, maybe for the benefit of the viewers and our audience, more than for the Commissioners, you introduced the two reports the IG issued, but you don't say anything more about it. So, could you just give a brief, the one Internet usage activity, what that focused on, and where EAC came out on that? In other words, is it our use of the Internet to produce our materials or was it...

EXECUTIVE DIRECTOR WILKEY:

It was generally an audit of the Inspector General that, as everyone knows, the Inspector General is an independent member of the Commission, and in addition to auditing the state requirements payments, also is responsible, under the Inspector General Act, for reviewing various activities of our agency, in keeping us in compliance with various sections of the law. This particular report dealt with our use of the Internet internally. For

example, was there any usage that did not comply with the laws or policies or standards. And in that report it was indicated that we had no problems with improper use of the Internet; people looking at sites they shouldn't have been, so on and so forth. And we got a very good report there.

The other report deal with complying with the Consolidation Appropriations Act. One of the things, for example, that they had cited us on, is not having appointed a privacy officer. And since that time we have appointed the privacy officer, and will be making other changes to deal with the recommendations in that report. I don't have it in front of me, so I can't cite too many of the specifics, but I know that we responded, and we have indicated that the obvious errors that we have had in meeting some of the requirements, we have indicated we will make the necessary changes as soon as possible.

VICE-CHAIR HILLMAN:

It feels like the administrative requirements that EAC has to meet as a federal agency is a bottomless pit; that when we think we've covered the ones we know about, you peel back a layer and there is six more. Or are we close, or do we now know all of the procedures, appointments of people as privacy officers, security officers, hallway monitors, whatever we're supposed to have, do we now know what we have to do irrespective of whether we've been able to complete the tasks, or should we expect that as we go through 2009 we'll liable to be called on not having done this, that or the other? I mean, how can we mine this field or get a bright

enough light to shine to the bottom of the pit, so we, at least, know the end is in sight?

EXECUTIVE DIRECTOR WILKEY:

I learned a long time ago never to say, never, but I am hoping that when I say never, I mean it. I think we have run the full gamut. I think that beginning with the very first audit that the IG did on our agency some two years ago, and then the first financial audit that we went through last year, we have run the gamut of just about everything that we need to know. We will soon be releasing a full set of policy and procedures that we've been working diligently on for the past six months or so. I think that if you look back from where we were a year ago to where we are now that you'll find that most of the recommendations that the IG initially made to us have been met, or are very close to being met. So, while again I hate to say never, I'm hopeful that we have met all of the necessary requirements that we need to make under the law. It's certainly been a learning experience, but as you and I have had on many occasion, discussions about it would have been nice when the agency was created, that somebody could have presented us a manual that said here's all the rules of the regulations and administrative practices and procedures that you need to meet in order to function as a federal agency, that didn't exist. And so, we've dealt with them as they come along, and I think it's a testament to the ability of the staff to continue to work hard to do this.

We have taken the bull by the horns in the last six months based upon our financial audit that we went through, and we are

told repeatedly by OMB, that while it wasn't a pretty picture, it is pretty much what every agency goes through the first time around. It's a learning experience, and we certainly have learned our share from that. And from that we are making the necessary changes in our administrative staff and financial staff. We're bolstering them up, we're bringing people in with a wide range of experience in federal government administrative rules and regulations. And so, I think that certainly if I can't say never, today, I'll be able to say it, hopefully, in the very near future.

VICE-CHAIR HILLMAN:

And as the new Administration implements new changes, whether through executive order or however they do it, how are we notified about new or different procedures that we have to comply with and what we have to do?

EXECUTIVE DIRECTOR WILKEY:

We would be notified, really, in two ways, and I would think that the bulk of them through OMB, and in addition to that, directly from the White House. But, usually those kinds of requirements either go through OMB or OPM directly and then filtered down through us, because they have to do some necessary review of those actions, and then filter them down to their agencies.

COMMISSIONER DAVIDSON:

Okay. And sometimes it seems like, if I can add on to that, that maybe the laws require those to happen. Some of them are even affecting our states on reports and new reports that they have to follow. And I know that OMB has to go through the same type of procedures that we do and put things out for review and so on, and

it takes more time to get that done, and by the time we need the reports from the states we're really too late, and the states are really very unhappy with us, because it's coming at a time when the reports are due. There's really nothing we can do about that except warn the states ahead of time that there will be changes. Do we have the ability to hold up the timeframe that their reports are due, because of changes in some of the forms that's coming about?

EXECUTIVE DIRECTOR WILKEY:

I think you'll find that the last set of changes that OMB made in the kind of reporting forms that we require, we had sufficient time to be able to get that information to states and do some new training, or we continue to do the new training throughout this year and make sure. We have seen far better response to these requirements than ever before, and I think it's a testament to what we've put out there, in terms of learning tools, and the kind of training that we do, that we've been able to get the kind of response that we have. But OMB, like every other federal agency -- and there has been a moratorium on new regulations under, I think, it was one of the first orders issued by the new Administration. And so, I think once that is cleared, then they will go through their normal process like we go through our process in developing a policy or procedure, having a comment period, putting it in the *Federal Register*. So, whatever happens, I think we'll have -- and I think OMB will expect that it affects, not just them, but it affects every agency that does grants or gives out money -- that a necessary amount of time is needed to be able to meet those regulations; they're not going to do it immediately, and that's what

happened in this case. There was plenty of time to be able to take a look at it and work with it. I expect that any changes in the future we'll have plenty of time to deal with it.

COMMISSIONER DAVIDSON:

That's good.

VICE-CHAIR HILLMAN:

Thank you.

CHAIR BEACH:

Commissioner Davidson, do you have any...

COMMISSIONER DAVIDSON:

I don't have anything further.

CHAIR BEACH:

Okay, great. Moving right along, I'll ask my colleagues, do we have any closing remarks or statements before we adjourn?

VICE-CHAIR HILLMAN:

Let me just do a quick update on the Board of Advisors.

CHAIR BEACH:

Sure.

VICE-CHAIR HILLMAN:

The Board of Advisors is preparing for its next meeting which will be held here in Washington, D.C. June 2-4. It appears that EAC will have posted the proposed updates to the 2005 VVSG before the meeting convenes, so the Board will use the June meeting to provide comment on those proposed updates and revisions. And they have an active voting -- the Board has an active Voting System Standards Committee that will be working with the EAC staff to prepare for that meeting. The Board will also

elect officers, Chair, Vice-Chair and Secretary, as required by its bylaws, and will be fulfilling its HAVA responsibility to work with the EAC on the final report that will be sent to Congress about the Election Day data grants program, the pilot program that five states participated in. And so, they've got committees working on these various things, and you will be receiving updates and information along the way about the June meeting.

And, I'd also just like to comment that -- I know that people think we're making it up, but we're not -- that EAC will soon have a Working Group Policy. And I know of three issues that are in the queue waiting for the policy to be adopted, so that we can move forward. I believe, one, Commissioner Davidson, is the MOE compliance with the Maintenance of Effort Requirement. Another one that I am particularly interested in convening will be a group to help bring definition to the term "accessibility" as it applies to voting systems, so that we can make sure that is incorporated when we consider updates to the 2005, as well as to the next iteration of the Voluntary Voting System Guidelines. And then this goes back to a resolution that the Board of Advisors passed at its meeting last year, which was that there be a working group to review how EAC is able to distribute its products, to make certain that the materials are getting to election officials. We've identified various kinds of challenges, either because we aren't able to maintain a database of the name of the election official, and sometimes when the mail gets -- if it's just generically addressed, when it gets to the office, it doesn't get to the person in the election office who handles the responsibility. Or if we rely heavily on distribution through our Web

page there are some smaller jurisdictions that don't have the capacity to access and download dense documents. And so, we've got to try to figure out, within our budget, recognizing that we do have limitations on our resources, how we can respond to these many needs. But, that is certainly one that would bring great benefit to what we're trying to accomplish.

Thank you.

CHAIR BEACH:

Commissioner Davidson, do you have any closing remarks?

COMMISSIONER DAVIDSON:

I don't have any, thank you.

CHAIR BEACH:

Mr. Executive Director, do you have any?

EXECUTIVE DIRECTOR WILKEY:

Only that I was particularly grateful for Commissioner Hillman's last comments on the Working Group Policy, because we're hopeful that we will be able to move forward with a contract this year to do an evaluation of our products. As you look back over the last three years, in particular, we have put out an enormous number of products that we've made available to our state and local election officials, and I think it's worthwhile for us to be able to take a look at what worked, what didn't work, how we can revise them, what we can do to make them even better in the future. So, I'm grateful that that would be one of the working groups. So, I'm hoping that we can resolve those issues soon, because there are many occasions, as we learned from doing the Quick Start Guides and our Management Guidelines, in which we

have used working groups with great success. So, I'm hopeful that we can get that policy resolved, because I think there will be much need for it as we move along in the next year.

CHAIR BEACH:

Mr. Gilmour anything for the good of the order?

COUNSEL GILMOUR:

No.

CHAIR BEACH:

Okay, thank you all very much. We'll adjourn and return for our hearing at 1 p.m.

VICE-CHAIR HILLMAN:

Can I ask a question before we adjourn? Are we technically adjourning? Or is the hearing a part of this meeting, and we're now just taking a recess?

COUNSEL GILMOUR:

You could do it either way. You could have a recess or you could close it down and start it back up again.

CHAIR BEACH:

I believe the way we noted it in the *Federal Register* is that we were going to have two separate.

COUNSEL GILMOUR:

Then we should repeat the beginning of this meeting again at the hearing.

CHAIR BEACH:

Okay.

VICE-CHAIR HILLMAN:

Okay.

CHAIR BEACH:

Okay, great. We'll return at 1 p.m.

VICE-CHAIR HILLMAN:

Thank you.

[The public meeting of the EAC adjourned at 11:37 a.m.]

**Public Hearing
of the
United States Election Assistance Commission**

**Voter Registration Databases: Initial Discussion on Reviewing
HAVA-Mandated Guidance**

Held at
1225 New York Avenue, NW
Suite 150
Washington, D.C. 20005

On Tuesday, March 17, 2009

VERBATIM TRANSCRIPT

The following is the verbatim transcript of the Public Hearing of the United States Election Assistance Commission (EAC) held on Tuesday, March 17, 2009. The hearing convened at 1:00 p.m., EDT. The hearing was adjourned at 3:21 p.m., EDT.

PUBLIC HEARING

CHAIR BEACH:

This hearing of the United States Election Assistance Commission will come to order. Before we begin, I just have a couple of announcements. I ask that everybody make sure their cell phones, pagers and electronic devices are either turned off or silenced as not to disrupt our proceedings today. This hearing will run from 1 to 3 p.m. and we'll be having three panels.

So please join me in the Pledge of Allegiance.

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

CHAIR BEACH:

Could I have a roll call please?

COUNSEL GILMOUR:

Certainly. Commissioners please respond verbally when I call your name.

Chair Gineen Beach.

CHAIR BEACH:

Here.

COUNSEL GILMOUR:

Vice-Chair Gracia Hillman.

VICE-CHAIR HILLMAN:

Here.

COUNSEL GILMOUR:

And Commissioner Donetta Davidson.

COMMISSIONER DAVIDSON:

Here.

COUNSEL GILMOUR:

Madam Chair, all members are present.

CHAIR BEACH:

Okay, great. Thanks. Good afternoon and happy St.

Patrick's Day. Today we have before us an agenda on the EAC's requirements for guidance on voter registration databases. We'll be hearing testimony from the following people: Dr. Herb Lin, who is chief scientist at the Computer Science and Telecommunications Board, National Research Council of the Academies; Wendy Weiser, who is the Deputy Director of the Democracy Program for the Brennan Center for Justice at NYU School of Law; Karen Long, who is the Adams County Clerk and Recorder for Adams County, Colorado; Dave Franks, the HAVA and Oregon Centralized Voter Registration Manager; and Donald Palmer, who is the Director of the Division of Elections for the Florida Department of State.

Are there any objections to the agenda?

VICE-CHAIR HILLMAN:

I don't have any objections. I do have a question. I see that it's going to be broken up into three panels?

CHAIR BEACH:

Yes.

VICE-CHAIR HILLMAN:

I was sort of hoping that Dr. Lin would be here when Ms. Weiser makes her presentation, because I actually have questions of him about information she provides us. So, Dr. Lin are you able to...

DR. LIN:

I'll stay through the entire presentation.

VICE-CHAIR HILLMAN:

Thank you, I appreciate that.

CHAIR BEACH:

That's fine. So I'd like to adopt the agenda.

COMMISSIONER DAVIDSON:

I so move that we adopt the agenda.

VICE-CHAIR HILLMAN:

Second.

CHAIR BEACH:

All in favor?

[The motion carried unanimously.]

CHAIR BEACH:

As stated earlier, we'll be hearing presentations on the EAC's voluntary guidance on voter registration databases. The Help America Vote Act required that each state implement a statewide voter registration database. 2008 was the first Presidential election year in which all states were to have these databases in place. Per the requirement in HAVA, the EAC had issued voluntary guidance on the voter registration databases back in 2005, and the EAC since then has been committed to build upon this guidance and has contracted with the National Academies of Science to conduct research to assist us in completing this task. Our purpose today is, really, just to take a step back and assess the current status of these statewide databases, and how they've operated in the 2006 election and the 2008 Presidential election. What we want to know is, are they working, are they not working, what are the challenges and successes that states have had, unanticipated consequences and any suggestions for moving forward. The input we receive today will ensure that future guidance is relevant and will ultimately improve the process for voters.

Vice-Chair Hillman, do you have any opening comments or Commissioner Davidson?

COMMISSIONER DAVIDSON:

No.

CHAIR BEACH:

Okay, great. Before we hear from Dr. Herb Lin, I'd ask our Deputy General Counsel Gavin Gilmour to provide a little background on our voluntary guidance, and kind of where we are in the process.

COUNSEL GILMOUR:

Certainly. HAVA Section 311 requires that the EAC adopt voluntary guidance over the substantive requirements of Title III. The purpose of the guidance is to assist states in meeting their HAVA requirements. Therefore, the guidance should be very practical and provide two things essentially. One, an assessment of what the responsibilities are under the statute; and, then recommendations concerning implementing these.

Now, it's important when we talk about voluntary guidance to, essentially, grasp the voluntary nature of the guidance. The statute makes it clear that the guidance that the EAC issues, does not bind states; it always refers to the guidance as voluntary, or as recommendations. In fact, in Title III itself, it makes it very clear that the specific choice and methods of implementation of Title III are left to the discretion of the states. So, what EAC is producing here are recommendations that are voluntary, helping states achieve the goals in HAVA.

Now the subject of the guidance, as I said, focuses on Title III, and in Title III there are three sections that we commonly refer to

as Sections 301, 302 and 303. In these three sections there are five general areas or requirements. There's the section on voting systems, which we refer to as voting system standards or guidance, provisional voting, voting or polling place information requirements, voter registration database requirements, identification requirements for first-time voters who register by mail. Those are the five substantive areas that are within these three sections.

HAVA also provided deadlines for the EAC to accomplish its guidance. Section 301 was to be completed by January 1, 2004, and Section 301 was on voting standards. Sections 302 and 303, which is, essentially, is the rest of the guidance, to be issued by October 1, 2003. Now these dates, if you're looking at them, actually predate the EAC. Our Commissioners weren't put in place until December of 2003, so, for practical purposes we weren't even around when these deadlines passed. HAVA also requires that the EAC review and update the 301 guidance once every four years. And that's for the voting system guidance,, that should be reviewed once every four years.

HAVA also outlines a detailed procedure for adopting this guidance. The process is very similar to informal rulemaking. Section 312 requires, first, the publication of the proposed guidance, an opportunity for the public to comment on that guidance, a public hearing on the proposed recommendations, and then finally the publication of the final guidance, in the *Federal*

Register. In addition to these requirements, HAVA notes that it is the duty of our two advisory boards, the Standards Board, and the Boar of Advisors, to review the guidance we issue in Title III. So, they also need an opportunity to review that guidance. So, what we're dealing with is a process that's actually quite involved, very similar to a formal rulemaking, despite the fact that it's voluntary. And in the past, you know, we have actually gone above and beyond these minimal requirements, having multiple hearings and things of that nature. So, it is an involved process.

The present status, which I believe you noted, is that we have issued guidance on statewide voter register databases, which is in Section 303(a). This guidance was finally published in the *Federal Register* on August 3, 2005. And it specifically noted that we would be looking at it again, and updating it, as is the subject of this particular hearing.

CHAIR BEACH:

Great, thank you. Commissioner Hillman, do you have any questions for...

VICE-CHAIR HILLMAN:

No questions.

CHAIR BEACH:

I just have one question. Just for the record here, what body enforces the implementation of statewide voter registration databases, if there are any, sort of, violations?

COUNSEL GILMOUR:

Title III, explicitly, grants the authority to enforce these requirements to the Attorney General, i.e., the Department of Justice would, through civil action, enforce the requirements of HAVA. It, basically, means that the Department of Justice, through the courtroom, would essentially enforce HAVA requirements.

CHAIR BEACH:

Thank you.

COUNSEL GILMOUR:

Specifically, Title III, the substantive provisions that we're talking about.

CHAIR BEACH:

Okay, great. Next, before I introduce our first panelist, I'd like to just mention that we did reach out to the American Association of Motor Vehicle Administrators to see if they would be able to testify today. Unfortunately, they're going through a transition process and they were unable to attend today's hearing, so, we hope to include them as this process does move forward. In addition, we hope to include Social Security Administration, as well.

I'd like to now call up Dr. Herb Lin. Dr. Lin is the Chief Scientist at the Computer Science and Telecommunications Board, National Research Council of the National Academies, where he has been study director of major projects on Public Policy and Information Technology. These studies include a 1999 study on

the National Cryptography Policy and a 1991 study on the future of computer science (Computing the Future), a 1999 study of the Defense Department systems for command, control, communications, computing and intelligence, a 2000 study on workforce issues in high-technology, a 2002 study on protecting kids from Internet pornography and sexual exploitation, a 2004 study on aspects of the FBI's information technology modernization program, a 2005 study on electronic voting, a 2005 study on computational biology, a 2007 study on privacy and information technology. Prior to his NRC service, he was a professional staff member and a staff scientist for the House Armed Services Committee, where his portfolio included Defense Policy and Arms Control issues. He received his Doctorate in Physics from MIT.

Thank you.

DR. LIN:

Thanks for the introduction. My name is Herb Lin, and as you've noted, I'm the Chief Scientist of the Computer Science and Telecommunications Board at the National Research Council. The Council is the operating arm of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine. The NAS was chartered by Congress in 1863 to advise the government on matters of science and technology.

I'm the director of the Academies project on State Voter Registration Databases, sponsored by the EAC. This project is a

three-pronged effort to advise states on how to implement and maintain their HAVA-mandated voter registration databases; suggest ways that states can improve interoperability of their databases with other internal state agencies; and to consider ways to evolve and sustain voter registration databases to share data between states. Olene Walker, former Governor of Utah, and Fran Ulmer, Chancellor of the University of Alaska at Anchorage and former Alaska Lieutenant Governor, co-chair of the expert committee responsible for this project. This project includes a series of workshops, which includes the sixth workshop to be held starting Wednesday, March 19-20, in Cambridge, Massachusetts; an interim report, which will be released in the spring of 2008; and a final report to be released this fall sometime.

Let me first describe the interim report and the workshop series. The interim report primarily addressed short-term opportunities for the improvement of voter registration databases in two areas: (1) enhanced public education and information dissemination, and; (2) improved administrative procedures and processes, both that could be implemented in time for the November 2008 election. The report also noted a number of longer-term opportunities for possible future improvements to support elections in 2010 and beyond.

This report was the subject of our last testimony to the EAC in August of 2008. We have not done any systematic analysis of

the impact of that report, but informal feedback that we've received suggests that it was useful to some elements in the elections community.

Turning to the workshops convened in this project, they have been designed to provide state and local election officials with the opportunity to interact with technology experts regarding current implementation and future directions for the HAVA-mandated state VRDs. To illustrate that, let me share with you some of the public discussions held during our 2008 workshop in Atlanta, Georgia.

At that meeting state and local officials from around the nation discussed their frontline experiences, obtained feedback and shared some best practices regarding the use of VRDs leading up to and during the election. That dialogue, among those officials and the technologists, highlighted several issues which I'd like to just go over briefly here.

Overall, the election officials felt that their voter registration databases performed generally pretty well, with a number of officials expressing relief that they did not have to deal with closely contested races. If the races had been closer, of course, it is possible that more VRD problems would have come to light than actually did.

They related the fact that the general public seems to be confused about the purpose of provisional ballots and how they're actually used in an election. Media interest in the number and

share of provisional ballots issued in each state reinforced this hypothesis.

Several officials from different states reported problems sharing data used to maintain voter registration lists with other internal state agencies. These other internal state agencies would be things like the local DMV, the Department of Vital Statistics, and so on. Many of these problems appear to reflect policy issues rather than technology issues.

Many election officials are worried about sustaining their voter registration databases when federal HAVA funding is no longer available. Participants noted that funds for maintenance, upgrades and replacement are required to keep their systems running, and that was -- lots of people commented on that.

Registration of UOCAVA voters still presents a special set of challenges for election officials.

Election officials reported record turnout. If this marks a start of a trend, such a turnout has significant implications for matters such as same-day registration, provisional ballots, staffing needs, and so on. Nobody knows how the future will work out in that regard.

Some officials reported some success in voter education efforts using online media such as Facebook, YouTube, MySpace and the like.

Election officials seemed to feel considerable pressure, and some are faced with lawsuits regarding the HAVA compliance of voter registration databases.

And they also reported, finally, that third-party advocacy groups are playing an increasing role in the voter registration process.

We'll be exploring some of these issues further in our workshop in Cambridge, and I understand some of you will be there. And we look forward to a lively discussion there.

That concludes my statement, and I'll be happy to answer any questions now or later.

CHAIR BEACH:

Thank you, Dr. Lin. Commissioner Davidson, do you have any questions for Dr. Lin, comments?

COMMISSIONER DAVIDSON:

Thank you. Dr. Lin, yes, I would like to ask you a question. In the research that you've been doing with the groups that have been coming in for the hearing and talking about the different problems, how do you see that working into your final report? Will that be -- will that mainly be what you -- the knowledge that you've taken from those meetings, is that what your report will be considering? Or will there be other areas that you will be looking into before you write the report?

DR. LIN:

In general, our fact-finding is not limited to taking testimony. Obviously, the testimony that we receive plays a very important role in what we write about, but we certainly have the experiences of all of the election officials on our committee to draw on, plus hearings and articles and so on. I think we have not done a systematic survey, in detail, of what happened in each state; that was beyond the scope of our mandate and funding and time. But I think that we will not limit ourselves to just the things that we've heard about. Am I answering your question?

COMMISSIONER DAVIDSON:

And I guess, my final question is, will you be making recommendations in this report?

DR. LIN:

I think so. I think -- the committee hasn't developed the report yet, so I don't want to prejudge what happens, but our mandate is to provide advice, and we intend to fulfill our mandate. So, for example, in the interim report we made some suggestions, or we made some recommendations for how election officials could, if they chose, improve their practices and procedures in time for the November election, and we identified a number of issues that we felt that would take longer. I think that in this report, we are likely to comment on some of those recommendations that we made previously, as well, because they require a little bit more elaboration, and so on.

COMMISSIONER DAVIDSON:

My final question is, in looking at this and talking with the states, have you discussed how soon we need to come out with something from the EAC to be helpful for 2010? Because, they need time to be able to change their, you know, whether they're changing their computer system, or changing their software in some way or another, what kind of timeframe has the states told you they need, lead time to be able to make it effective in the 2010 election?

DR. LIN:

They haven't really said. And, again, we haven't done a systematic survey of that. In general, every IT person will tell you, the sooner the better. And, you know, we are currently on a track to produce a report by the fall, sometime in the fall, and we intend to hold to that goal. So...

COMMISSIONER DAVIDSON:

Thank you.

CHAIR BEACH:

Thank you. Vice-Chair Hillman, do you have some questions or comments?

VICE-CHAIR HILLMAN:

Actually, what I'd like to do is save my questions for after Ms. Weiser makes her testimony, and then, if possible, I'd like to ask

that Dr. Lin could join her at the table, so there could be a little dialogue.

DR. LIN:

Certainly. Certainly.

CHAIR BEACH:

Sure, okay. I have a few questions.

DR. LIN:

Sure.

CHAIR BEACH:

One, you discussed that there are some challenges with UOCAVA voters and registration. Can you expand on that or give me an example of what your group has found?

DR. LIN:

What we found was, in looking at the UOCAVA issue, is that it's very cumbersome for an overseas voter to register; that often the mail system, for example, is much more unreliable than the mail system in the United States. Since they're not local, they have a hard time figuring out where to go to register or how to register. And the physical demands of getting pieces of paper back and forth seems to be a great impediment to proper registration.

CHAIR BEACH:

As far as you moving forward, has there been any discussion on looking at the impact of redistricting or the Census on how that would impact voter registration databases?

DR. LIN:

No, we have not looked at that. That's an issue that I will raise. Thank you for mentioning that. That's an issue that I will raise with my committee, but we haven't looked at that to date.

CHAIR BEACH:

Okay, and one final question of what you've observed so far with your working group. Do you have any opinion on how the databases have performed this past election cycle?

DR. LIN:

We can only report that we heard, which is that we didn't hear at this most recent hearing in Atlanta, which was specifically called to have elections officials come talk to us about their voter registration databases, we didn't hear every much -- we didn't hear very many complaints. That doesn't mean there weren't any, but it means that they didn't rise to a very large level or a very significant level, in their minds, we would think. We gave them the opportunity to complain and they didn't, so I infer from that that they performed more or less as expected. As I said, I think that, as I said in my testimony, if there were -- if elections were closer, if the election was closer I think -- everything in an election gets more closely scrutinized when it's close -- and there may well have been other problems reported. I think the answer, beyond what I've just told you, I think we don't know.

CHAIR BEACH:

Okay, thank you. There being no other questions, I'd like to at this time call up Wendy Weiser from the Brennan Center.

Ms. Weiser is the Director of the Voting Rights and Elections Project and Deputy Director of the Democracy Program at the Brennan Center for Justice at NYU School of Law. Over the past three election cycles, she has coordinated advocacy and litigation efforts that kept hundreds of thousands of voters from being disenfranchised. She has authored a number of publications on election reform, litigated ground-breaking voting rights lawsuits and provided policy and legislative drafting assistance to federal and state legislators and administrators across the country. She is a frequent public speaker and media contributor on voting rights and election reform issues and regularly appears and is quoted by national media outlets. She has also served as an Adjunct Professor of Law at NYU School of Law. Ms. Weiser received her J.D. from Yale Law School and her B.A. from Yale College. She was a law clerk to Judge Eugene H. Nickerson in the United States District Court for the Eastern District of New York.

MS. WEISER:

Thank you very much, Madam Chair, Vice Chair and Commissioners, for the opportunity to testify today. And I am very pleased that the Commission is, again, focusing on the critical topic of voter registration databases, which are both the gateway to the franchise and the most critical tool of election administration.

These databases are a big step forward and, if used properly, could dramatically improve voter registration system in the administration of elections. But like any tool, if poorly understood or used improperly, they could create problems, including the disenfranchisement of eligible voters.

I've already submitted very detailed written testimony about the Brennan Center's concerns with the use of the databases in the 2008 elections, along with recommendations for the EAC. So, today I will limit my remarks to three areas where I believe that the EAC can really make the biggest difference in improving the voter registration systems. And that's the collection of data and information about voter registration systems, the use of record matching, both in the voter verification and in the purge process, and modernizing the voter registration system.

So first...

VICE-CHAIR HILLMAN:

Excuse me one second, if I could ask two things of you.

MS. WEISER:

Uh-huh.

VICE-CHAIR HILLMAN:

One, if you could speak a little louder.

MS. WEISER:

Sure.

VICE-CHAIR HILLMAN:

And then, secondly, when you address those three points, if you could just point me to where in your written testimony I will find those subjects, then I can do a little cross-reference.

MS. WEISER:

Sure.

VICE-CHAIR HILLMAN:

Okay.

MS. WEISER:

I'll do my best...

VICE-CHAIR HILLMAN:

Okay.

MS. WEISER:

...on the latter one. So, I'll start with voter registration data and information, which I do address throughout -- on each of the topics what the lack of data is, but there is a section in the testimony that specifically addresses data. I believe it is number two, point two on page 16. So, there is a section particularly on that, but I do address these points throughout.

And this is an area where I believe the EAC can most likely make the most significant difference, is by fostering the collection and dissemination of better data and information about databases in the voter registration system. There is really surprisingly very little publicly available information right now about voter registration databases; how they're constructed, how they're maintained, how

they're used and how they perform. And in a similar vein, although states actually provide a lot of information -- other information about their voter registration systems in the NVRA report and the Election Day Survey, that information is often of poor quality and in inconsistent formats, which makes it difficult to assess the voter registration system performance and to compare information across jurisdictions. If we take purges of the voter rolls, for example, there is virtually no public information about how and when they are conducted, how many voters are removed in each purge and how those were resolved. And overall, this dearth of public information does limit the ability of policymakers and members of the public to assess the performance of the registration system and to recommend improvements to that system.

And I'll give some examples of some of the questions that we can't really effectively answer right now. On purges, we don't know how often jurisdictions conduct purges. How do they develop their purge lists? How many records are purged? On what grounds? Were the affected individuals notified or provided an opportunity to correct the situation? On verifications, we don't know how many registration records are sent for verification to motor vehicle authorities, what are the match failure rates, what are the matching protocols used, what are the steps taken to review match failures, and whether those match rates have improved over time.

On databases generally, we don't know how they're constructed, whether they have the capacity to keep records of database transactions, to restore erroneously purged records, whether the fields can be modified, whether their data entry protocols, like for hyphenated names, for example, and what other election management functions each can perform; whether they can interact electronically with other databases, or whether they can receive electronic information from other databases even if they can't be made interoperable.

Provisional ballots is another area which would help assess the performance of the registration system, but we don't have specific information about how many provisional ballots are cast because of registration problems, whether those are counted, and in each category, and why and why not.

And we don't have information about costs, the costs of the registration system of processing voter registration forms in off election years, in the busy period right before the election, how much purges cost by category, NVRA mailings, automatic address updates with motor vehicle authorities. These, and others, are areas where the EAC can really play a significant role in improving the situation.

We recommend that the EAC try to require election officials to collect and record more detailed information in either their NVRA reports, or in the Election Day Survey, and perhaps even issue

guidance on urging greater transparency and more detailed reporting on the use of voter registration databases. We also recommend that the EAC take steps to ensure that the data is in a more standard format and work with election officials to assist with that standardization. The EAC can take steps to, actually, make that data reporting more mandatory such as by conditioning certain benefits on the provision of data, or by publicly disclosing which jurisdictions have not been providing adequate data that might shame them into getting their data together. And the EAC can sponsor additional studies on the voter registration system, which is a valuable tool in getting information out there.

The second major area where the EAC can really make a difference is in the record matching process, which currently produces really significant errors, both in the HAVA verification context, and in the purge context. In the verification process the danger is false negatives, where a voter registration record fails to match a record in another government database, even though the individual in question indeed has a record in that database. And this happens when matching criteria used are too strict, don't account for type of hyphenated names, maiden names, and so forth. And if match failures like this are used to deny registration or impose hurdles on voters, then many eligible citizens will be harmed because of false negatives. And eligible voters will even be harmed if greater, more flexible matching criteria are used, but

that will be a much smaller number. And I discuss this all at length in the section on matching, “no match, no vote.” I believe that’s on pages two through six.

In the purge context, the danger is false positives, it’s a reverse danger, where a voter registration record matches a record in another database, but the two records actually refer to two different individuals. And this happens where the matching criteria used are too flexible, such as, for example, when two individuals with the same name and birth date are presumed to be the same person, but basic statistics teaches the likelihood that a sample size of sufficient size would produce individuals with the same name and birth date is very high. If matches are used to purge voters, without providing protections for affected voters, then many eligible citizens will be harmed because of these false positives. And these dangers aren’t just conjectural, they actually were realized in the 2008 elections. For example, four states had in place “no match, no vote” policies and that culled up with a significant number of eligible voters, and there were very highly publicized efforts to expand those policies in two additional states that ultimately failed. And the problem is, these matching process are not a reliable means of determining ineligibility.

To get a sense of the magnitude of the problem, let’s look at some of the figures. In Ohio, more than 200,000 of the approximately 660,000 voters who registered in 2008 were not

successfully matched before the election, so that's almost a third. In Florida, in the last four weeks of the registration system, more than 14 percent of nearly 440,000 registration records were not successfully matched. Election officials were able to investigate that and were able to determine that at least two-thirds of those were definitely the result of typos. So they had time to investigate that. And many of the remaining ones were likely, also similar errors that were not caught up in the review process. So, I've submitted a lot of other figures from other matches in my testimony, and these show that "no match, no vote" policies function principally to exclude eligible voters based on administrative errors.

Another problem in the 2008 election cycle, and previously, is that the matching criteria used for HAVA verification don't reflect the most advanced techniques, the most modern techniques available. For example, I talk about the Help America Vote Verification Process developed by the AAMVA, the American Association of Motor Vehicle Authorities, which all states use to match registrations using Social Security records. That uses very, very strict matching criteria across a number of fields, and the result is predictable; an extraordinarily high rate of false negatives and non-matches. In November of 2007, the Social Security Administration reported that, of the 2.3 million registrations that it processed, or that were verified through it, in that year nearly half, or 44-1/2 percent, did not match. So, it's a significant rate. And

third in the purge context in 2008, we saw that overly loose matching criteria can lead to false positives that catch up eligible voters, and there were a couple of instances that I discuss in my testimony. But the extent of this problem is not known, because we don't have a lot of information about purges; when they're conducted, how many voters are affected, but we believe that it's a significant problem based on all the purges that have come to light over the past couple of years, that every time there's a significant problem.

And there are a number of things that the EAC can do about these issues. It can issue detailed guidance to improved record matching accuracy, in both the verification and in the purge context. And I believe that there are some good recommendations to this effect also in the interim report by the National Academies. It can issue guidance urging states not to adopt "no match, no vote" policies. This is something that I've previously recommended to the Commission. And issue guidance ensuring that purge programs have adequate voter protections, and I previously submitted that.

And the last area which I'll briefly mention, where the Commission can really make a difference, is in conducting research to help states modernize their voter registration systems. The most significant problems with voter registration are typically the result of our outdated paper-based voter-initiated system, and it creates problems for both voters and election officials. And we saw a lot of

this in 2008, as in other election years. For voters, many voters experienced registration problems because of errors in their paperwork, because election officials couldn't read their handwriting, because their forms were not transmitted or were transmitted late by voter registration agencies or voter registration drives, because their forms were lost in the mail, because the information was entered incorrectly in the database, or because officials couldn't process their registrations on time because there's typically a deluge at the end of the registration cycle, and others don't make it on the rolls because they don't know -- they move and they don't know that they have to reregister, they're not aware of the registration deadlines, or they only become interested after the registration deadlines. These are the result of the paper-based system. And election officials, in turn, also have to process a deluge of voter registration applications that typically come in right at the last minute before the registration deadline, in the busiest period of election administration. And during that time they have to decipher poor handwriting, manually enter the voter registration information in the database, and this is information that's been entered in other government databases previously typically, they have to hire scores of temporary workers to help them in that process, deal with lots of voter registration drives, some of which make mistakes, ensure that all the registrations are processed in time to print their poll books, et cetera, and then process provisional

ballots because of the errors in the registration process. And this is an unnecessarily burdensome process that makes it really hard for election officials to focus sufficient attention and resources on all the other critical election administration tasks like poll worker training, voting system testing, et cetera. And these problems could be solved by modernizing the voter registration system and building on the voter registration databases that are in place, that are the subject of today's hearing.

Now because the voters rolls are now computerized and because they're capable of sharing information with other databases, it's now possible to move towards a system of more automatic voter registration, where voters are automatically added to the voter rolls based on information in other government databases. And because they're statewide, it's now possible to move towards a system of more portable or permanent voter registration within states, so that voters don't have to update their voter registration record with election officials each time they move; this can be done now much more automatically. Now, of course, any system using automatic processes, for some of the reasons I discussed before will have some errors in it, it won't be full-proof, and so any such modernization system will also have to have some fail-safe procedure available for voters who either don't make it on the voter rolls or whose information is incorrect on the voter rolls.

These three elements, automatic voter registration, permanent or portable registration, and fail-safe procedures for voters, are the foundation of a proposal that we have published -- the Brennan Center published, concerning voter registration modernization. Each of these elements is actually already in place, in part, in a number of states, and we believe that each ought to be expanded nationwide and that voter registration databases can really help that. We believe that this would substantially reduce errors on the voter rolls, reduce costs and workload for election officials, reduce duplication and waste, reduce the opportunity for fraud, and reduce unnecessary administrative barriers to the franchise, and they would increase the efficiency of election administration, and free up essential resources for the other election administration tasks.

Based on our experiences, most election officials and members of the public actually support this reform. And the principal obstacle, at this point, is lack of sufficient information and data to accomplish this in a short period of time. And we believe that the EAC can help in this process by fostering research designed to provide states with the information and the technical assistance they need to actually modernize their voter registration systems and move more into the 21st century.

Thank you very much.

CHAIR BEACH:

Okay, thank you. I'll turn to Commissioner Davidson for questions and comments.

COMMISSIONER DAVIDSON:

I'd like to, maybe, come back, I've got some questions for Ms. Weiser now, but I'd like to, maybe, come back after Commissioner Hillman asks her questions of Herb and...

CHAIR BEACH:

Okay.

COMMISSIONER DAVIDSON:

In reviewing your testimony, because I read your testimony, I got the feeling you were saying that there was several states that were not meeting NVRA.

MS. WEISER:

Yes, that is correct.

COMMISSIONER DAVIDSON:

Is that the way you see it?

MS. WEISER:

There were at least two successful lawsuits relating -- or that were at least initially successful, I think they're still ongoing -- one of them might be complete -- in Michigan and Colorado, states that were not following the purge protections in the NVRA. And again, we don't have information about how purges were conducted in other states. These happened to come to public light in 2008, and advocates did bring litigation. We were involved in one of those

lawsuits, finding that voters were being purged without the protections for suspected movers that the NVRA requires, is one example, or within the 90-day period that the NVRA prohibits purges to take place.

COMMISSIONER DAVIDSON:

So, in your view, within that 90-day period, should there be no list maintenance?

MS. WEISER:

As I read the NVRA, there can be no systematic purge activities within that 90-day period. Clearly, if an individual becomes ineligible during that 90-day period; moves, is convicted of a disqualifying felony, dies, that is not captured within the systematic list maintenance. Systematic list maintenance is the term that the NVRA uses. But to do a comprehensive match of the voter registration database, for example, against another database to identify individuals who have been long registered, who are suspected to be ineligible, or moved, would be something that needs to take place before the 90-day period.

COMMISSIONER DAVIDSON:

I will have further questions for Colorado since they're here. So, I'll wait and ask maybe another question after Dr. Lin is finished answering questions for Vice-Chair Hillman.

CHAIR BEACH:

Vice-Chair Hillman?

VICE-CHAIR HILLMAN:

Sure. I want to delve into -- I'll just pick on two areas of the presentations from both Dr. Lin and Ms. Weiser.

So, to over simplify, there's always a risk in over-simplifying, but I want to see if I can't just sort of see if we could parse out the activities that have happened to create and maintain statewide voter registration database. First was the HAVA requirement. Then states had to come up with its policies about how the database would function, at least at a basic level, so it could do a scope of work to let a contract -- to have a database either created, whether in-house or outside contractor. So, then ensued the set of hardware/software protocols, if you will, and to get feedback if the database could do what the state wanted to accomplish, with respect to creating and maintaining a statewide voter registration list that could be interactive with local jurisdictions. Nice that it could be interactive with other state agencies as well, but at the core to be interactive with the local. And then the fourth chunk is the implementation and maintenance of that, such protocols as checks and balances with respect to the entry of data, and how typographical errors are confronted, and if somebody has a question about a hyphenated name or not hyphenated, you know. Those kind of more detailed things, but things that very much affect the integrity of the database and the kind of list it produced, and whether it can serve other purposes for the election officials, other

than capturing and recording and producing a list of registered voters. I mean, is that sort of a fair chunking out of the four basic components, Dr. Lin?

DR. LIN:

I think that's a fair statement of steps that would have to be done.

VICE-CHAIR HILLMAN:

Uh-huh.

DR. LIN:

And, in principle, the sequence that you described is not an unreasonable one. In practice, of course, all of the history of information technology development, systems development, suggests that many of those things happen in not quite the most logical order possible. So, there's a difference between the theory that you've laid out and the practice.

VICE-CHAIR HILLMAN:

Right, right, right. Thank you. Ms. Weiser were you involved in discussions of HAVA before it was adopted?

MS. WEISER:

I was not personally involved, the Brennan Center was.

VICE-CHAIR HILLMAN:

The Brennan Center was. Because I'm wondering if at that time, in the period of 2000 to 2002, if it was believed that the time table that HAVA required for the implementation of the databases

was reasonable and doable. And I've heard various feedback, but I'm particularly interested in this from the "advocacy" community's point of view.

MS. WEISER:

I actually don't know what the view was at that time. Certainly, there have been a lot of challenges with the timetable, both of the database requirements and the voting system requirements.

VICE-CHAIR HILLMAN:

It seems to me like a lot of the deadlines incorporated in HAVA, there was a misinformed/misguided notion that because a few states already had such databases, other states just had to copy those and get with the program, and in two year's time they could have a database up and running. And I think that history and experience has shown that did not work, at least not to the benefit of having databases that were humming along and being fully implemented for the 2008 elections. And I think for EAC, it became even more tricky because the Department of Justice has responsibility for implementation. We were not always informed as to which states were being identified for being out of compliance and when action would be taken. So, for EAC to provide what I think the most useful guidance, would be for EAC to be able to be on the same page with Justice, as to what's going to trigger out of compliance, so that way we could provide useful information to the

states ahead of time and say, “These are the things that you should have in place, and these are the things that should be operational for you to be considered and deemed in compliance.” So, hopefully as we go forward EAC will be able to develop that, so that this guidance will help states know, you know, what’s the trigger; whether the complaint is filed by local groups, a national group, or whatever, what’s the trigger that would cause a state to be out of compliance. There are some obvious things, like not having a database, but that’s the biggest and the most obvious.

About the collection of data, I think, Wendy, you might be, at least, peripherally knowledgeable that EAC has had a lot of discussion back and forth with election officials about our Election Day Survey, and the type of data we seek to collect, and the volume of data, and the number of questions and, you know, when we can produce a survey form, and whether the states collect that data in a way that they can respond to the questions we ask. I’m wondering if you or your colleagues have had discussions directly with election officials about the data that could be reported, and what kind of responses you have gotten directly.

MS. WEISER:

We are not currently working with election officials to change their data provision. I know that there’s a contract at the Pew Center on the States that is working closely with election officials to try to improve their data collection. I think that, certainly, resources

and technical assistance, and some kind of best practice standardized format, will really assist them in making available better data. And it is -- and I think that the databases can be used to collect data in a more standard and useful format. But we have not been directly having -- working with state officials on that topic.

VICE-CHAIR HILLMAN:

Dr. Lin, to that point, does the project, currently underway, address either the type of information that should be collected to inform about how the databases are functioning, how useful they are, what shortcomings there might be? Or, secondly, whether the databases themselves can be used to collect and report that data?

DR. LIN:

Certainly, we've talked about the kinds of data -- the kinds of information that we need. I mean, when you talk about data it's often quantitative data, some percentage of ballots not mailed out or whatever, okay, something like that. We have talked often within the committee about the lack of information, and by that, I mean both quantitative and qualitative information about what's going on with the individual states' databases. For much of what we would want, I think it's fair to say that some quantitative data, to be sure, would be helpful, but kind of a field study of the databases of, you know, talking to people about how they work and what sorts of problems they've been encountering. And not the sort of stuff that you get in formal testimony, but the stuff that you get from election

officials when you're having a beer with them, when they're willing to talk off the record, and so the kind of an informal, down in the ground information that you really want, not the stuff that they sanitize for public consumption. That would have been really useful, and we didn't have any good way of getting that kind of information.

As for the databases themselves to help generate the data, certainly they can generate some useful pieces of data, but it's not clear, for example, how you would get databases to say the reasons why somebody was turned away at the polls. And that kind of detail is important. So, you would probably have to rely on other methods to collect those data. So, I don't want to preclude the possibility that some data would be available from the databases themselves, but I think that you would want to get a lot more.

VICE-CHAIR HILLMAN:

Have you had an opportunity to look at the survey that EAC issued to the states for the 2008 election, and whether or not any of the questions we asked and the data we requested would address some of the concerns that you just raised?

DR. LIN:

I think it's being looked at by the committee, but I don't know what the current status of that is.

VICE-CHAIR HILLMAN:

Okay. I think it would be useful for us to hear back from the committee as to whether the current survey instrument provides some of the data that, you know, would be useful,...

DR. LIN:

Okay.

VICE-CHAIR HILLMAN:

...not just for EAC to report, but useful for states to know that these could be used as measurements of effectiveness or lack thereof.

DR. LIN:

Okay, I'll bring it up with the committee. Promise.

VICE-CHAIR HILLMAN:

Thank you.

MS. WEISER:

I wanted to add that the Brennan Center did submit comments on the 2008 Election Day Survey, including, for example, including more detailed information about provisional ballots; reason provisional ballots were cast and not counted, I think, is one of the comments we included.

VICE-CHAIR HILLMAN:

There still exists a tension between what I call the idealistic desire that states could get the survey instrument two years before the election, which meant that by November 2008 we would have had to have issued the survey instrument for the November 2010

elections. And I say idealistic, because we're not there yet, and I don't know how long it takes for an instrument to be fine-tuned to the point where you say "ah", you know you have that, "Aha," moment, "this gets it." I know that every survey instrument I've been involved with, whether it's annual or biannual, or every four years or whatever, it's always tweaked, because times change and information changes. And so, I'm hoping that EAC will be able to find common ground and a meeting place with the voter interest community, if you will, and the election officials, and the academics, to say, "This instrument is as close as we can get at this time to collecting the kind of data that will inform us about progress made under HAVA."

Going to the lack of information on purges, I think I'm a little confused about what you said, because on the one hand -- I don't know that election officials announce -- you know, they certainly don't use the word "purging" -- "We're going to do our purge now." But, I was of the information that certain, at least, state or locally-based groups were working close with election officials to monitor when list maintenance would be done, list maintenance by any other name, would be done, and whether it was in a defined period of time, or whether it was going to happen throughout a period of time. For example, you know, throughout all of 2009, some jurisdiction is going to be doing list maintenance and would be mailing out throughout 2009. And I thought the information was

going to be collected some place where various groups would have access to know that Iowa or Kentucky or Michigan, or whoever, in 2007 and 2008 had conducted its list maintenance during these periods of time. But, if you could just articulate a little more by what you mean when you say the information isn't available. Not that you weren't articulate, but I'm just trying to mine a little deeper to get to what the real issue is.

MS. WEISER:

I'm not sure if I have something more detailed. It may very well be that some jurisdictions are indeed working with public groups and informing them of all their list maintenance activities, and trying to make it as open and transparent as possible. That is not the usual case across the country, and in most jurisdictions people don't know when the list maintenance activities happen, and how they were conducted. Usually they don't -- voters certainly don't know, in many cases, that they have actually been purged from the voter rolls until they show up on Election Day, if they've been erroneously purged. We did a detailed study, I am not the author of that study, but in 12 states, and detailed interviews of county officials in five or six of those states, to try and get a picture, in general, of how those jurisdictions conduct their list maintenance activities. They vary, substantially, from county to county within the states; they didn't have a regular schedule. We were unable to find out what they were doing that particular year, in 2008. We got a

sense of what they were doing, had very detailed interviews, people were very forthcoming with us. But that information is not regularly reported to the public, nor are there protocols that are publicized, that people can examine them and see if they think that they're using best practices.

VICE-CHAIR HILLMAN:

Okay. All right, Dr. Lin.

DR. LIN:

Let me respond there a little bit more to amplify. When Wendy says that there is no information on how they're conducting it, I mean, obviously, there's some information about it. But at the level -- the purge process -- the matching process, to take an example, is one in which the technical criteria, the specific detailed technical criteria make a huge difference in the outcome of the purge -- sorry, in the outcome of the list maintenance. So, for example, if it means that you're going to use first character of the last name and the full last name, versus full first name, middle initial and last name, those make an extror -- which one of those you choose makes a huge difference. And you can't tell without talking to the guys who actually had programmed the system. This is the sort of information -- I'm going to channel for you for a moment, but I would say this is the sort of information that you would want on the Web site. This is the criteria, whatever the criteria is, this is what we use, and that would be a statement, that would be a public

demonstration of commitment to openness about it. This would mean people could then tell. They could know the criteria by which -- it's not -- when you say criteria, it's not the criteria, is he a felon, is he not a felon. It's whether or not, you know, how many characters you need to match. It's much more at that level, and I think that's the sort of thing that Wendy is talking about.

MS. WEISER:

Another example is -- one example I gave in my testimony was a purge in Georgia, where it was clearly searching for non-citizens that were on the voter rolls. And there was some good assumptions -- the Driver's License Bureau actually collects citizenship documentation on when people obtain driver's licenses. There was a problem in that they don't actually update citizenship information when people become naturalized. And so, a purge that relied solely on the documents that you use at the point of obtaining your driver's license, based on purported non-citizenship, would catch up all naturalized citizens, anyone who was naturalized since the time they first obtained their driver's license. So, that's another example of the kinds of criteria. So, knowing that there was a purge conducted -- at that time this came to light because of the Social Security Administration had publicized data about matching rates and sent letters to some states saying that, "You sent far more records to us than we would have expected. What's going on"? Some folks did some follow-up investigation and found out

that this purge had been conducted, it was well intentioned, I assume, but had a faulty assumption in it.

VICE-CHAIR HILLMAN:

When you say “purged,” do you mean the process that in the end removes a person’s name from the list, or takes a person from active to inactive?

MS. WEISER:

I’m not differentiating between those two, whether -- in different jurisdictions they do it differently, and they do it differently based on different types of list maintenance activities, based on different criteria. And some jurisdictions treat inactive voters essentially the same as voters who aren’t on the list, and others have different procedures available for inactive voters. So, I’m not differentiating between the two.

VICE-CHAIR HILLMAN:

Okay, all right. And then on the matching protocol, and I think you did actually answer my question, Dr. Lin, about the matching protocol, but Ms. Weiser where do you think -- who should be the ultimate deciding authority as to what the matching protocol will be within a state? I mean, you’ve got several entities that are involved in the process; local election officials, state election officials, Department of Motor Vehicles, and then you’ve got the Social Security Administration. But, who should be the ultimate authority to decide, “This is what the matching protocol will

be, and this is how many levels of matching protocol we will go through”?

MS. WEISER:

I believe the responsibility lies with the chief election official, under statute. Whether or not the chief election official has all the information available, they certainly ought to work with all of the other entities and experts with which they have to interact, but I believe that that is where the responsibility lies.

VICE-CHAIR HILLMAN:

So, if the chief election official wants a certain matching protocol that neither the DMV database nor the Social Security Administration database can respond to, and maybe this is a question for Dr. Lin, how do you resolve that?

DR. LIN:

Sorry, say that again please.

VICE-CHAIR HILLMAN:

The chief state election official wants a particular set of matching protocol to be used, and that there should be six levels before it's determined that a person is not on the list, or it's a duplicate, or whatever. And if the databases of the DMV or the Social Security Administration cannot meet those requirements; that their databases can't address that, how does that get worked out? How would you recommend or suggest that that gets worked out?

DR. LIN:

You've chosen the worst possible case.

VICE-CHAIR HILLMAN:

Right.

DR. LIN:

Let me just say that before I address that, and I will address that, there are other, easier cases to address, for example, the use of different name variants, William, instead of Bill, or something like that. Some states have a -- when they're verifying against, for example, Social Security, they make -- it's implicitly a policy decision that they'll just try once. So, they look up William Smith and they don't try Bill Smith. So, that's implicitly a policy decision to say, "I'm only going to try once." So, there are many ways to improve -- and we commented on some of these in our interim report -- there are many ways to improve the process even without having to deal with the worst case that you just described.

To deal with the worst case that you described, ultimately, to take an extreme case of that, let's say the state elections official, the chief elections official wants data that isn't collected by the DMV. Well, that's a question of getting the state to start collecting the information that it needs, and it's all the usual difficulties of that. So, there are times when the problem that you described is, in fact insoluble, or may be insoluble. I think that the answer, in practice, is, you do the best you can to work with the target agencies, the

DMV or whatever, to provide the data. There is a question of whether the data has to be matched in-house, or by the agency in question, and it may ultimately be a question of who pays for it. So, for example, one could imagine, if the DMV is not willing -- in my state isn't willing to cooperate, and I'm the chief elections official, maybe what I do is I pay somebody to -- and make an arrangement with the DMV for my consultant -- or my contracting firm to go into the DMV and go into their databases and do what the DMV wouldn't do for me. I mean, that's just -- I'm just pulling that out of the air. That's just a hypothetical. So, there are all kinds of ways of dealing with this problem. But, it is true that at some point you have to have some cooperation from the target agency, and if they just shut themselves down, then there really isn't anything you can do about that, except getting the Governor involved or something.

VICE-CHAIR HILLMAN:

Thank you very much both of you.

CHAIR BEACH:

I just have a housekeeping question for our next panel.

Does anybody have a plane to catch or have any requirements to be here, after three?

MR. FRANKS:

Yes, I think they put me on a 5:42 flight.

CHAIR BEACH:

Okay, because I know this panel may have taken a little longer than anticipated, but I wanted to make sure that that's taken care of. Are we okay with our technical side going beyond three?

Okay, I think Commissioner Davidson, myself, and Executive Director Wilkey have questions for Dr. Lin and Ms. Weiser.

EXECUTIVE DIRECTOR WILKEY:

Just a comment if I can.

CHAIR BEACH:

Can I call you both back up? You're not dismissed yet.

EXECUTIVE DIRECTOR WILKEY:

Dr. Lin, good to see you. I can't let a discussion like this take place without exhibiting some of my pet peeves, some of it you alluded to in your testimony, Ms. Weiser, and it's very important. And I'm glad to hear, Madam Chair, that you attempted to or were thinking about having the motor vehicle people here for the reason that -- let me qualify what I'm going to say here. When we think of voter registration databases and voter registration systems, we only think of the state and local election administrators. There are three entities who have a very, very significant impact on the work that has to be done in this area. Those are, not in any significant order, the United States Postal Service, the Social Security Administration, and the Motor Vehicle Administration, whoever they may be, in each of the states. They have very significant contributions and responsibilities, under both, NVRA, and under

HAVA, but yet, they are hidden, somewhat, in the work that they do.

While we had a very interesting hearing just last week, in the United States Senate, chaired by the Senator from my former state, which was very informative, but throughout that hearing I was thinking while we were getting some good details, we also were missing the fact, that these entities that I just spoke about, are so important to the process, and yet they are very seldom heard from as to what is their role, what they think their role is, are they meeting that responsibility, and what can they do to improve it, but yet we never hear from them. So, I'm hoping, and I will continue to suggest to the Chair and others, that when we have these hearings, that perhaps it would be great to see a panel of three people consisting of those entities, because they are vitally, vitally important to the whole process, in everything we do. If you look at the fact that the significant, probably 80, 90 percent of the voter registrations in this country now come, either, through the mail, or through motor vehicles, they play a significant, significant role in this process.

And so, Dr. Lin I'm going to ask you, in your deliberations on the committee since I haven't been privy -- I wasn't able to get to all of the meetings, have there been discussions with any of these entities about what their responsibilities are under NVRA and HAVA, what they see their roles as, and what they can do to

enhance their roles in the future? Because, we can't do -- local and state election administrators cannot do their job without these three entities.

DR. LIN:

In one of the workshops conducted before the interim report was issued, we did hear from the motor vehicle -- we actually heard from the U.S.P.S., somebody who talked about the National Change of Address registry, somebody from SSA, and somebody from the Association -- from AAMVA. We did hear from them, and some of their input was, in fact, reflected in our interim report.

So, we have had some testimony from them. I think their testimony underscores -- we didn't take the full measure of all of their responsibilities. We asked them only about certain specific issues, but I think your statement is right, and it underscores their importance, and the testimony we received also underscores their importance to the process.

Certainly, flaws in, for example, in mail forwarding, which a lot of the NVRA stuff depends on, I think, matter a lot to the outcomes of those processes. And we all know that the forwarding system is not a hundred percent perfect. We all have personal anecdotes about that. So, you're right and, you know, we will continue to try to engage them.

EXECUTIVE DIRECTOR WILKEY:

Thank you, because I know that having been involved in both NVRA and HAVA legislation, that it was like a shotgun wedding, you know. They were really very reluctant to play their roles, but yet they have a significant role. Would you agree with that, Ms. Weiser?

MS. WEISER:

We strongly agree with that, and would strongly support efforts by the EAC to work with these other entities, to actually improve their participation in the process. I gave some particular examples in my testimony. Certainly, I didn't discuss the post office as much, but as a significant, significant role that ought to be included.

EXECUTIVE DIRECTOR WILKEY:

Thank you. Thank you, Madam Chair.

CHAIR BEACH:

I'll be brief. I just have a couple of questions for you. Ms. Weiser, when you talk about list maintenance and purging, do you see a distinction between the two? Because, I know list maintenance has been used since NVRA, but now they're using this term of art, purging. So, I kind of wanted to get, from your point of view, what the distinction is between the two, if there is any.

MS. WEISER:

I don't -- I'm not using them with any distinction. It was just a shorter term...

CHAIR BEACH:

Okay.

MS. WEISER:

...for list maintenance, meaning, efforts to try and cull the voter rolls of ineligible or duplicate records.

CHAIR BEACH:

Okay, thanks. Do you think the statewide databases have met the goal of making registration a more uniform process in each state?

MS. WEISER:

They certainly moved us closer towards that goal. I think that there's a lot more that can be done to improve that, but it certainly has moved closer, and I think it's been even better in jurisdictions with a "top down" database system rather than a "bottom up" database system, but I think that there are other ways that the databases can help that. There are a lot of registration rules and procedures that don't, necessarily, depend on the particular database that happen before it hits the database. So, I think that we can use more work in that area.

CHAIR BEACH:

I know the Brennan Center has stated that voters should be allowed to present evidence at the polls, if their name is not on the registration list, as an Election Day solution. Can you describe for me in more detail what that would entail, as far as the type of

evidence that would be used? Because I know you're offered a provisional ballot if you're not on the rolls. Is there something else that should be...

MS. WEISER:

I'm not sure in what context you're referring to, if this was the voter registration modernization proposal, if this was the record matching context. So, I'll try and respond, generally, and I'll take each in turn.

In the record matching context, in a number of jurisdictions, instead of a "no match, no vote" policy, the individual records are flagged if they don't match, and then individuals are asked to provide some form of identification, or go through some procedure at the polls, in order to clear up the non-match or identify themselves. The most common procedure is showing one of the HAVA forms of identification. In terms of correcting registration failures, for example, Michigan has a procedure in place, whereby if an individual -- and this is one of many jurisdictions that do -- if an individual shows up at the polls on Election Day, and that had been previously registered, and his name is not on the rolls, that individual can actually cast a ballot that will count on Election Day. So, it is a form of, something like Election Day registration, for the category of voters whose records have been changed, or who've been erroneously purged from the voter rolls. And so, they -- I

actually don't recall the particulars of the procedure, but I do know that they vote on the machines.

CHAIR BEACH:

Would it be a photo ID or something, to be able to cast a regular ballot?

MS. WEISER:

I don't recall if they have some form of identification – well, they have some form of identification required of all voters.

CHAIR BEACH:

Right.

MS. WEISER:

So, I don't think that these voters are treated differently. They might also have to demonstrate proof of residence, I don't recall. I can forward that information after this hearing. There are variations on those kinds of procedures in other states.

What I was referring to, in the context of voter registration modernization, if the system moves towards much more automatic systems, or automatic address updates, or automatic addition of eligible citizens onto the voter rolls, then individuals will be missed, or there might be people whose records are erroneously moved from one jurisdiction -- from one address to another address based on these false positive matches. And so, there needs to be some sort of procedure in place for those voters to be able to check and correct their voter registration records, before Election Day, or at

the polls on Election Day, since those voters will be subjected to problems that were not of their own making.

CHAIR BEACH:

Okay, thank you. Any other questions or comments? Okay, we'll call up our next panel.

First we have Karen Long, who is the Adams County Clerk and Recorder. She was elected in 2006 as the Adams County Clerk and Recorder, and served as Chief Deputy Clerk & Recorder from 1999 to 2006. She's managed three major business departments, which comprise the Clerk's office, conduct of elections, six motor vehicle offices, and the recording department. She's also assisted in the implementation of Vote Center voting in Adams County, Colorado, in 2005, and participated in numerous discussions groups, and successful implementation of SCORE, which is the State of Colorado Registration and Elections, statewide voter registration system database.

Next, we have Mr. Franks. He has several years of information technology management, and project management experience in both the public and private sectors. He was the Y2K manager for the Oregon Department of Revenue. He established and managed the State of Oregon's Information Technology Project Management Office, and served as the operations manager for the Economic Development Department of the City of Portland. He's

been with the Oregon Secretary of State's Office, as the HAVA and Oregon Centralized Voter Registration Manager since March 2007.

And last, we have Donald Palmer, who is the current Director of the Division of Elections for the Florida Department of State, and serves on the Executive Committee of the EAC Standards Board. Prior to coming to the Florida Department of State, he was a trial attorney with the Civil Rights Division, Department of Justice, where he enforced the Voting Rights Act, the National Voter Registration Act, and the Uniform and Overseas Citizens Absentee Voting Act. He also represented the United States in one of the first enforcement actions under the Help America Vote Act. Mr. Palmer is a former Judge Advocate General and Intelligence Officer serving with the Navy in tours onboard the USS John F. Kennedy and the USS Dwight Eisenhower; as a reservist with the United States Central Command; and deployed overseas to Naval Station Naples, Italy. As a JAG, Don served in Europe and Southeast Asia as Senior Defense Counsel for Sailors and Marines accused of military offense. He later handled criminal appeals for the Navy as an appellate government counsel. Don resides in Tallahassee with his wife and three children.

I'd ask that Ms. Long go first, Mr. Frank second and Mr. Palmer third. And we'll save our questions for the panel after you all get through your testimony.

MS. LONG:

Thank you Chairwoman Beach, Commissioners Hillman and Davidson, Executive Director Wilkey, and members of the Election Assistance Staff.

Thank you for the invitation to appear before the Election Assistance Commission regarding Voter Registration Databases: Initial Discussion on Reviewing HAVA-Mandated Guidance, including a discussion about how the database has impacted voter registration in Adams County, Colorado, as well as other Colorado counties, and how the county coordinates database management with the State of Colorado.

The statewide voter registration system implemented in Colorado during the 2008 Presidential election year is commonly referred to as SCORE, and it is a “top down” system.

The new SCORE voter registration system and used in Colorado includes both a voter registration system and an election management system, which will be extremely useful and beneficial into the future for voters and the counties for numerous reasons.

Impacts from SCORE put on Adams County and others in Colorado during the original implementation in late 2007 and early 2008 include:

One of the downsides, we had unfortunate circumstances surrounding the first system contract in Colorado, which led to cancellation of that contract and then significant delays before our

second statewide voter registration system was eventually contracted and successfully implemented.

We had another downside. Not all counties started on our SCORE system at the same time. We had incremental installations, a few at a time. And many of us encountered steep learning curves. We had large money investments by counties to hire extra staff to implement the system.

Another potential downside is that it could be an unfunded mandate to counties for ongoing support.

We see upsides that we're proud to tell you is 64 determined county election officials and our staffs working closely with our Secretary of State's Office, we successfully implemented the system, not without bumps and bruises to all though.

We had very large, aggressive and successful voter registration drives, started working in Colorado very early in 2008 to register voters. And their efforts kept us very busy while we were still learning to use the new system.

The Adams County elections office also engaged in determining if two different recall elections were to be conducted at the same time as the implementation of our new SCORE system. Should we stay on our legacy system to conduct the recall election because we knew that system would work? Or should we attempt to conduct the recall elections on new, nearly unproven statewide voter registration and election management system?

Should we run dual systems, so we could prove our legacy system to the new system? Four of Colorado's largest counties were the last to implement SCORE, and my county being one of those. Many were reluctant to turn loose of the legacy systems because of the obvious changes. We did lose some system functionality from our legacy systems to SCORE.

Another question became, how would we conduct a mock election in our new system after being on the other system just two weeks after going on the new system?

I can tell you that the Colorado SCORE system is fully real time, which is beneficial for any and all counties who access voter registration records, update records, et cetera. This is a voter registration system built into an election management system, since these processes are closely tied together in Colorado.

The positive impact SCORE made is a standardization and uniformity of process and procedures for all counties in our state, which is exactly what the voters will benefit from. This system has changed the way we work our processes in the counties.

For efficiency purposes, we are now bringing our Colorado election laws in line with the processes used in SCORE. We soon expect to see online voter registration become a reality in Colorado, and that will be made possible by the statewide voter registration database.

Very soon we will begin consolidating our voter records because of the efficiencies created by SCORE. Prior to implementing SCORE we had several different stand-alone voter registration databases around Colorado. As SCORE was implemented, voter records from 64 counties were dumped into the new SCORE database. As a result, Colorado now has 5.8 million voter records but only 3.2 million active and inactive voters. By virtue of the late deployment of SCORE, these records still must be addressed.

Because of the mobility of the voting public, we have many, many, many duplicate records of voters. The same person may have registrations in numerous counties. Our records in 2009 to consolidate these records, not remove them, but consolidate them, will prove to be another challenge for counties, but it is a necessary piece of realizing the efficiency of a statewide voter registration database. We will be gaining the uniform use of technology around Colorado from the smallest, to the largest of counties.

As far as specific processes, ID verification continues as discussions among many are ongoing. Our voters are not penalized or denied registration; they simply must provide ID to the election official for completion of their voter registration.

Our agency interfaces work fairly well. Two are efficient; our Department of Corrections and our Colorado Department of Health and Environment. The Colorado Department of Revenue, we're

dealing with a very antiquated computer system and which does not interface satisfactorily. It's taken a lot of work on both sides of the equation to get where we are today, and there clearly is in Colorado no hope for funding to upgrade that system. And the Social Security Administration has no direct connect, as I'm told by my Secretary of State's Office. This is virtually a batch process and it is not efficient for any of us. We would appreciate a look at this.

As far as NVRA, SCORE aids the Colorado counties to be more efficient and visible, standardizing codes for NVRA reporting. This will provide better data as to how and where voters are registering.

Pre-election policy decisions by our Colorado Secretary of State were often quick and far-reaching decisions. SCORE has definitely pushed us to uniformity and some of these policy decisions will be reviewed, with county input, for future impacts. A few of these include document retention, undeliverable ballots, unaffiliated voters, permanent mail-in voters' inability to surrender the ballot and vote on electronic voting equipment, and voter moves. Some of these will be addressed in 2009 legislation in Colorado.

A late lawsuit filed in Colorado is challenging the cancellation of duplicate voter records from SCORE; removed within 90 days leading up to a federal election, cancellation of felony voters and the cancellation of deceased voters. This resulted in post-election

procedures which drastically impacted the counties' ability to proceed with routine post-election timelines set in our Colorado law. We had to review certain, segregated provisional voter information and send letters to these voters included in the lawsuit by two days after the election. Some counties encountered hundreds of the lawsuit provisional voters to confirm. These were subject to different standards for review than our routine, law-driven provisional processes in Colorado. Eventually, after using SCORE to confirm provisional voters' registration records or lack thereof, we were ordered to count some and then audited on that process. This is still lingering in Colorado, but the process for completion was somewhat simplified by our ability to see voter records in SCORE and if our voters were registered elsewhere in the state.

We do acknowledge that the provisional ballot process worked well to protect voters whose cancellations were challenged in the lawsuit.

We believe SCORE will broaden voter confidence simply because of the many mailings being sent to voters in Colorado, generated from SCORE, including the confirmation of the voter's recent registration or requested change.

Counties strongly believe that integrity reigns as a result of the SCORE statewide voter registration database, it is a vital tool on an intrastate basis for confirmation of voter records, changes to records, and voter history and we believe it will bring integrity to an

interstate basis as well, even if it is into the future. We are able to provide more accurate information to other states regarding our voters, if requested, and we believe we are receiving more accurate information from those states, as well.

We know in Colorado that our SCORE system is not quite “there” yet. We deployed the system in 2008 and successfully completed the primary and general elections. However, the vision is now focused on 2010 and upgrading the system with even more mechanisms to allow more efficiencies and options. In the voter registration system, many voter registration records, as mentioned earlier, will be consolidated. The election management system has several modules that were not totally functional and will have further development to provide a system which fully responds to our needs; for instance, election worker module which will include an interface for payroll purposes, reports module will be refined to provide more accurate and user-friendly reports, petition module will be tweaked and the batch scanning module will undergo revision.

As one of our County Clerks in Colorado noted, “when we are able to complete all of the processes vital to the success of SCORE, following NVRA, HAVA and our own Colorado state laws, the design of SCORE will bring intrastate integrity into the statewide voter registration process.”

Thank you for allowing me the opportunity to share the impacts, the issues and successes of our Colorado SCORE statewide voter registration system from a county standpoint and our look into the near future.

I'll be happy to answer any questions you may have.

CHAIR BEACH:

Thank you. Mr. Franks?

MR. FRANKS:

Madam Chair and members of the Commission, thank you for inviting me to testify before you today. Let me start by giving you a few numbers before I delve into the specifics of Oregon's Centralized Voter Registration Database, or what we creatively call OCVR, not quite a fancy name as Colorado's.

Oregon has a population of just a little over 3.7 million. The number of residents eligible to vote in the state is just less than 2.8 million. Of these more than 2.1 million, or 77 percent, are recorded as active registrants in our system. In the November election we received 1.8 million votes cast and that participation rate was 85.7 percent. And our participation rate among UOCAVA voters was 75 percent.

Oregon began exploring the concept of a centralized voter registration system as early as 1999. The OCVR project began in earnest in December of 2002 with the hiring of Julie Pearson as the project manager. A detailed request for proposal procurement

process was started at that time. The RFP was released in May of 2003 and a contract awarded to the Saber Corporation in August of that year. At that time Saber was a locally owned Oregon company. They recently were purchased by EDS, which itself has been purchased by Hewlett Packard.

A pilot system involving several Oregon counties was launched in March 2005. All 36 counties went into production on the system in January of 2006. We gave the vendor final acceptance after the successful May primary of 2006.

OCR/V is a “top down” system, as defined by your Voluntary Guidance on Implementation of Statewide Voter Registration Lists publication. It also incorporates several election management functions, such as election set-up, ballot creation, ballot processing, petition processing and election results.

OCVR can electronically receive data from other voter registration agencies, such as the Oregon Department of Motor Vehicles and the American Association of Motor Vehicle Administrators.

OCVR incorporates several features to facilitate list maintenance. Various duplicate checking functions are incorporated and National Change of Address Information is cross-checked. In addition, our office works with the local election officials to perform additional duplicate checking examinations and other list maintenance activities.

OCVR maintains detailed registration and voting history information. Digital images of full voter registration cards are incorporated into the system. An important requirement of Oregon's vote-by-mail system is the ability to verify a voter's signature image in the OCVR system with the voter's signature on a ballot return envelope. In Oregon, every signature on every ballot return envelope is reviewed and verified using OCVR.

OCVR incorporates a number of security features and protocols to ensure the safety and integrity of the system. One of the many features includes the validation of the machine address of the personal computer used to access the system. We also do transactional audit logging in the transactions that happen in the system.

OCVR is housed on three redundant sites in different geographical areas of the state. All three systems are mirrored and are replicated production sites.

I was asked to comment on the systems utilization in relationship to vote-by-mail. Oregon has been an all vote-by-mail state since 1998. OCVR was designed and implemented with vote-by-mail in mind, even though it also incorporates polling place and poll book functionality. County election officials were involved as key partners throughout the design and implementation process. This partnership continues today as we work to enhance and maintain OCVR.

As I indicated earlier, an important aspect of our system is the image capture of the voter's registration card, which includes the voter's signature. As a ballot envelope is returned, a bar code is scanned and the voter information, including the signature image, is presented on screen for verification. Local elections officials in Oregon are trained in signature verification, and detailed procedures that articulate the state's match-no match standard are in place regarding signature verification.

Vote-by-mail elevates the need and incentive to keep our database current and accurate. Local officials work diligently to keep the voter's address and other registration information up-to-date. We often find that our information is more up-to-date than NCOA or DMV data. Election materials returned by the Post Office provide the opportunity to perform list maintenance by instigating further research.

A challenge that presents itself with vote-by-mail is related to same day or late date registrations. Oregon has a new registration cutoff 21 days prior to an election. Ballots for residents are mailed 14 to 18 days prior to the election. Voters may change their existing registration information right up through Election Day. This can and has resulted in more than one ballot being provided to individual voters. OCVR is configured to track these ballots and does inform the local election official if incorrect or multiple ballots have been returned by an individual voter.

I was also asked to discuss our pilot project comparison of Oregon and Washington voter registration files that took place in August through November of last year. Our Elections Director, John Lindback, initiated this project as part of voter registration database study currently underway at the National Academy of Sciences. We received full cooperation and support from the Washington Elections Department.

We also included participants from the National Academies Committee on State Voter Registration Databases. They are Michael Alvarez and Jeff Jonas. Dr. Alvarez is a Professor of Political Science at the California Institute of Technology and Jeff Jonas is an IBM Distinguished Engineer, with a whole lot of other things behind his name that I'll leave off for now. These gentlemen were very helpful in determining matching criteria and providing feedback throughout the process.

After some initial statewide matching, the scope of the project was limited to Clackamas, Multnomah and Washington Counties in Oregon and Clark County in Washington. These four counties comprise the bulk of the population in the Portland metropolitan area.

A list of 1,312 individuals were produced based on matching first name, middle initial, last name and date of birth. A procedure was developed for contacting these individuals on the matched list. Each state developed a contact letter. In each letter, the individual

was asked if they wished to cancel their registration in the other state and a postage paid envelope was included. And in the Oregon instance and the Washington instance on both of these, we based the mailing on whatever their last registration date was. So if the database indicated their most current registration was Washington, Oregon mailed the letter.

Oregon mailed to 686 individuals from the list; 650 of these mailings were delivered. Of those Oregon letters that were delivered, 391 generated a response, a response rate of about 60 percent. Of those responses, 379 were forwarded to the appropriate county election official and resulted in cancellation of their Oregon voter registration record. 12 of the responses were unresolved as they didn't give us enough information or provide a signature, or something like that.

The response data from Washington was quite similar. They mailed 626 mailings; of those 599 were delivered. Of those delivered, 362 generated a response, again a 60-percent response rate. 352 of the responses resulted in cancellation of the individual's registration record in Clark County Washington. And they had eight responses that didn't provide enough information. And no voter was inactivated or cancelled in either list without their written permission.

We found that there is some latency in our state-to-state communication of voter movement, but we were happy to find that

there was little or no indication of voters purposely voting in both states. We plan to continue our work with Washington in this area and possibly expand the project.

In closing, I'd like to refer to the National Academy of Sciences 2008 document, State Voter Registration Databases: Immediate Actions and Future Improvements, Interim Report, which has already been brought up here today.

The committee that drafted the report listed several short and long-term actions for improvement that the Oregon system already conforms with. Those include:

1. Resubmission of match queries if the response from motor vehicles or Social Security Administration is a non-match.
2. Human review of all computer indicated removal recommendations. And based on the earlier conversation I think that's an important one to point out.
3. Allow selected individuals to suppress address information from public disclosure.
4. Provide public access portal for online checking of voter registration status.
5. Provide voter registration receipts and;
6. Improve the design of our voter registration card.

In addition, we're in the process of implementing two additional recommendations from the report:

1. Use of online registration forms; and,

2. Allowing voters to register and update information online if a signature is already on file with a state agency.

With that, I'll conclude my remarks and turn it over to my colleague from Florida.

CHAIR BEACH:

Thank you.

MR. PALMER:

Thank you. I'd like to thank the Election Assistance Commission for the opportunity to discuss Florida's implementation of a statewide database requirement under the Help America Vote Act and to discuss future improvements necessary by the states to respond to the expectations of registered voters, to meet the needs of election administrators and to meet the interest of other stakeholders in the voter registration and list maintenance process.

One of the major changes that have taken place in Florida has been the implementation of the statewide database Florida Voter Registration System or FVRS. The federal Help America Vote Act required each state to implement a statewide voter registration database. Florida's system went live January 1, 2006.

FVRS maintains the official database of registered voters and their voting history. While a large part of the registration input is completed at the county level, all registration activities take place through this database.

The system established in Florida facilitates interoperability between the county voter registration systems and FVRS and includes processes such as the maintenance and update of voter registration records, notification to voters, assignment of identification number, assignment of precinct and political jurisdictions, processing of precinct registers, address list maintenance and the match processing initiated by statewide computerized list maintenance.

The county databases allow local election officials to work with their local copy of the data when performing these processes for which they are responsible; petition verification, absentee processing, voter history processing, candidate lists and other reports. While correspondence may be triggered by FVRS at the state level by the notification process, the counties have the responsibility for printing and mailing of all correspondence to voters.

Any change to a voter's record on FVRS will appear virtually simultaneously on the county database where that voter is registered. A synchronization process allows local election officials to maintain a copy of all voter information, yet ensures that if the local county requests information from the central database they will obtain the same results. Each local system will have records for each voter that is registered to that county. And while the local

system may retain records of voters who have moved to other counties, they may not be eligible voters in that previous county.

Every time a new voter registration record is created or a registration record is changed, FVRS provides a notification to the affected counties. If a voter is being moved from one county to another within the state, both counties will receive a notification of that change. After processing and retrieval of notifications, all 67 databases are accurately synchronized with FVRS.

The concept of interactive databases under HAVA is facilitating more efficient list maintenance procedures and also meeting the individual voter registration needs of the community, allowing each county in the state to communicate with each other using the statewide database as a conduit.

For example, when a registrant moves from one county to another within the state, the registration is now updated instead of creating a whole new voter registration and it permits registered voters in one county in Florida to go to their new local precinct polling place on Election Day and update their address before voting a regular ballot.

The statewide database allows a county election official or poll worker to look up voter information on the statewide database or their synchronized local database and determine whether the newly moved in voter is on the official voter registration list. If so, the voter can update their address and vote a regular ballot. In

most instances, the election official would be able to determine within minutes whether the person presenting themselves is a registered voter in Florida.

However, even if the election official is unable to determine whether the voter is on the statewide rolls for any reason, for technical or connectivity reasons, the voter can vote a provisional or fail-safe ballot. This provisional ballot allows the election official to search the statewide database at a later time and investigate without the pressure of Election Day, to determine if the individual who presented themselves was indeed a registered voter. The bottom line is if the individual was a registered voter, the provisional ballot will count.

Before the advent of the statewide database under HAVA, the voter described above would likely not have been permitted to vote, as the new county would not have been able to verify with the other county or the state, via FVRS, that the individual was actually registered in the State of Florida.

In order to assure that the voter registration rolls are updated regularly, systematic computerized list maintenance data and duplicate information is provided to the counties on a regular basis. Every two weeks a list of deceased persons is received from the Department of Health and the Department identifies the names of those who are registered to vote. The names are forwarded to the Supervisors of Elections at the county level to be removed from the

voter rolls. Likewise, the Department identifies the names of persons declared mentally incompetent and those who have been convicted of a felony and who have not had their civil rights restored. After determining that the information is credible and reliable, the Department forwards that information to the Supervisor of Elections who then notify the voter of their potential ineligibility and give the voter the opportunity to refute that information. In addition, the Supervisors of Elections regularly update their registration information based on notices of address changes that they had received. The Supervisors of Elections in each county provide biannual certifications of their list maintenance activities.

One item which has received a lot of press coverage recently is what some are calling the “no match, no vote” law. There have been many misstatements about this provision. HAVA requires states to match information received on voter registration forms against driver’s license and Social Security databases for the purpose of verifying the accuracy of the information provided -- excuse me -- information provided. HAVA requires states to match this information received on voter registration forms for the purpose of verifying the accuracy of the information. As the counties are the final arbiter on voter eligibility or ineligibility, we have a duty to provide that information to county officials for resolution with the voter.

In Florida, the Voter Verification law regarding new voter registration applications became effective January 2006. It was in effect until December 2007 when a court first ordered the Department to stop the almost two-year process. That ruling was overturned on appeal. The law was re-implemented September 8, 2008. The implementation was delayed by pending litigation until July, when we received Department of Justice preclearance, reprogrammed the system to automatically notice voters and set up revised procedures. We increased the human element into this process by carefully reviewing records and unverified applications individually with a special database from the Department of Highway Safety and Motor Vehicles. Obvious errors, including nicknames or typos would be resolved and the applicant would be registered to vote.

Every voter registration applicant must provide, if issued, a Florida driver's license number, state identification card number or the last four digits of the Social Security number. The identification number is automatically cross-checked against the Florida driver's license database or the Social Security Administration database. If that number does not match, the Bureau of Voter Registration Services within the Division of Elections manually reviews the scanned image of the application for identifiable typographical errors or a difference between a nickname and formal name based on available records and the actual voter registration application.

If the number cannot still be matched, the applicant is notified by letter and often by other means, such as a phone call or an email, to provide a photocopy of their identification by email, by mail, by fax or the applicant may show their identification in person to the Supervisor of Elections. If proof is provided before the election, the applicant becomes registered and the person is able to vote a regular ballot. If the proof is not provided before the election, the person may still vote a provisional or fail-safe ballot. The person may provide proof up until 5 p.m. the second day after the Election Day for the ballot to be counted.

This law does not keep any person with an unverified number from being able to vote. This law is about verifying identity at the time of registration, so that when the voter goes to the polls the voter can vote a regular ballot, not a provisional ballot.

The courts have held that the Voter Verification law is valid because the state has a compelling state interest in maintaining accurate voter rolls. Despite what some have said, the Voter Verification law prevents fraud and improves the accuracy of the voting rolls, so there is no confusion on Election Day. The state provided examples of fraudulent applications that did come through the system because the law had been temporarily stopped. This is a good common sense law that will help our voter rolls achieve more accuracy and less fraud.

The interoperability of the statewide databases with other state and federal databases should be a process of continuous improvement by the use of the latest technological enhancements and, as important, human oversight of the process to minimize errors. For example, in Florida, we are suggesting to the state legislature that the Division of Elections interact with the Social Security Death Index to provide nationwide information on Florida registrants that may have passed away outside the State of Florida. This information is often not obtained by our state health agency resulting in deceased registrants staying on the rolls for an unusual length of time due to gaps in information. With this legislation, we are looking to establish interaction with the Death Index to receive this data, process it with our HAVA staff before passing it on to the counties for final eligibility determination and removal.

In conclusion, statewide databases should be a constantly evolving vehicle to better serve registrants and voters and to enhance processes for local election officials. We are anticipating and planning on the future use of available technological advancements to improve our current database capabilities. In this world of instantaneous banking and worldwide communications, we will attempt to incorporate the latest technology to serve the people and meet their high, and not unreasonable, expectations.

I would be remiss if I did not applaud the EAC and the group of state and local election officials working with the National

Academies in exploring interoperability and many of the technical issues related to the operation, maintenance and upgrade of current database systems. While this process has taken a long time, it has certainly been thorough; the interim report is a wealth of knowledge and we hope the final report is helpful in envisioning the way forward.

Thank you for the opportunity to discuss this issue. And I am happy to take any questions.

CHAIR BEACH:

Okay, thank you. In the interest of time, I understand Mr. Palmer and Mr. Franks have a plane to catch, so I would ask my fellow Commissioners to address questions to Mr. Palmer and Mr. Franks first.

Vice-Chair Hillman?

VICE-CHAIR HILLMAN:

Okay, thank you. I'll go to Mr. Palmer first. Matching against the Social Security Death Index, it's got a more formal name.

MR. PALMER:

Social Security Death Index.

VICE-CHAIR HILLMAN:

Index, okay. So you have not done that yet but that's something you're planning to do. Is that...

MR. PALMER:

It's something that the state legislature would have to approve. And essentially, that is where you would use -- usually you would use a vendor that would identify individuals that may be Florida registrants.

VICE-CHAIR HILLMAN:

I would just suggest that you might want to talk to Oregon about using that index since they just had a horrendous go-around as a result of a very high error rate on that index, that caused them some additional work and some problems. So, just as a point of information.

MR. FRANKS:

Very familiar with it. I'll give you my card before I leave.

VICE-CHAIR HILLMAN:

In this last election what percentage of the "no matches" were resolved at the state level versus the percentage that had to be resolved by the local election official?

MR. PALMER:

Of the unverified applications that came back to the Division of Elections of Bureau Voter Registration Services, we were able to clear 70 percent of those -- 65 to 70 percent of those. Of those remaining unverified applications, they were sent to the county level. And although I don't have the percentage with me, that narrowed it down to -- by Election Day we had under 10,000

unverified applications that had not been cleared or resolved by the county officials.

VICE-CHAIR HILLMAN:

Okay. And my final question for you Mr. Palmer, if a person's provisional ballot is not counted, if it's determined that their name is not valid, therefore not on a voter registration list anywhere, is it up to the voter to make an inquiry about that? Or are they notified that they are not registered to vote?

MR. PALMER:

I believe that most counties have to have a system in place. And I do -- there may be some exceptions, but I know the vast majority of county supervisors contact the voters directly, explaining what the problem was and the reason their provisional ballot was not counted.

VICE-CHAIR HILLMAN:

Thank you. And I'm not sure that I have a question for Oregon at this time, in part because I had the wonderful opportunity to spend a couple of days there recently and received a very thorough briefing, so I want to thank you for your time. And I have a quick question for Ms. Long, but if you want us to...

CHAIR BEACH:

Sure. Sure.

VICE-CHAIR HILLMAN:

Okay. Was SCORE posted for public comment before it was implemented, do you know?

MS. LONG:

As far as the Secretary of State posting it for public comment, I believe they held public hearing as I recall. I'm not from the Secretary of State's Office, but as I recall they did. I would be glad to check on that for you and further advise you.

VICE-CHAIR HILLMAN:

Okay. And then with respect to the large discrepancy that you identified between -- I want to get this right -- 5.8 million voter records, only 3.2 million active/inactive voters, is the public aware that this discrepancy is going to have to be resolved? I mean, do you think the public is aware of this?

MS. LONG:

I believe that the general population is aware of it. It has been in our newspaper and in the media.

VICE-CHAIR HILLMAN:

Uh-huh.

MS. LONG:

And I'm sure that our Secretary of State will make sure that that endeavor continues. Beyond that I don't know, you know. If you have suggestions as to how that would better be accomplished, I'm sure they would be open to that. But from a state perspective I know they have made some effort to.

VICE-CHAIR HILLMAN:

How is your county impacted by this? Do you know the number of record overage for your county?

MS. LONG:

I'm sorry, I didn't bring that with me. I do not know currently, but I can get that for you as well.

VICE-CHAIR HILLMAN:

Okay, thank you. Oh, DMV, last question. You have responsibility for DMV in your counties?

MS. LONG:

Yes.

VICE-CHAIR HILLMAN:

Okay. So when you talked about the agency interface, you didn't note DMV. Do we take it that the interface with DMV works well?

MS. LONG:

I did make note. It's called the Colorado Department of Revenue. It's CDOR.

VICE-CHAIR HILLMAN:

Oh, the Department of Revenue is motor vehicles?

MS. LONG:

In Colorado is the Department of Motor Vehicles.

VICE-CHAIR HILLMAN:

And that's the one that doesn't work and you have responsibility for?

MS. LONG:

It's Band-aided together.

VICE-CHAIR HILLMAN:

I see.

MS. LONG:

And we have currently no funding available in Colorado to make it better. The Secretary of State has worked with the Department of Revenue. They have worked, I think, fairly well to accomplish an interface that retrieves the Department of Revenue's driver's license records to the extent that it transfers those in, but it still lacks a lot of what it needs to be efficient.

VICE-CHAIR HILLMAN:

Thank you very much.

MS. LONG:

Thank you.

MR. FRANKS:

Chair and Vice-Chair Hillman, I can add on to that. Oregon also has quite an antiquated DMV system. We seem to be working with it pretty well. But as I was talking to my counterpart from Colorado, I asked her if their DMV charged them for the records that they give and apparently not, but in Oregon, we actually pay the Oregon Department of Motor Vehicles for a regular download of

records. And then if they have to do any programming to accommodate us they also charge us for that as well.

VICE-CHAIR HILLMAN:

Thank you.

CHAIR BEACH:

Commissioner Davidson?

COMMISSIONER DAVIDSON:

I guess I would like to first, because you've got to leave, I will ask you if there was anything about the previous testimony anywhere with Dr. Lin or Ms. Weiser, because when I read the one testimony and then read yours, I felt like it was completely different on the no vote -- I mean, let me find out what it's called here, about your "no match, no vote." I guess I completely understood it different, because I didn't think you were doing any checking at all and it sounds like you are and you are allowing people to vote a provisional ballot even if it didn't match and they've got up to two days. Is that my understanding? Am I correct in understanding that?

MR. PALMER:

Yes, Commissioner Davidson. I think that -- I mean, from my perspective as the Director these folks are HAVA funded and they did an outstanding job in looking at using technology to mitigate errors, mitigate errors on the part of voters, mitigate errors on the part of election officials that may be trying to input the data,

and this was something that was brought up earlier, you know. With these voter registration drives, you know, you're going to get applications that are extremely sloppy, you may not be able to read it, there may be some input that's incorrect, that sometimes the person actually gives an incorrect number, may transpose a number, maybe misspell something. And so, if something does come back, you know, with a typographical error, being able to look at an image of the application and being able to look at the history of this individual on the Highway Safety and Motor Vehicles, you're able to -- with any application itself, you have multiple screens, you are looking at this information and you can resolve the issue with the voter. And of those that we sent down to the county -- I mean there are just some numbers that are just incorrect. It's not matching. And so, you're able to resolve those that are fairly resolvable. And if not, you send it to the county and then they begin their process of communicating with the voter, reaching out to the voter by phone, by email, by correspondence, some of them even went to their house to see if they could be resolved. And, obviously, some, by Election Day there were still some that were unresolved, but they did an outstanding job of reaching out to voters. It's really about mitigating mistakes. And as we met with different groups, like the League of Women Voters, we'd emphasize the importance of being neat on voter applications, because it's very important that that data get into the system

correctly because that's where it all starts. I made some suggestions on the online use of voter registration or the use of online, where you pull it down and you can type it in. Those are very helpful because it makes sure the number is correct, makes sure the driver's license is complete and makes sure the name is spelled correctly and, you know, it helps the process from the beginning to make sure some of these issues don't arise.

COMMISSIONER DAVIDSON:

But, I want to make one thing really clear. When it says "no vote," you never turned away somebody at the polling place; they were given a provisional ballot, weren't they?

MR. PALMER:

Absolutely. And that's something we conduct in training with local election officials. They understand that their duty is if a person presents themselves to the polls and they insist -- and they understand what the issue is. They're able to vote that provisional ballot. They're provided information of what is necessary, what necessary evidence is provided, so that they'll go back and if they have they that information they can count that provisional ballot.

COMMISSIONER DAVIDSON:

Okay, thank you. And Ms. Long, coming from Colorado, I thought maybe I could help in clearing up -- I'm going to ask you a couple more questions on the motor vehicle. You are just an agent of the state motor vehicle system, correct, and your information

from the county goes to the state and then is disseminated out to the state for verification of registration?

MS. LONG:

Yes. As County Clerks, we are agents of the Department of Revenue for purposes of administering motor vehicle licensing and registration in Colorado. Some counties also do driver's licenses. My county doesn't happen to be one that performs the driver's license function in the office. So, we're agents when it comes to motor vehicle business. And then for voter registration purposes, we register voters routinely, make changes to records. And then that goes -- it's real time system, so it's part of the voter registration system then that is interfaced with the Department of Revenue's statewide motor vehicle system for purposes of driver's license.

COMMISSIONER DAVIDSON:

And I think that's some of the confusion. Driver's license is normally where we talk about how many people are registered and then motor vehicle, which is separate, which County Clerks are agents of motor vehicle for license plates and that portion. That makes it a little bit -- I didn't want to leave it to where, "Well, why isn't Colorado addressing it, the clerks -- the Secretary of State?" Because they don't have that power, it is separate. It would be nice if all the states managed both, because it would really help our voter registration systems I do believe.

Tell me Ms. Long, in the court case you were ordered to put some records back on. That's correct?

MS. LONG:

Yes, I think I had 15 records that I was ordered to put back on.

COMMISSIONER DAVIDSON:

With the court case?

MS. LONG:

Through the court case.

COMMISSIONER DAVIDSON:

And can you tell me what -- the outcome of those 15 records? Do you know how many people that was taken off in error?

MS. LONG:

I had 12 voters that I had to put back on the records. They were indeed duplicate voters, but I still had to put those records back on. I had two deceased voters, I had to put those back on. And I had one felon voter and I had to put that back on to get through the 2008 Presidential general election. And they were, indeed, duplicate voters. They were, indeed, deceased. And then the last one was, indeed, a felon. But I had to put those back on through the lawsuit on to my voter registration record.

COMMISSIONER DAVIDSON:

Out of those was there any problems with adding them back on?

MS. LONG:

No problem adding them back on. I think we actually had two, possibly, of the duplicate voters who did vote provisional ballots, and the system worked as it should have and those two provisional voters' votes counted.

COMMISSIONER DAVIDSON:

Okay. Mr. Franks, in Oregon you have mail re -- excuse me, mail elections, the one state that totally is mail. How important is it to have accurate voter registration rolls?

MR. FRANKS:

Commissioner Davidson, it's very important. The address -- both the residential address proving residency and the mailing address is very important that we have that. We've had a number of instances where we, as I mentioned in my testimony, where we take the National Change of Address data and compare it with our lists and actually find that the clerks have done a very good job of getting information from the voter or tracking the voter through the system and making sure that we have an accurate address. Our data is often better quality and more accurate addresses than NCOA or the DMV. We find that NCOA addresses can often be six to eight weeks out of date by the time we get it, and usually if we've gotten anything from DMV in terms of a change of address or new

voter registration card we've already made those changes in our system.

COMMISSIONER DAVIDSON:

I guess my last question to each one of the three of you is, I think there's always a problem with terms in the election world. We all see terms being different. Some states have 'purged' is what they actually do, some say 'cancelled the voter'. Can you tell me if you visually -- or if your law makes a difference between purging and -- what is the terminology on motor vehicle -- I mean under...

CHAIR BEACH:

List maintenance?

COMMISSIONER DAVIDSON:

Pardon?

CHAIR BEACH:

List maintenance.

COMMISSIONER DAVIDSON:

Maintenance. What's the difference between purging and maintenance to you, in your states? And is one of them stopped earlier or do you continue -- tell me. I don't want to put words in your mouth.

MR. PALMER:

Well, the way I see it from the State of Florida is that you have active list and you have an inactive list. And, of course, if you are on the inactive list -- if you're placed on the inactive list

following the procedures of the National Voter Registration Act, even if you -- if you show up on Election Day and -- you show up on Election Day, you are able to vote, then you automatically become an active voter. If you are determined as a potential ineligible voter for a variety of purposes, you know, deceased, felon, incompetent, or any other reason of ineligibility at the county level, there are removal processes. And in the end of that removal process, which sometimes including a hearing and notification to the voter, at a minimum, you would be removed from the list. So, those are sort of the terms that we use. I really haven't heard the use of the word purge for a long time, but...

COMMISSIONER DAVIDSON:

And if the others agree, that's fine. If you're different....

MR. FRANKS:

I think ours is a little different because of vote-by-mail. We use 'inactive' and 'cancelled' in our system. If a voter's ballot or voter notification card or confirmation card comes back undeliverable, they can be put in the inactive status. And like Florida, all they have to do is show up or give us the proper information that we're missing and they're moved right back into the active category. If they fail to vote in the number of elections that are specified in the federal guidelines and those type of things, or if they're eventually, you know, proven to be deceased or something

like that, they will eventually move through the inactive phase and then into a cancelled status.

COMMISSIONER DAVIDSON:

One extra question there. Do you mail your ballots to inactive voters?

MR. FRANKS:

No we do not, because usually we don't have their current address. That's why they've been moved into inactive.

COMMISSIONER DAVIDSON:

Okay. Ms. Long?

MS. .LONG:

Yes, Colorado law and processes are very similar to what both of my counterparts here have described. In Colorado, a voter is deemed inactive if they miss voting in a general election, and they receive, from us, a confirmation card it's called, after the election, to determine if they want to remain as active voter. Any contact with our office, not just at election time, but any contact with our office from the time they become inactive until the next time we vote, will activate them again. So, if we get a notification, obviously, from driver's license to change an address or change a name, that automatically activates them in Colorado. Otherwise our processes are very similar.

COMMISSIONER DAVIDSON:

Thank you.

MR. FRANKS:

Could I follow-up? We don't send them a ballot, but we do try and contact them with a notification that we don't have enough information to send them a ballot.

COMMISSIONER DAVIDSON:

Very good. Okay.

CHAIR BEACH:

Okay, great. Mr. Palmer, could you briefly just comment on what role third-party groups have played in voter registration and what impact, if any, they've had on the "no match, no vote" law that you have in Florida and it has on the individuals who have registered through this process?

MR. PALMER:

Well I think for the individuals that registered with third party registration groups, I think they're, you know, very pleased with the opportunity to register. I mean, we always try in the State of Florida to provide, and the supervisors do, as many opportunities to register as possible. As I used to discuss with the different groups in Florida, I would encourage them to be very careful about screening their own applications, and ask people to be as neat as possible, take their time, you know, in filling out the registration card, because that has a lot to do with whether or not the local election official is going to be able to take that data and input it into the system, and accurately go through the process.

CHAIR BEACH:

And all three -- I know, Mr. Palmer, you have mentioned interoperability, and Mr. Franks you have a program that you're doing with Washington State on looking at interoperability between those two. I wanted to get a sense from the three of you, do you believe the EAC, as we move forward in looking at our guidance and updating it, how much of a role should interoperability play? Is that something we should examine and look at?

MR. PALMER:

Well as I said in my testimony, I think it is. I've reviewed the 2005 guidelines. I've also read the interim report. I think that -- looking forward, I think that interoperability improvements with, you know, internal agencies is highly important, as well as dealing with external agencies, as other states or the federal government because it's information coming into the system. And, as I said, there will be necessary improvements to our databases to sort of facilitate that. But, I really think that it's necessary for some of the goals that we have as an election administration community.

MR. FRANKS:

I think I would generally agree. That said, it's fairly obvious to us in our work with Washington and some other states, the information about when people move and re-register in another state does take a fair amount of time to get back to the original state. But I don't want to diminish the complexity of interoperability

between systems, because there's a lot of difference in the systems, there's a lot of data fields and criteria that are different throughout the systems. So, it's not something that would be easily accomplished without a fair amount of work and investment.

CHAIR BEACH:

Ms. Long?

MS. LONG:

Yes, I agree with both comments. I can tell you, we see, just within our own state, difficulty, technically, to be able to make those work. I do see it as something for the future that would be very helpful to have records available from other states, or make them easier for communication between the two states.

I know one of the things, just to mention internally, in Colorado, we've spoken about is, should we change the question on the driver's license to have someone opt out of becoming a registered voter rather than having them opt in. So, I put that on the table, as I think that may be something that needs a look at around the country. Are we opting voters in or are we opting them out when it comes to that kind of record?

CHAIR BEACH:

Thank you. I have one question, again, for the three of you. When I was counsel to the House Administration Committee, back, I believe it was early fall we had received phone calls from state election administrators, directors, officials that they were concerned

with the Social Security Administration's timing of their maintenance because it was during a Columbus Day weekend and that's when you had received a lot of your registrations. And now looking back I wanted to see, did that impact that time when they closed from Columbus Day weekend, I believe it was that Friday to that Monday, if it impacted at all your ability to upload or enter registrations at that time or verify.

MR. PALMER:

It did not impact the State of Florida, but I could imagine a circumstance where a delay like that could. In this instance it surprisingly did not. I looked at the situation and it was not going to impact us.

CHAIR BEACH:

Okay.

MR. FRANKS:

For Oregon, it had I would say a minimal impact. It was close to our registration cutoff deadline, but most counties were able to, kind of, hold the material until the following Tuesday and do the registration then. Most of our matching is done through the DMV, so I would say it had a minimal impact.

CHAIR BEACH:

Ms. Long.

MS. LONG:

I think it had a minimal impact in Colorado, but the fact that the information I provided, that my Secretary of State's Office told me, is that it really doesn't seem to work well at all with the Social Security. They're telling me that they're having to download the information and then batch it out to the counties. So, I think maybe it was a factor of us in the counties not recognizing the fact that the system was down over Columbus Day weekend, and that was a huge weekend for us. We were wrapping up, not only voter registration, but in Colorado, we became a heavily mail ballot state this year, and that was a huge weekend for us. We brought in about 150 extra workers to finish up. So, it didn't impact us on the county level, but I'm sure it probably did at the state level. They had already batched to us what we use.

CHAIR BEACH:

Okay, thank you. I have one more question for Ms. Long. Your SCORE system, is it your understanding that it is HAVA compliant?

MS. LONG:

That is my understanding, from my Secretary of State's Office, yes.

CHAIR BEACH:

Thank you very much.

MS. LONG:

Thank you.

CHAIR BEACH:

Mr. Executive Director, do you have any questions or comments?

EXECUTIVE DIRECTOR WILKEY:

Well, several of my questions have already been answered, but I think some of the discussion that we've heard in this panel relates to my earlier comments, particularly when we were talking about Social Security Death Index and other issues. I think, not to beat a dead horse, but the issue with the closing of the Social Security database on that busy weekend when states were struggling at the tail end of their voter registration deadlines was not so much an issue of them closing it down, but the fact that they didn't particularly care how it affected us, and that goes to exactly what I was saying earlier.

Mr. Franks, do you know -- you mentioned during your testimony, that DMV charges you on a charge back for this data. Is that something you know that is pretty standard around the country, or is it just your particular state?

MR. FRANKS:

I do not. That's why I asked if they were charged by their DMV. Our Department of Motor Vehicles always talks about the federal highway funds they received and the limitations on what those funds can be used for. Therefore, they can't do these kinds of things that involve any federal funds in it, and obviously they

don't have the general fund dollars to do a lot of work. So, yeah, anything we get from them we routinely pay for. And in Oregon that's not uncommon. It's not the standard, but it's not uncommon from agency to agency.

EXECUTIVE DIRECTOR WILKEY:

Okay. Thank you, Madam Chair.

CHAIR BEACH:

Thank you. Mr. Deputy General Counsel is there anything you'd like to add to the discussion?

~~MR. COUNSEL~~ GILMOUR:

No.

CHAIR BEACH:

Okay, great. I want to thank you all for being with us today and for having some really interesting and great testimony. And I think it's appropriate now to adjourn, so our hearing is now adjourned.

[The Public Hearing of the EAC adjourned at 3:21 p.m.]