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4 U.S. ELECTION ASSISTANCE COMMISSION

5 PUBLIC MEETING

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7 1225 NEW YORK AVENUE, N.W.

8 WASHINGTON, D.C.

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10 Taken on the date of:

11 TUESDAY, MAY 1, 2007

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21 Start time: 2:00 o'clock, p.m.

22 Taken by: Jackie Smith, a court reporter

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1 U.S. ELECTION ASSISTANCE COMMISSION:

2 Donetta Davidson, Chairman
3 Rosemary Rodriguez, Vice-Chair
4 Gracia Hillman, Commissioner
5 Caroline Hunter, Commissioner
6 Juliet Thompson-Hodgkins, General
7 Counsel
8 Thomas Wilkey, Executive Director

9 SPEAKERS:

10 Edgardo Cortes
11 Kurt S. Browning
12 Julie Thompson-Hodgkins
13 Curtis Crider
14 Julie Thompson-Hodgkins

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1 P-R-O-C-E-S-S
2 CHAIR DAVIDSON: I'm going to go
3 ahead and call the meeting to order. I'd
4 like to ask everybody if they would put
5 their cell phones on vibrate and/or silent

6 so that they won't interrupt the meeting.

7 First of all, I'd like for us to

8 stand and do, "The Pledge of Allegiance."

9 (The Pledge of Allegiance.)

10 CHAIR DAVIDSON: I'd like for

11 Julie Hodgkins to take our roll.

12 MS. HODGKINS: Chair Davidson?

13 CHAIR DAVIDSON: Here.

14 MS. HODGKINS: Rosemary

15 Rodriguez?

16 VICE-CHAIR RODRIGUEZ: Present.

17 MS. HODGKINS: Caroline Hunter,

18 Commissioner?

19 COMMISSIONER HUNTER: Here.

20 MS. HODGKINS: Gracia Hillman,

21 Commissioner?

22 COMMISSIONER HILLMAN: Here.

4

1 MS. HODGKINS: Madam Chair,

2 there are four members present and a

3 quorum.

4 CHAIR DAVIDSON: Okay. First of

5 all, I'd like to turn to Commissioner

6 Hillman to say a few words.

7 COMMISSIONER HILLMAN: Thank

8 you. As you know, yesterday I traveled to

9 Los Angeles to attend the funeral of the
10 late Congresswoman Juanita
11 Millender-McDonald, and I want to say what
12 a lovely service it was. It was a large
13 church, and the church was completely
14 filled. There were at least 60 members of
15 Congress who traveled together to attend
16 the funeral, as well as numerous state and
17 local election officials.

18 Congresswoman Millender-McDonald
19 was a champion of voting rights and issues
20 to make sure that all eligible citizens
21 could have the opportunity to vote.
22 You know and as we all know, she

1 served so briefly as the chair of our
2 oversight committee, the House Committee
3 on Administration, and she was so excited
4 to have had the opportunity. She was
5 looking forward to working with EAC, to
6 look at HAVA, and all the related issues.
7 So we have lost a champion, and I know
8 that she'll be missed. And I was just
9 pleased that I had the opportunity to be
10 there and the EAC representation was so
11 noted at the funeral.

12 CHART DIVISION. Thank you. 1

13 think some of us got to attend a public
14 hearing that she held in her district last
15 fall, and it gave us a little opportunity
16 to get to know her a little bit better.

17 It's hard to get to know anybody in the
18 Hill, but it gave us that opportunity when
19 we were there to get to know her a little
20 bit better.

21 COMMISSIONER HILLMAN: Indeed,
22 her constituency turned out. I am sure
6

1 there were people on the sidewalk that
2 could not get into the church, but it was
3 clear what an impact she made in
4 Los Angeles, and in her district in
5 particular.

6 CHAIR DAVIDSON: Thank you.

7 Adoption of a motion?

8 COMMISSIONER HILLMAN: So moved.

9 CHAIR DAVIDSON: The I's have
10 it.

11 So I will get to the welcoming
12 remarks, and I would like to thank
13 everybody for joining us here today.

14 We're here to discuss two topics
15 that will impact states regarding how they

16 manage and spend HAVA funds. And I'm

17 trying to get the mic closer, is that

18 better? Okay.

19 We really appreciate Florida

20 Secretary of State Browning for joining us

21 on such short notice. Secretary Browning

22 is a man that knows elections. Before he

7

1 became Secretary of State, he's served in

2 elections in Haskell, is I think the way

3 you say it, for 28 years. So he's got a

4 lot of experience, and we definitely

5 appreciate you being here with us today,

6 and I know that your testimony will

7 provide valuable information to the

8 Secretaries as well as election officials

9 throughout the nation. So I thank you

10 again, and, it will help today, you being

11 here. So thanks, again, for being with us

12 today.

13 We also received a letter this

14 morning from U.S. Senator Bill Nelson in

15 support of Florida's request and I'd like

16 now to have a unanimous consent to read

17 and enter his statement into record. Is

18 there any opposition? Seeing no

19 opposition, I will go ahead and read the

20 letter into the record.

21 "Dear Commissioner Davidson, I

22 am writing to support in the strongest

8

1 possible terms the State of Florida's

2 request to apply funds the state also has

3 received pursuant to Section 251 of the

4 Help America Vote Act, (HAVA) towards the

5 replacement of voting machines throughout

6 the state so that a hundred percent of the

7 machines produce a verified paper record.

8 As a senior Senator from

9 Florida who won elections to the U. S.

10 Senate in the 2000 election, I am

11 committed to do all I can do to ensure

12 that voting systems in my state and

13 throughout the nation uphold the integrity

14 of elections. Florida led the nation in

15 election reform in 2001 with this passage

16 of the Florida Election Reform Act, and I

17 strongly support HAVA's passage in

18 Congress. My understanding of HAVA is

19 that it affords states broad discretion to

20 determine how to spend payments made to

21 them under the statute to improve the

22 administration of elections for federal

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1 office.

2 Florida has worked hard to meet

3 HAVA's many federally-legislative

4 requirements, and remains one of the few

5 states to have met them. Now, under

6 Governor Crist's strong leadership,

7 Florida proposes, consistent with the

8 state's HAVA plan, to eliminate any

9 remaining uncertainty about ballot

10 integrity by requiring a verifiable paper

11 record of every vote that is cast in the

12 state. It is my hope that the EAC will

13 respond to Florida's initiative and

14 commitment to reform voting systems in a

15 way that facilitates the efforts Governor

16 and the Secretary of State to replace

17 voting systems in the state using the

18 funds that Florida received for this very

19 purpose under HAVA.

20 Finally, I want to emphasize

21 that my commitment to election integrity

22 is so strong that I introduced Senate

10

1 S-559, the Voter Integrity and

2 Verification Act (VIVA), early in the

3 110th Congress to require the use
4 throughout the nation of voting systems
5 that result in creation of a paper record.
6 I recognize the important role of the EAC
7 in promoting fair and accurate elections,
8 which is why my bill includes a provision
9 that ensures that the Commission's
10 authorization extends beyond the 3-year
11 period specified in HAVA.

12 I appreciate the opportunity to
13 be heard in conjunction with the EAC's
14 review of Florida's request to use HAVA
15 funds to improve significantly the state's
16 voting systems and improve the overall
17 conduct of elections in the state. I ask
18 that this statement be shared with the
19 other EAC Commissioners and made an
20 official part of the record of the Tuesday
21 May 1st hearing. Sincerely, Bill Nelson."

22 I have distributed copies to the
11

1 other Commissioners, and the letter is
2 also available to everybody at the back of
3 the room, as you entered into the room,
4 and I thank you for listening.
5 And we will go ahead and get
6 started. So if the first panel would join

7 me, please. Secretary Browning and
8 Edgardo, if you would join us at the
9 table. While you do, I will read in some
10 information.

11 Currently pending in Florida
12 State Legislature is a bill to replace all
13 touch screen voting systems, except those
14 that serve voters with disability, with
15 optical scan voting equipment. The bill
16 would also require retrofitting the
17 remaining touch screen systems with a
18 voter-verified paper audit trail.

19 The State of Florida asks EAC
20 for this opinion, whether the state may
21 use remaining HAVA funds to purchase new
22 equipment for the retrofit activity.

12

1 EAC received their inquiry as part of the
2 Commission's role to advise states on the
3 appropriate use of HAVA funds.

4 As the awarding agent for HAVA
5 funding, EAC relies on OMB Circular A-87
6 to recipients of HAVA funding. According
7 to OMB Circular A-87, states must request
8 re-approval for capital expenditures of
9 more than \$5,000,000. States must request

10 pre approval for all expenditures relating
11 to purchases of real property,
12 retrofitting or purchases of real
13 property.

14 EAC routinely receives requests
15 regarding the proper use of HAVA funds
16 from the states. Staffers review these
17 requests and provides interpretations to
18 the state. The reason we're discussing
19 this in public is twofold. We're trying
20 to accommodate Florida in their before
21 their legislature adjourns, and two, this
22 is an issue that may be relevant to other

13

1 states.

2 And let me be very clear, this
3 issue is only one, is only about the HAVA
4 funds and not what type of equipment can
5 be used. It is the EAC's role to
6 establish national standards for voting
7 systems, but it is not EAC's role to even
8 tell or even recommend to the states what
9 kind of voting systems they should use.

10 I'd like to say a few words
11 about our staff. They work very hard.
12 The ones that are doing this presentation
13 and the following presentation, I'll let

14 you know and everybody else that works at
15 the EAC, they are doing the work of about
16 three people, and I cannot thank them
17 enough for their dedication and their hard
18 work.

19 And now we'll move forward and
20 hear from Secretary of State Kurt
21 Browning. Thank you.

22 MR. BROWNING: Thank you. Madam
 14

1 Chair, members of the Commission, Director
2 Wilkey, and the Election Commission staff,
3 good afternoon, and thank you for the
4 opportunity to speak with you today on the
5 topic of voting systems and appropriate
6 expenditures of Help America Vote funds.

7 My name is Kurt Browning. I am
8 the Secretary of State and Chief Election
9 Officer of the State of Florida.

10 After the presidential election
11 in 2000, a great deal of attention was
12 focused on elections administration and
13 the voting process in Florida and
14 throughout the United States. Much of
15 that attention remains on Florida. But
16 before I move forward in my comments

17 regarding Florida's current legislature, I

18 think it's vitally important to understand

19 from where we have come.

20 In 2001, Florida set a model for

21 the rest of the nation when our

22 legislature passed a historic piece of

15

1 legislature entitled the, "Florida

2 Election Reform Act." Highlights of that

3 act include: Decertifying all punch card

4 machines, mechanical lever machines,

5 central count voting systems, beginning

6 with the 2002 primary election. Providing

7 for mandating uniform ballot design for

8 each certified voting system, implementing

9 provisional ballot processes for the

10 counties, providing clarification of

11 recount procedures, including elimination

12 of partial recounts, providing for greater

13 facilitation of the UOCAVA, and

14 eliminating the for cause requirements for

15 casting an absentee ballot, as well as

16 adopting a statewide polling place manual

17 to guide poll workers in statewide minimum

18 standards for voting education efforts.

19 The Federal Government placed

20 the focus on election reform in 2002. In

21 2003, Florida formed the Help America Vote

22 Act State Planning Committee, and this

16

1 planning committee was tasked with

2 creating a plan that would establish how

3 Florida would use the federal funds to

4 replace punch card voting systems, improve

5 voter education, train poll workers, and

6 carry out the other activities to improve

7 the administration of federal elections.

8 In July of 2003, Florida passed

9 legislation implementing The Federal Help

10 America Vote Act of 2002. Florida was one

11 of only a handful of states to accomplish

12 this monumental task of meeting all

13 federally legislated requirements in

14 preparation for the election that

15 followed.

16 As you can see, Florida's made

17 great strides in all areas of election

18 reform, and we are proud to be a

19 nationwide leader in the process. But

20 sometimes we must take a fresh look at our

21 direction.

22 Before serving the citizens of

17

1 Florida as Secretary of State, I served as
2 Pasco County Supervisor of Elections for
3 26 years, 31 years in the Supervisor of
4 Elections Office, focusing on my location
5 constituents. While my constituents were
6 comfortable and confident on touch
7 screens, I see that the climate and
8 political environment has changed somewhat
9 and there is a perception across the state
10 that indicates many voters do not trust
11 electronic voting machines and want to
12 cast a paper ballot. For Florida, this
13 perception has become reality in large
14 part and we want to address those
15 concerns.

16 To that end, Florida's Governor,
17 Charlie Crist, has presented to the
18 Florida Legislature a proposal that moves
19 one hundred percent of all ballots cast in
20 Florida to paper, while also improving our
21 ability to administer federal elections.

22 Let me share with you our
18

1 proposal, how it relates to HAVA funding.
2 This proposal is a commitment that every
3 Floridian's vote in a local, state, or

4 federal race will be counted and
5 verifiable. It will move forward Florida
6 toward a comprehensive, streamlined
7 election system that uses a paper ballot
8 in every voting precinct, beginning at the
9 primary election in the fall of 2008.

10 Our proposal has three major
11 components. First, we will replace all
12 touch screen voting machines, with one
13 exception, in polling places with
14 precinct-based optical scan voting
15 systems. Optical scan voting systems have
16 been widely used and provide a paper
17 record that can be used for recount and/or
18 audit purposes.

19 Second, the Governor's plan
20 would require one touch screen unit,
21 updated with a voter-verifiable paper
22 audit record, commonly referred to as
19

1 VPAT, on each precinct and each early
2 voting site to accommodate our blind and
3 visually impaired voters and to maintain
4 compliance with HAVA.

5 Third, in addition to the
6 precinct-based optical scan voting system,
7 this proposal requires optical scan

8 ballots to be used in early voting sites.

9 This proposal contemplates optional grant

10 funding for counties to purchase a Ballot

11 on Demand system to be used in early

12 voting sites. The proposed grant funding

13 would be available to those counties that

14 use a hundred percent touch screen voting

15 systems at early voting sites during the

16 2006 general election.

17 Ballot on Demand, I am sure you

18 know, allows for individual ballots to be

19 printed when the voter arrives at the

20 early voting site. This system, used in

21 conjunction with optical scanners at early

22 voting sites, is replacing touch screen

20

1 systems that were partially financed with

2 HAVA funds. When Florida counties

3 originally replaced punch card and lever

4 voting systems in 2001 and in 2002, the

5 counties funded well over a majority of

6 that cost. The State of Florida

7 reimbursed some of the cost for the

8 counties and then Florida reimbursed

9 itself with HAVA Section 102 funds.

10 Again, HAVA funding has only constituted a

11 small portion of the overall cost of the
12 voting systems currently used in Florida.

13 I have provided you with a
14 handout late last week noting the time
15 line of what Florida has received and
16 expending, in terms of HAVA funding, as it
17 relates to voting systems and
18 administration of federal elections. In
19 that document, we have detailed three
20 overall components into four funding
21 issues.

22 No. 1, the optical scan voting
21

1 systems in all precincts. No. 2, one
2 touch screen with VPAT in all precincts
3 Three, one touch screen with VVPAT in all
4 early voting sites. And four, Ballot on
5 Demand grants for certain touch screen
6 counties.

7 While the Florida legislature,
8 which adjourns on Friday, May 4th, has
9 suggested several scenarios for making
10 this happen, all of these bills under
11 consideration impact at least one of the
12 three points in the Governor's plan.
13 Additionally, some of the current state
14 legislation anticipates the use of HAVA

15 funds to pay for the precinct-based
16 optical scanners and the Ballot on Demand
17 systems. Some of the legislation does not
18 provide for VVPAT printers, nor does it
19 include a provision for the use of
20 AutoMarks because of the substantial cost
21 involved with implementing that system.
22 The Governor's legislature proposal is a
22

1 cost efficient, resourceful, and
2 meaningful plan that will provide our
3 citizens with a seamless and streamlined
4 voting process in which voters will have
5 the confidence that their vote was
6 verifiable, cast, and counted.

7 That being said, I do think it
8 is important for the Commission to provide
9 guidance for the use of HAVA funding for
10 the four basic funding components, as most
11 states are or will be considering some
12 combination of these systems.

13 I urge the EAC to strongly
14 consider allowing states to use HAVA funds
15 as allowed under Title II, Section 251, to
16 continue to improve the administration of
17 federal elections.

18 The right to cast a vote is the
19 most fundamental of all American rights.
20 There is no greater testament to the
21 principles that our country was founded on
22 than the ability for every American to
23

1 take part in the democratic process by
2 casting a vote for a candidate of their
3 choice and being confident that their
4 ballot will be counted.

5 I thank you for your
6 consideration and for allowing me to speak
7 with you today. At this time, I'd be more
8 than happy to answer any questions.

9 CHAIR DAVIDSON: Thank you, very
10 much. We appreciate that. First of all,
11 I'm going to turn to Julie for questions
12 and then the Commissioners. We'll go down
13 the row, if you have any questions of the
14 Secretary. I think there may be some
15 questions. And if we want to come back or
16 if he would like to make statements after
17 Edgardo's testimony, that's fine.

18 MS. HODGKINS: Thank you, Madam
19 Chair. I appreciate the opportunity. If
20 you beg my indulgence, you guys may ask
21 questions that may spawn a question or two

22 of mine in the process. If I might be

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1 allowed to at least reserve the right to

2 ask questions at the end, I would

3 appreciate that.

4 CHAIR DAVIDSON: Certainly.

5 MS. HODGKINS: Secretary

6 Browning, I wanted to touch on just one of

7 the points that you raised in your

8 testimony with regard to actually a

9 little bit of a historical fact, that is,

10 the money that Florida spent in 2001 and

11 2002 to purchase voting systems that I

12 believe you have said and have certified

13 on behalf of the state are HAVA compliant.

14 Can you give me a little bit

15 more information about how much the state

16 spent at that time, how much of that was

17 reimbursed using federal funds?

18 MR. BROWNING: Yes, ma'am.

19 Thank you.

20 In 2001, there was a formula

21 that was used, by county size, that took

22 the funding that the legislature had

25

1 provided. They had provided \$24,000,000

2 over two fiscal years; 12 and 12. And so
3 the first year, there was \$12,046,875 that
4 went out to the counties. The following
5 year, the same amount. In 2002, July, of
6 that 24 plus million dollars that was
7 appropriated by the state, I believe there
8 was \$11,581,377 of 102 funding that was
9 reimbursed back to the state, that was
10 permitted under Section 102.

11 MS. HODGKINS: Is that the only
12 federal funds that was used to reimburse
13 that?

14 MR. BROWNING: At that point in
15 time. There have since been other HAVA
16 dollars used, I think, 251 dollars that
17 were used to fund the ADA touch screen
18 units to comply with that requirement of
19 HAVA.

20 MS. HODGKINS: And of the funds
21 that, I guess, total of \$24,000,000
22 roughly was reimbursed to the state, what

1 percentage did that make up of the actual
2 expenditure that the counties incurred in
3 2000, 2001 to purchase these new voting
4 systems?

5 MR. BROWNING: I looked at
6 numbers yesterday, briefly, before I came
7 up here this morning, trying to get a
8 handle on how many HAVA dollars were
9 actually used to offset the cost of county
10 voting systems. It was about one fifth of
11 the cost. And when I looked at the other
12 counties in Florida, it was about one
13 fifth of the cost of their total systems.

14 We exceeded well over \$100,000,000 in
15 total voting system costs, well over
16 \$100,000,000. And that's just an estimate
17 on my part because I don't have the total
18 numbers that counties have spent on voting
19 systems, but I do know what we have, in
20 fact, spent or given to counties as
21 relates to the voting systems
22 reimbursements.

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1 MS. HODGKINS: One more
2 question. So it's fair to say then that
3 only a small portion of the cost that
4 either the state or the county expended in
5 that initial purchase has actually been
6 funded through federal dollars, and that
7 the other portion, you have never
8 requested any federal dollars to reimburse

9 those costs?

10 MR. BROWNING: On the

11 \$24,000,000 that the state put up before

12 HAVA was even in existence, the state has

13 been reimbursed \$11,581,377 that was 102

14 money.

15 Since that time, we have used

16 251 funding. I think we had 51 counties

17 that we had given \$11,600,000 to come into

18 compliance, and that was in September of

19 '04. And then in May of '06, we

20 reimbursed the balance of the 16 counties

21 that were already in compliance to the

22 tune of \$13,469,378. Let me do it this

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1 way; for the ADA, \$25,000,000 of money, in

2 addition to the 102 funds that reimbursed

3 the state in 2002. So, roughly, you are

4 looking at \$36,000,000 total of HAVA money

5 funding that was used to offset the cost

6 of voting systems in Florida.

7 MS. HODGKINS: Thank you. Thank

8 you, Madam Chair, for the opportunity to

9 ask questions.

10 CHAIR DAVIDSON: Commissioner

11 Hillman.

12 COMMISSIONER HILLMAN: Thank

13 you. A couple questions. I think I know

14 the answer, but I just want to be sure.

15 So Florida spent all of its 102 funding;

16 is that correct?

17 MR. BROWNING: We have a small

18 balance, I believe, of -- I think it's the

19 102. No, all of 102 is gone. The dollar

20 amount was like 240,000 difference between

21 what the state actually submitted and then

22 what the balance or what the total 102

29

1 funding was. We took everything we got

2 in 102, and we reimbursed it. There's

3 just a very small portion of the 101

4 funding left.

5 COMMISSIONER HILLMAN: Before I

6 ask my other questions, I just want to

7 thank you for coming up and talking with

8 us about this. I think it is really

9 important that the EAC have an opportunity

10 to have these conversations at our public

11 meetings so that the public can understand

12 the myriad of tasks the EAC must perform

13 in making sure that states are in

14 compliance are HAVA, working with the

15 states to help provide guidance to make

16 sure that they are able to spend their
17 HAVA dollars, but spend them appropriately
18 with federal guidelines. So I appreciate
19 your being willing to come up to have this
20 conversation because it is the first one
21 that we have had in a long time at a
22 public meeting about how states spend

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1 their dollars.

2 To that end, I am wondering if
3 you and a member of your staff have had
4 conversations with groups in the state
5 about what Florida is planning to do, and
6 if you could just share with us a little
7 bit, the kind of reactions you are getting
8 from different groups who like the
9 initiative, those who maybe don't like it,
10 and, in particular, what the disability
11 community may be saying.

12 MR. BROWNING: Yes, ma'am. I
13 will tell you that early on, when Governor
14 Crist appointed me to serve as Secretary
15 of State, I was hit with a lot of things
16 very quickly because of our legislature
17 session starting March 6th, along with the
18 budget had to be prepared, whatever.

19 One of the things that I made
20 time to do was to sit down with the
21 disability community, sit down with the
22 advocacy groups, in Florida. We have some
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1 very, very vocal advocacy groups in
2 Florida. It was my purpose to meet with
3 them around my conference table and begin
4 the dialogue so that we kind of all knew
5 where we were coming from. I had a
6 general sense of where these folks were
7 coming from, but I wanted to hear it from
8 them, and more importantly, I wanted them
9 to know where their Secretary was going,
10 which was a different position than former
11 Secretaries in Florida, as is the position
12 that our Governor has taken, is a
13 different position than our previous
14 Governor has taken, when it came to what I
15 call the paper trail or paper record.
16 Governor Crist has been very open and up
17 front, advocating strongly in that regard.
18 I would characterize most all
19 the advocacy groups as being supportive of
20 the Governor's proposal. Almost all the
21 advocacy groups want to have a paper
22 record of votes cast in Florida, as they

1 do across the country.

2 It's interesting that as I talk
3 to the different advocacy groups, that I
4 found that there is even differences among
5 those communities, where you had those
6 folks that were okay with DREs, as long as
7 they had the VPAT. Then there were those
8 within that community that said we will
9 not rest until every DRE is run out of the
10 country, much less Florida. So there is a
11 wide spectrum there.

12 I believe it's a fair
13 characterization to say that almost all of
14 the advocacy groups support the Governor's
15 proposal. Where we're probably getting a
16 little bit of push back, and as a former
17 supervisor, I think you can understand why
18 the push back is coming from our local
19 elected election officials because,
20 obviously, going into a presidential
21 election year, the spotlight's on Florida.

22 It will always be on Florida; concerns

1 about technology and equipment
2 availability, timing, and those kinds of

3 issues.

4 As a former elections official,

5 I am very, very sensitive to all those

6 concerns. I went through the 2000

7 election. I survived the 36 days. We

8 converted from punch card to touch screen

9 in Pasco County in a short period of time

10 and had a very successful 2002 election.

11 I wouldn't say that the supervisors are

12 against it. I think everything being

13 equal, they are hopeful to have more time

14 to do it. Let's wait until 2010 as

15 opposed to 2008.

16 So when I talk to the disability

17 community, they were supportive. I think

18 when I talked to Rich LaBelle in Florida,

19 who is very active in the community, the

20 disabled community, he told me that his

21 organization is not going to have any

22 problems with this plan because he knows

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1 me and he trusts that I would continue

2 pushing vendors to ensure that as soon as

3 practical and feasible, that we would be

4 able to accommodate, not just blind and

5 visually impaired voters, but also those

6 voters that may be quadriplegic,
7 paraplegic, and other disabilities. And
8 he had my assurances about the direction I
9 would take.

10 All in all, I think that the
11 plan has been supported very well in
12 Florida. I think when you go out in the
13 field and you talk to voters in general, I
14 think that you will find voters mix.

15 You have certainly pockets in Florida,
16 when you get into southeast Florida, you
17 have folks down there that are more
18 sensitive to the arguments about touch
19 screen, and probably touch screens because
20 that's what they use, where you go to the
21 other coast, Collier County, which is
22 Naples, Lee County, fort Meyers, Sarasota,

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1 you will find those communities, Nasser
2 County, Charlotte County, not having any
3 problems with touch screen voting systems.

4 As I said in my comments, there
5 is this perception out there that you
6 cannot trust touch screen voting systems.
7 I don't necessarily subscribe to that. I
8 was a supervisor that acquired a touch
9 screen system. However, the Governor and

10 this Secretary support the move to a
11 paper-based system. We have got to in
12 Florida, and I am sure there is probably
13 the sense across the United States or will
14 soon be, we have got to get away from
15 having to defend touch screen voting
16 systems, and we have got to get back to
17 what we were elected or appointed to do,
18 and that is, run elections and run them
19 well.

20 We spend -- I spend such an
21 inordinate amount of time defending touch
22 screen systems that I felt never needed a

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1 defense, but that's the position that I

2 and we have been in for sometime.

3 COMMISSIONER HILLMAN: Madam

4 Chair, were we coming back for additional

5 questions, because I have another one.

6 CHAIR DAVIDSON: Well, hold it,

7 and see if we don't have time to come

8 back.

9 COMMISSIONER HILLMAN: If it's
10 okay, maybe I need to ask it.

11 CHAIR DAVIDSON: Go ahead and
12 ask him.

13 COMMISSIONER HILLMAN: This
14 question is directly to the process that
15 you are going through with respect to
16 explaining to EAC what it is Florida wants
17 to do, the expenditure of the money, and
18 seeking our advisory clearance, whatever
19 is the correct word.

20 Some groups would suggest that
21 EAC ought to just mind its business and
22 let Florida spend its money as Florida

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1 wants to, and that is, after all, what
2 HAVA says. My concern is how you and the
3 Governor and members of the legislature
4 characterize the efforts, the process you
5 have to go through to have this
6 conversation with EAC about expending the
7 monies the way that you have proposed.

8 MR. BROWNING: I am trying to
9 figure out how I want to answer that.

10 COMMISSIONER HILLMAN:
11 Truthfully, but directly.

12 MR. BROWNING: We understand the
13 role of the EAC. In fact, in my
14 department, Department of State in Florida
15 had taken the position early on when asked
16 early on by members of our legislature why

17 we kind of keep the HAVA dollars quiet.

18 We're using Section 251 money or funds to

19 fund our Bureau of Voter Registration

20 Services, as well as our Florida

21 registration system. And the money that

22 we have remaining after all the funding

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1 was provided, we have that projected that

2 it will support those two functions out to

3 like 2017, which was great. All of a

4 sudden, we come in and we want to start

5 talking about looking at different voting

6 equipment, and we, the Governor and I, had

7 both advocated using nonrecurring general

8 revenue dollars, stay away from HAVA. I

9 advocated strongly to stay away from HAVA.

10 Then you had people in the budget office

11 that said, well, let's just use HAVA. And

12 it was one of these things where we knew

13 that we had HAVA dollars there, but I, as

14 a Secretary, and we, as a department, kept

15 advocating, telling our members,

16 Governor's office, that initial

17 information we had received from the EAC

18 was that you cannot use those dollars for

19 that purpose.

20 And as the session goes on,
21 there was more and more discussion about
22 the use of HAVA dollars and why can't we
39

1 use them. And we wanted to point out that
2 as soon as you start using HAVA dollars,
3 then those activities that are being
4 funded by 251 dollars are going to come on
5 to recurring general revenue a lot faster.
6 We have estimated upwards of 2011, 2012,
7 down from 2017, and that's a risk they are
8 willing to take.

9 But we understand the role of
10 the EAC, and I understand that you would
11 not necessarily want states going out
12 there and just spending federal dollars or
13 federal grant money with no oversight. We
14 respect the system and the process that we
15 have to go through. I am hopeful that the
16 EAC will understand that there is, I
17 believe, a movement out there that
18 counties or states are going to be really
19 under the gun to look at types of voting
20 technologies they have out there. And
21 it's hard to justify, if you're not in the
22 elections business. If you are a member

1 of the legislature, it's tough to sit
2 there and justify to somebody that you are
3 sitting on \$91,000,000 of HAVA dollars and
4 you can't use it to go out and buy voting
5 systems that improve federal elections.

6 The comment that I had and this is a
7 comment to me, their rationale for looking
8 at the money, had there been an optical
9 scan ballot in place in Sarasota County,
10 we may not have had the issues that we're
11 having from Sarasota County. I don't know
12 if that's true or not, but at least you
13 would have had a piece of this that you
14 could have gone back in and physically
15 counted to make sure or find out what
16 happened in Sarasota County. I just use
17 that as an example.

18 We respect the process. I am
19 just hopeful that as Commissioners, that
20 you will understand the position that
21 Florida is in. I'm sure that you will
22 find other states. I believe Maryland has

1 just made the decision to leave touch
2 screens and go to optical scan. I'm not
3 sure how they are funding it. I'm not

4 sure. I think they have much less HAVA

5 dollars left so it really isn't the impact

6 where we can pay for the Governor's

7 proposal or the one that the legislature

8 is contemplating. We can pay for that

9 with the existing HAVA dollars that we

10 have, and it gives us the assurance or

11 greater assurance that we're not going to

12 have problems into the future.

13 COMMISSIONER HILLMAN: So is it

14 accurate to say that you're okay with this

15 conversation, and that you don't see the

16 EAC trying to interfere in Florida's

17 ability to change from DRE to optical

18 scan; is that accurate?

19 MR. BROWNING: I think it

20 depends on your answer. No, ma'am.

21 Personally, I do not see the EAC

22 interfering with the type of equipment

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1 that Florida wants to use at their polling

2 places.

3 COMMISSIONER HILLMAN: Because

4 you know that's what we're being accused

5 of.

6 MR. BROWNING: I have not been

7 aware of that. I try not to read too many
8 newspapers, but I do not sense that EAC is
9 trying to dictate to Florida the type of
10 equipment. As I said, I am hopeful the
11 EAC will be sensitive to Florida's need,
12 as they would other states' needs.

13 Things change. Things change.
14 When HAVA was adopted in 2002, I think it
15 was very clear where we, as a country,
16 were headed with election reform. EAC was
17 created. There was HAVA funding. There
18 was specific activities required to be
19 done under the requirements of HAVA, and
20 it's made a huge impact on the way the
21 states and counties run their elections.

22 I am hopeful that the EAC will be
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1 sensitive to that, that some five or six
2 years later now, that things change. I
3 never thought when I bought a touch screen
4 voting system that there would be the hue
5 and cry that people don't trust them. The
6 Governor's committed there has to be some
7 funding provided so counties or local
8 governments are not left holding the bag
9 when they change voting systems.
10 Those of us who had punch cards

11 for 2000, 2001, we went to touch screen,

12 15 large counties did. That's over half

13 the registered voters in Florida. Then

14 six years later, when you think about

15 buying a voting system, it's not like

16 buying an automobile where you got tired

17 of the color or there's a ding or dents.

18 Voting systems are huge dollars, so the

19 Governor was committed to providing a

20 paper record in all of our ballots being

21 cast, but without burdening the counties

22 with a huge financial investment, that

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1 some of those counties are still owing on

2 their new touch screen voting systems.

3 COMMISSIONER HILLMAN: Thank

4 you, very much.

5 CHAIR DAVIDSON: Commissioner

6 Rodriguez.

7 COMMISSIONER RODRIGUEZ: Thank

8 you.

9 As you know, this is a decision

10 made not by the Commission, but by staff.

11 We did have some curiosity about why

12 Florida had spent all of its HAVA funds.

13 I suspected it was a political reason, but

14 it sounds like it's a policy reason. And

15 so I just appreciate your time and

16 presentation today. Thank you, very much.

17 MR. BROWNING: Sure. If I may

18 just address that. I like to think it's

19 efficiency with the dollars that we have

20 received. Keep in mind, when HAVA came

21 into being, Florida had already

22 experienced significant election reform

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1 after the 2000 election, and so we were

2 much further down that lone road when HAVA

3 came into existence in 2002, 2003. One of

4 the major pieces, keep in mind, all the

5 voting systems had already been changed

6 out, the biggest piece being to comply

7 with the development of the Florida voter

8 registration system. I think we did that

9 under budget on time. We met the January,

10 '06 deadline, worked very well during the

11 '06 elections. We're fortunate. I think

12 our state plan had decided that we needed

13 to set money aside to fund our Bureau of

14 Voter Registration Services as well as

15 fund for as many years out, which I think

16 is estimated about 2017. Thank you.

17 VICE-CHAIR RODRIGUEZ: Thank

18 you.

19 CHAIR DAVIDSON: Ms. Hunter.

20 COMMISSIONER HUNTER: Thank you,

21 Madam Chair, Mr. Secretary.

22 My question is similar to what

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1 Ms. Hodgkins was talking about and also

2 Commissioner Rodriguez. So you made a

3 conscious decision back then not to use

4 federal funds to completely reimburse the

5 counties for the expenditures they made on

6 the touch screen systems back in 2001,

7 2002?

8 MR. BROWNING: If I may, I was

9 not the Secretary then, but I will tell

10 you that after serving on the HAVA state

11 planning committee since its inception

12 when I was a local elected official, the

13 plan was not to reimburse. The state felt

14 that there needed to be some ownership by

15 local governments of their own voter

16 systems. Voting systems are a county,

17 local jurisdiction system, Florida law.

18 They are the ones that buy it, pay for it.

19 County Commissioners are the ones that own

20 the system. The supervisor of elections

21 are the custodians of those systems. The
22 supervisor can not go out and say I own

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1 this voting system. So it was a conscious
2 effort not to spend all of our HAVA
3 funding on voting systems reimbursement.

4 COMMISSIONER HUNTER: Thank you.

5 CHAIR DAVIDSON: Mr. Wilkey, do
6 you have any questions?

7 DIRECTOR WILKEY: I don't have a
8 question at this point. I can't let the
9 opportunity go by without saying something
10 to the Secretary publicly, what I have
11 said to him privately, and that is, that I
12 am extremely happy that the Governor made
13 this choice, and I think you have proven
14 that today, Mr. Secretary.

15 I know your background, when we
16 worked together before, and I think that
17 everybody is very proud of you where you
18 are.

19 I might have another question
20 down the road as we proceed.

21 CHAIR DAVIDSON: That's fine. I
22 will give you an opportunity after Edgardo

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1 speaks to make a statement also. As I

2 said, this is a little different than what

3 we normally do.

4 My question that I have, to be

5 honest with you, is really not about the

6 funding. I am getting there, being a

7 federal officer for the TGDC VVSG, some of

8 the questions I am asking, I hope, will

9 help other states in thinking about some

10 of these issues as they move into

11 legislature in this arena in their states.

12 So what I would really like to

13 know, when did the legislature -- I know

14 they don't go buy the certification. You

15 do your own certifying of voting systems

16 in Florida, but do you have anything in

17 your law about whether it needs to meet

18 the 2002 guidelines or the 2005 guidelines

19 or anything like that?

20 MR. BROWNING: I am not certain.

21 And Dawn Roberts is here. We do not do

22 that currently. It is not in the pending

1 legislature. We like to keep up as best

2 we can with the federal standards. We do

3 certify voting systems in Florida, and I

4 believe that we're pretty rigorous with

5 our voting systems certification. That's
6 one of the things, as the new Secretary,
7 is to be able to sit down with my staff
8 and see what we need to do to incorporate
9 our new standards into your certificate
10 methods.

11 CHAIR DAVIDSON: The one
12 question is in the disability arena,
13 that's the other question I have for you.
14 Is that going to be the permanent ballot,
15 the verified paper or is it just a
16 verification? If it's the verification,
17 we're fine, but if in our 2005, if it goes
18 into being the official ballot, then the
19 disability community needs the ability to
20 be able to review that as other voters.

21 MR. BROWNING: If I may, under
22 the Governor's proposal, which I will add
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1 is now different than what is going
2 through the legislature process and I will
3 explain that in just a moment, it did
4 provide that the VPAT, if you will,
5 verifiable paper audit record was, in
6 fact, going to be the ballot of record.
7 We understand that the legislature pending

8 before Congress makes that, I believe, the
9 official record, as far as recounts. That
10 particular piece is not in the
11 legislation, currently going through the
12 legislature.

13 What is currently in the
14 legislative package in Florida is
15 replacement of all touch screens with
16 optical scans and the use of optical scan
17 ballots for all federal voting sites,
18 that's it. Now, where we come in with the
19 Ballot on Demand is to assist counties
20 that are large counties that have used
21 touch screen because of ballot and
22 management issues.

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1 When you look at Miami, Dade,
2 Palm Beach, Pinellas, it's possible that
3 in September of '08, they could see
4 upwards of 1,500 plus ballot types. So
5 they have 20 early voting seats. You'd
6 have to have 1,500 different stacks of
7 paper at two different locations. I don't
8 need to go any further than that, but
9 that's the reason we were looking at
10 providing the Ballot on Demand, so they
11 could print the ballot that would be their

12 ballot when they came in. But the
13 proposal requires that nutshell optical
14 scan to be used in the precinct and early
15 voting sites.

16 The disability community, the
17 piece we have gotten from Mr. Wilkey and
18 Julie is that the purchase of VPATs, if
19 you will, is permissible under HAVA, but
20 our legislature doesn't want to do that.

21 They don't want to entertain putting
22 printers on a touch screen voting system.

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1 That's somewhat troubling.

2 So that's pretty much where we
3 are. We understand if the bill becomes
4 law, that we will need to comply, our
5 vendors will need to comply, providing
6 some audible verification of those ballots
7 cast by voters with disabilities, that are
8 blind or visually impaired. We can't do
9 that. Technology, it is my understanding,
10 is not out there for that community.

11 CHAIR DAVIDSON: I have one
12 remaining question, kind of along the
13 similar arena. But by only having DREs in
14 a location, whether it ends up with

15 verified paper or whether it's without,

16 how are you going to be sure, because

17 there's is very many sometimes

18 disabilities in your precincts, that a

19 ballot is secure and secret?

20 MR. BROWNING: One of the issues

21 that's come up in Florida, that is,

22 whether only one unit can be used by only

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1 a blind or visually impaired voter. The

2 answer is no. We encourage our

3 supervisors for that purpose to have

4 multiple people use the touch screen

5 voting system. There will be poll workers

6 that will want to use that unit because

7 they prefer that over an optical scan

8 ballot.

9 So I don't think, let me say

10 this, that issue, as far as the secrecy of

11 those ballots, is not a concern to me.

12 I think that we have addressed that and we

13 will continue to address that issue.

14 CHAIR DAVIDSON: I am very

15 pleased because it has definitely -- you

16 have put thought into it, and making sure,

17 and I know you will have procedures,

18 making sure you are protecting those

19 people's rights.

20 So I am very pleased with your

21 answers, and I think that helps other

22 states, as they address these issues, to

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1 make sure that they realize -- all of the

2 surrounding areas, not just have the

3 television in one area, but capture

4 everything.

5 MR. BROWNING: Madam Chair, if I

6 may, very briefly, I assured the Governor

7 as best I can that my goal as a Secretary

8 of State was to make elections non-events

9 in Florida. The only thing you ought to

10 be reading about on Wednesday morning are

11 election results. It should not be what

12 counties have problems with what voting

13 equipment. And I know a lot of times,

14 it's like herding cats, but I was an

15 election official, I know what issues are

16 out there. And we're going to work hard

17 at making Florida error free. I am not so

18 naive, and I have been in the business

19 long enough to know that you will always

20 have issues with elections administration.

21 You always will because there's people

22 involved with it, like you and me.

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1 What we're trying to do is

2 minimize our exposure to risk. Right now,

3 what's going to be the next in 2008 --

4 2006, it just so happened to be Sarasota

5 County. 2000, it was Tampa, Miami, Dade,

6 Brower Counties, and it succeeded in all

7 the other punch card counties. My role is

8 to minimize that risk.

9 We believe if we can use HAVA

10 dollars to change this, it certainly

11 reduces our risk significantly.

12 CHAIR DAVIDSON: Certainly, lots

13 of people have a touch style election

14 process. You just gave your speech so we

15 appreciate that. Definitely, for

16 everybody that's here, when he says

17 results the following days, those are

18 unofficial results because they are still

19 doing a lot of counting on their

20 provisionals. Just so the press

21 understands, we don't give results the

22 next day.

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1 Do you have extra questions or

2 we will go to Edgardo, or do you want to

3 do it after his?

4 MS. HODGKINS: I just have one

5 question, if that would be okay.

6 Secretary Browning, are the systems that

7 are going to be replaced in working order;

8 they are functioning properly, it's not an

9 issue of them being replaced because they

10 are not working.

11 MR. BROWNING: That's correct.

12 To my knowledge, all those systems are

13 fine.

14 MS. HODGKINS: Thank you.

15 CHAIR DAVIDSON: Okay. I'm

16 going to turn to Edgardo Cortes. You can

17 go ahead with your presentation.

18 Edgardo's been with us since 2005, I

19 think, about July. Thank you.

20 MR. CORTES: Thank you, Madam

21 Chair, Commissioners. I am here to give

22 some background information on HAVA funds

1 and the process that EAC uses in

2 responding to state requests for guidance.

3 I apologize in advance. It's a little bit

4 hard to make federal law and regulations

5 kind of simplified and not dense. I will

6 do my best.

7 States have received over three
8 billion dollars in federal funds so far
9 under the Help America Vote Act. Of that
10 amount, the EAC is responsible for
11 providing oversight for approximately 2.97
12 billion distributed under HAVA Sections
13 101, 102 and 251. The remainder of that
14 three billion dollars is distributed under
15 Section 261 and overseen by the U.S.
16 department of Health & Human Services.
17 The EAC takes oversight responsibility
18 very seriously, is constantly working with
19 states to make sure that federal taxpayer
20 funds are properly accounted for, used in
21 accordance with all applicable laws and
22 regulations.

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1 The Programs and Services
2 Division, which is comprised of myself and
3 one other EAC staff person, is responsible
4 for working with the states to provide
5 information and training on the
6 appropriate management and use of HAVA
7 funds. Over the past three years, EAC has
8 answered hundreds of questions from

9 election administrators around the country
10 regarding appropriate uses of HAVA funds.
11 Prior to considering individual questions
12 from states, there is some information
13 that is fundamental to each of them and
14 which covers the basic limitation on the
15 uses of HAVA funds.

16 As you all know, there are three
17 sources of funding provided by HAVA for
18 use to improve administration of federal
19 elections and meet requirements of Title
20 III; those requirements to implement
21 provisional voting, improve voting
22 technology, to develop and implement the

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1 statewide voter registration database, to
2 provide information to voters, and to
3 verify and identify voters according to
4 the procedures set forth in HAVA.

5 The funds received by a state
6 under Section 101 can be used for
7 complying with the requirements under
8 Title III, improving administration of
9 elections for federal office, educating
10 voters concerning voting procedures,
11 voting rights, voting technology, training
12 election officials, poll workers, election

13 volunteers, developing the state plan for
14 requirements payments to be submitted
15 under the specific section of HAVA,
16 improving, acquiring leasing modifying or
17 replacing voting systems and technology
18 and methods for casting and counts votes,
19 improving accessibility and quantity of
20 polling places, including access for
21 people, individuals with disabilities,
22 visual impairments, and assistance to
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1 Native Americans, Alaska Native citizens,
2 and citizens with limited proficiency in
3 the English language, and establishing
4 toll-free telephone hot lines that voters
5 may use to report possible voting fraud
6 and voting rights violations, obtain
7 general election information, and access
8 detailed automated information on their
9 own voter registration status, specific
10 polling place locations, and other
11 relevant information.
12 Section 102 funds can be used
13 only for the purposes of replacing punch
14 card and lever voting systems with voting
15 systems that comply with Section 301(a) of

16 HAVA.

17 Section 251 funds can be used to

18 implement any of the Title III

19 requirements, including purchasing

20 compliant voting systems, implementing

21 provisional voting, providing information

22 to voters in the polling place,

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1 development and implementing a statewide

2 voter registration list, and identifying

3 voters. In addition, states may use HAVA

4 funds to improve the administration of

5 elections for federal office on one of two

6 conditions is complete. The first is that

7 the state certifies it has met the

8 requirements of Title III or the state

9 certifies its intention to use an amount

10 that will not exceed the minimum amount

11 available to states under Section 252.

12 That minimum payment amount is

13 approximately 11.6 million dollars.

14 The State of Florida has

15 certified to the EAC that it has met all

16 the requirements of Title III. This means

17 that all the remaining Section 251 funds

18 the state has available may be used to

19 improve the administration of elections

20 for federal office.

21 The uses of Section 251 funds

22 and Section 101 funds, when used to meet
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1 the requirements of Title III, must be

2 accounted for in the state's plan as

3 originally submitted to EAC or later

4 amended. Any material changes to the use

5 of the funds from the approved state plan

6 requires that the state revise its plan

7 and submit those revisions to the EAC for

8 publication in the Federal Register.

9 And I will let it be known that

10 this afternoon we actually received

11 Florida's most recent revision in the

12 state plan. We'll be reviewing that in

13 the coming days, and preparing that for a

14 Commissioner vote for publication in the

15 Federal Register.

16 Florida's current request, as

17 the Secretary mentioned, involved the use

18 of Section 251 plans. Now, in addition to

19 the restrictions imposed by HAVA when the

20 funds were given out, were distributed by

21 either GSA, General Services

22 Administration, or the EAC, those funds

1 were made subject to several circulars
2 developed by the Office of Management &
3 Budget. Specifically, OMB Circular A-87
4 which governs the use of federal funds to
5 purchase goods for state and local
6 governments, Circulars A-102, S-122, and
7 123. These circulars restrict
8 inappropriate uses of federal funds and
9 generally require that costs paid for by
10 HAVA funds and all federal funds be
11 allowable, allocable, and reasonable.

12 As the Chair mentioned earlier,
13 according to OMB Circular 87, states must
14 request pre approval for any capital
15 expenditures more than \$5,000 and states
16 must request pre approval for all
17 expenditures related to renting or
18 purchasing real property.

19 Let me talk a little bit about
20 allowable, applicable, and reasonable. A
21 cost is allowable if it is necessary for
22 the proper and proficient performance and

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1 administration of the federally sponsored
2 program. So costs that are specifically

3 identified under HAVA Sections 101, 102,
4 or in Title III are allowable expenses.

5 A state can allocate an expense
6 by charging the portion equal to the
7 percentage of use for HAVA-related
8 purposes to the HAVA funds. Basically,
9 what it means is that evenly the portion
10 that's used by HAVA funds can be paid for
11 with HAVA funds. If you are purchasing a
12 piece of equipment that would be used for
13 HAVA purposes and another function perhaps
14 that the Secretary of State's Office has,
15 you could only cover -- you would have to
16 figure out the amount of usage that
17 pertains to elections, and you would only
18 be able to pay for that percentage of use,
19 the last part, as reasonable.

20 A state has to do some
21 assessment as to whether costs are
22 reasonable. This is done by determining

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1 that the cost is justified based upon
2 factors such as the frequency of use,
3 leasing versus purchasing, natural costs
4 for the goods or services. Florida's
5 request, in particular, we feel, deals
6 with the question of reasonableness. The

7 program and services division is
8 responsible for responding to all state
9 requests regarding HAVA funding issues,
10 including any pre approval of expenditures
11 required under OMB Circular 87.

12 Just to give everybody an idea
13 of the requests that we get from states,
14 on any given week, we can receive anywhere
15 are from 20 upwards of 75 requests,
16 particularly if we're close to, let's say,
17 the annual reporting deadline for the
18 states. The complexity of these questions
19 varies, and the responses can take
20 anywhere from a couple of minutes to
21 sending back an e-mail, to, in some
22 instances, several weeks to do some

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1 extensive research. We currently have
2 about 65 requests from states awaiting a
3 response from EAC. Now, this does not
4 include other questions we receive, for
5 example, from members of Congress or
6 questions related to our responsibilities
7 under the National Voter Registration Act.
8 Our division sends out responses to state
9 questions on a daily basis, and consults

10 with the General Counsel's Office

11 frequently on those responses.

12 Finally, I wanted to give

13 background as to how we ended up at this

14 meeting today with this request from

15 Florida. Our initial question on this

16 issue came on March 12th by way of a phone

17 call from Bob West, who works for the

18 ethics and elections committee in the

19 Florida House of Elections. He,

20 basically, asked whether or not HAVA funds

21 would be used to replace DREs in 15 of

22 those 67 counties. He did request a

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1 response by the end of that day, but did

2 not have additional information.

3 We told him, obviously, without

4 having everything in hand, it would take

5 us a bit longer to get it to him, but we

6 did offer and did send him a copy of a

7 response that was previously sent to

8 Washington state on a very similar issue.

9 We did let him know that if he wanted a

10 formal response, that we could go about

11 gathering additional information, and we

12 would be able to provide that.

13 That following day, we received

14 the very same question from Amy Tuck, the
15 Director of Elections in the Department of
16 State. I forwarded her the response that
17 I had sent the previous day to the
18 legislature, and offered to set up a call
19 with her to answer any questions that she
20 may have. The following day, the 14th,
21 Julie Hodgkins and myself had a phone
22 conversation with Ms. Tuck and Barbara

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1 Leonard, the HAVA coordinator in Florida,
2 to answer some additional questions that
3 they had.

4 Several weeks later, on April
5 5th is when we were given a request for a
6 written opinion. We had given them our
7 thoughts over the phone, and we had some
8 previous e-mails in an informal way. Ms.
9 Tuck requested a written opinion from us,
10 and we then set out to make sure that we
11 had all information in hand. We actually
12 had a conference call with the Secretary
13 on the 16th of last month, April 16th,
14 with Secretary Browning, several staff
15 members, some folks from the legislature,
16 Tom Wilkey, Julie Hodgkins and I were

17 present for the EAC. We have been in the
18 two weeks since then gathering additional

19 information to respond to the request.

20 That is how we're here today, to hopefully
21 finish that process of gathering
22 information.

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1 CHAIR DAVIDSON: Okay. I will
2 first start with Commissioner Hunter, do
3 you have questions?

4 COMMISSIONER HUNTER: No, I
5 don't. Thank you, Madam Chair.

6 CHAIR DAVIDSON: Commissioner
7 Rodriguez.

8 VICE-CHAIR RODRIGUEZ: Thank
9 you. No. I want to thank Mr. Cortes for
10 his comprehensive presentation. Madam
11 Chair, I don't have any.

12 CHAIR DAVIDSON: Commissioner
13 Hillman.

14 COMMISSIONER HILLMAN: Two
15 questions, I think. You mentioned we had
16 received a revised state plan from
17 Florida.

18 MR. CORTES: Yes.

19 COMMISSIONER HILLMAN: Does it
20 address the issue we're discussing today?

21 MR. CORTES: I received it about

22 twenty minutes before coming down here.

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1 COMMISSIONER HILLMAN: Maybe I

2 could ask the Secretary directly.

3 MR. BROWNING: It does not

4 include that. We understand we would have

5 to go in and re-address our state plan.

6 When the state plan was drafted and

7 published out for public comment, this was

8 not even a flip on the radar.

9 MR. CORTES: Commissioner, one

10 of the reasons I need to put in the

11 revised state plan was an issue that came

12 up during a single audit, in terms of

13 having the state update. This is

14 something they have been working on for a

15 while.

16 COMMISSIONER HILLMAN: So it's

17 not related?

18 MR. CORTES: Right.

19 COMMISSIONER HILLMAN: And my

20 other question is, Washington -- you

21 mentioned that you had provided to Florida

22 a copy of a response we had given

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1 Washington state, but you didn't say what
2 that was, so could you just clarify a
3 little bit.

4 MR. CORTES: Yes. Washington
5 state, last summer, had requested
6 permission to purchase what they called
7 audio units. Basically, they were
8 disability accessible units to replace
9 machines that one of the counties had
10 previously purchased.

11 Our response to Washington
12 basically detailed -- there was some
13 question as to whether or not the machines
14 that they had previously purchased were
15 compliant with HAVA Section 301(a). And
16 so our response to Washington basically
17 said, No. 1, if the equipment that you
18 purchased the first time around was not
19 compliant with HAVA Section 301, then you
20 could not have used HAVA funds for that
21 purchase. HAVA funds are restricted to
22 voting systems that meet the requirements

1 of HAVA. If you feel that that equipment
2 was compliant and the county is simply
3 wishing to replace them with a different

4 model because they had a change in the
5 county commissioners and they wanted a
6 different system but the previous system
7 was still in good working order and had
8 been purchased not too long ago, then we
9 did not think it was reasonable for the
10 state to make that expense using HAVA
11 funds.

12 COMMISSIONER HILLMAN: Was that
13 the only state we had received a similar
14 request from regarding the expenditure of
15 HAVA funds to replace HAVA-compliant
16 equipment?

17 MR. CORTES: Yes. Until we
18 received the question from Florida, that's
19 the only question we received along those
20 lines.

21 COMMISSIONER HILLMAN: Do you
22 remember when that was?

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1 MR. CORTES: It was sometime
2 late summer, I believe, around August. I
3 could get a specific date for you.

4 COMMISSIONER HILLMAN: 2006?

5 MR. CORTES: Yes.

6 CHAIR DAVIDSON: The question I
7 have is related to that. The statement

8 that you handed out in Washington, did you

9 use the Circular 87 for that purpose; is

10 that the reason why we felt or the staff

11 felt that they could not use that

12 additional funding that they had?

13 MR. CORTES: Yes. The analysis

14 was based on the issue of reasonableness

15 and the fact that they had very recently

16 purchased voting systems that were

17 compliant with HAVA. The equipment was in

18 good working order and was still a viable

19 system, and there was no -- I mean, the

20 change was not related to any problem with

21 the system.

22 Essentially, we felt that the

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1 federal funds would be used for paying for

2 the same thing twice was, essentially, the

3 reasoning behind that. It had to do with

4 the reasonableness argument, whether or

5 not you should use federal funds to pay

6 for the same thing twice.

7 CHAIR DAVIDSON: Okay. Thanks

8 for the clarification.

9 The only other question I have

10 is, Edgardo, you talked about our activity

11 regarding monitoring the use of HAVA

12 funds. In very simple terms, could you

13 tell me what role HAVA assigns to the EAC

14 to ensure that the proper usage of HAVA

15 funds is?

16 MR. CORTES: Well, there are a

17 couple of things specific to HAVA and

18 there are some other general things

19 because we're a federal agency. Specific

20 to HAVA, there are sections of HAVA that

21 require the states to report to us on

22 their state spending, on the spending of

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1 the HAVA funds, to report to us within a

2 certain time after the close of the fiscal

3 year. So there are provisions in HAVA

4 that require the states to report to us

5 their spending. We're a federal agency,

6 so therefore, under all the OMB Circulars

7 and under federal law, we're considered

8 what's referred to as the cognizant agency

9 for those federal funds. So we have

10 responsibilities to conduct oversight over

11 those fundings, which includes not just

12 responding to these requests, but also the

13 issue of auditing those funds, resolving

14 those audits, and so the whole host of

15 things that goes along with oversight and

16 management of those funds.

17 CHAIR DAVIDSON: Thank you.

18 COMMISSIONER HILLMAN: May I ask

19 a quick follow-up? Back to the State of

20 Washington, when staff issues an opinion,

21 and this was a letter, so it was a written

22 opinion, advice, ruling, whatever you

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1 would call it, is that appealable, if they

2 don't agree or if they think that wasn't

3 the correct interpretation; is that

4 something they can appeal or request that

5 there be reconsideration?

6 MR. CORTES: Well, I'll answer

7 that in two parts. No. 1, we do not have

8 -- the Commission has never adopted a

9 formal policy in terms of that process

10 specific to these sorts of questions, but

11 I will say that as a matter of general

12 Commission policy in other areas, whenever

13 a staff issues a decision, it has been set

14 out so that the Commissioners do have the

15 ability to act as an appeal body for those

16 requests, but there is no specific -- to

17 these type of requests, there is no formal

18 policy adopted by the Commission on that.

19 COMMISSIONER HILLMAN: And did

20 we hear back from Washington?

21 MR. CORTES: No. We had no

22 objection from the State of Washington.

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1 COMMISSIONER HILLMAN: Thank

2 you.

3 CHAIR DAVIDSON: Ms. Hodgkins,

4 do you have questions?

5 MS. HODGKINS: No, ma'am.

6 CHAIR DAVIDSON: Okay.

7 Secretary Browning, we will ahead and take

8 her testimony and then we will come back

9 and give you an opportunity to give a

10 statement.

11 MR. BROWNING: Sure.

12 CHAIR DAVIDSON: I open the

13 floor to you.

14 MS. HODGKINS: Thank you, Madam

15 Chair, Commissioners. Let me start by

16 saying thank you to Secretary Browning and

17 his staff. You have been very generous

18 with your time and very generous with your

19 staff's time in responding to our many

20 questions about the situation and helping

21 us to understand exactly what has happened

22 in the trail of dollars, etc.. So we do

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1 appreciate the time that you have

2 committed to this.

3 I guess where we should start,

4 Madam Chair, Commissioners, is let's talk

5 about the question or the request that's

6 on the table. Then what I'd like to do

7 after we talk about that is talk about

8 some potential alternatives that may work

9 to facilitate this request as well.

10 As Mr. Cortes aptly put together

11 his testimony to describe the laws and the

12 circulars that apply to decisions related

13 to HAVA funding and the use of HAVA

14 funding, specifically, he outlined that,

15 essentially, in OMB Circular A-87, there

16 is a three-part test which we apply to any

17 request that we obtain: First, is the

18 requested use of funds allowable. Second,

19 is the requested use of funds allocable to

20 the funding program under which it has

21 been requested. And, third, is that

22 request reasonable.

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1 In terms of determining whether

2 or not something is allowable, we rely
3 heavily on the governing statutes and that
4 the Help America Vote Act and whether or
5 not specifically under the statute that
6 particular expense is allowed, is it
7 permitted. And I believe Edgardo covered
8 these with you, from us making sure we're
9 all on the same page. The 251 funds, the
10 ones that are in question here can be used
11 for one of actually six purposes. The
12 first is -- five are in a category that I
13 will call meeting the requirements of
14 Title III, so that is purchasing and
15 fielding HAVA-compliant voting systems,
16 establishing a statewide voter
17 registration list, implementing
18 provisional voting, providing voter
19 information at the polling place, and
20 implementing verification procedures under
21 Section 303 that are required during voter
22 registration and voting, as the case may

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1 be. So that's one big category, but it
2 covers five different things that funds
3 can be spent on.
4 Under certain circumstances, a

5 state may also use the funds to pay for
6 activities that improve the administration
7 of elections for federal office. There
8 are two circumstances under which that can
9 occur. Either the state has complied with
10 Title III, done all the five things that I
11 just mentioned, or the expenditure that
12 the state wishes to make is less than the
13 amount that the state would have received
14 if they had just taken a minimum payment.

15 For purposes of all of the states, and

16 that is not territories, that's about 11.5

17 million dollars.

18 In this particular instance, the
19 State of Florida has been able to certify
20 to us that they have, in fact, complied
21 with all of the requirements of Title III.

22 So there is no limitation as to our

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1 looking to the 251 funds, as to whether or
2 not any of these funds could be used for
3 any of the purposes for which they have
4 requested.

5 So let's take them one by one.

6 And if you will indulge me, I will start
7 with the easy one. One of the requests
8 that has been made is whether or not the

9 State of Florida can purchase
10 voter-verifiable paper audit trail
11 retrofits, if you will, to equip the
12 electronic voting systems that they
13 already have in place. This is a
14 particular functionality that is not
15 required by the Help America Vote Act, and
16 particularly not required by Section 301
17 (a). However, the Commission has
18 previously considered this very issue and
19 has found that the use of a voter-verified
20 paper audit trail constitutes an
21 improvement to the administration of
22 federal elections. So, therefore, that is

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1 allowable, it is permitted to a state to
2 use funds under Section 251 in order to
3 pay for that type of activity.
4 The second portion is whether or
5 not this is allocable, whether it benefits
6 in some divisible way, a federal election
7 versus a state election. When it comes to
8 voting systems, we have very clearly
9 determined that voting systems benefit
10 state and federal elections in a
11 non-visible way. So it is allocable to

12 the same program because it is about an
13 evaluating system. It is about something
14 for which that funding program is allowed
15 to be used.

16 The last question then as to the
17 voter-verifiable paper audit trail piece
18 is whether or not it is a reasonable
19 expense. And we have found in the past
20 that we believe that this is a reasonable
21 expense related to providing the voter
22 with a way of verifying his or her vote at
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1 the time that it is cast.
2 Moving on to the second request,
3 it is related to the purchase of optical
4 scan voting systems to replace electronic
5 voting systems. As you heard Secretary
6 Browning testify here today, it is quite
7 plain that the systems that were purchased
8 by the State of Florida in 2000 -- I'm
9 sorry, 2001 and 2002, were partially
10 funded by federal dollars through a
11 reimbursement and partially funded by
12 state or county funds, in fact, the large
13 portion of that money being funded at the
14 state or county level. That was then not
15 subsequently reimbursed by federal funds.

16 The system that Florida desires
17 to purchase is what we believe to be a
18 HAVA-compliant voting system based on
19 certain of their communications to us,
20 that that system would be HAVA compliant.

21 Therefore, we look at the first test, and
22 that is whether or not this is an

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1 allowable expense. Well, if it's a voting
2 system that meets the requirements of
3 Title III, it is an allowable expense
4 under Section 251.

5 The second question, of course,
6 being the same one of allocability and
7 whether or not there is something that is
8 allocable to the funding program at hand.

9 Again, it's a voting system. We don't
10 believe that it has a divisible benefit to
11 a state or federal election. Therefore,
12 it is allocable to that particular
13 program.

14 The point at which we feel, I
15 feel, the staff feels, that the Election
16 Assistance Commission is somewhat
17 constrained is the issue of reasonability.
18 And that is, the State of Florida has

19 certified that they have already purchased
20 a fleet of voting systems for particularly
21 15 counties that use of the DRE systems on
22 Election Day and in early voting, and that
85

1 those systems comply with HAVA. That is
2 inherent in the certification that that
3 State of Florida has provided to say that
4 they have complied with all the
5 requirements of Title III.

6 Therefore, EAC is forced to
7 consider the issue as to whether or not it
8 is reasonable for a state to use federal
9 funds to pay for a fleet of voting systems
10 one time, and then in a situation where
11 the law changes or the ability changes at
12 a later date, not actually changing the
13 functionality or ability of those systems
14 currently in place, whether or not it is
15 reasonable for us to be asked to pay for
16 those systems again.

17 Obviously, this is only a
18 portion of the expense that they are
19 asking us about because the amount of
20 funding that is being requested is over 22
21 million dollars to replace the DREs with
22 optical scans, and as you have heard

1 Secretary Browning testify, certainly less
2 than that amount of federal funds has been
3 allocated previously to that portion.

4 We believe that the Election
5 Assistance Commission is constrained not
6 to pay for the same thing twice, if you
7 will, that is, not to fund the replacement
8 of HAVA-compliant voting systems with
9 HAVA-compliant voting systems. So we
10 would recommend the reduction of the
11 requested amount by the amount of funds
12 that have already been allocated to this
13 activity, the amount of federal funds that
14 have already been allocated to this
15 activity.

16 The last issue of request is
17 related to the purchase of Ballot on
18 Demand systems. And as Secretary Browning
19 testified, these are, if you will, an
20 additional piece of equipment. That
21 allows at an early voting site the
22 election administrator to print a

1 particular Ballot on Demand, as opposed to
2 having to pre print, if you will, every

3 ballot style in that particular county or
4 in that particular jurisdiction. They
5 would be able to print that particular
6 person's ballot as it is needed.

7 Based upon information that we
8 have been provided by the Secretary's
9 Office, we believe that these systems, if
10 you will, replace the same ones that we
11 just discussed, the same DREs. So we have
12 accounted for the reduction that we have
13 talked about, in terms of the federal
14 funds that have already been allocated in
15 this activity and the five million dollars
16 that they have requested would be both
17 allowable because this is a component of a
18 voting system, allocable to the funding
19 program because, again, it's a voting
20 system and it is appropriate for use
21 there, and third, a reasonable expense
22 because of the fact that it is reasonable

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1 to purchase a system that will allow you
2 to avoid the cost of pre printing ballots.
3 So we believe that is a reasonable
4 expense.

5 As sort of a summary of where

6 the staff feels like we are at this

7 particular point, obviously, we have

8 gotten some very good information today as

9 we have in every conversation with the

10 Secretary of States Office.

11 But I wanted to, before I

12 concluded my remarks, talk about a couple

13 of alternatives that we may be able to

14 explore with the Secretary of State's

15 Office and with the State of Florida.

16 First and probably most lucrative, if you

17 will, would be the possibility of

18 reimbursing some of the costs that have

19 not previously been reimbursed related to

20 the original purchase of electronic voting

21 systems in 2001 and 2002. It is quite

22 obvious from the testimony that we have

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1 heard here today and, obviously, from my

2 previous conversations with Secretary

3 Browning and his staff, that the State of

4 Florida and counties have committed a

5 great deal of money to that activity, and

6 that is an activity which I believe to be

7 reimbursable under Section 251(c) of HAVA.

8 HAVA actually specifically allows

9 retroactive payments only for the purchase

10 of voting systems that occurred between
11 the time of the November, 2000 election
12 and the actual passage of the Help America
13 Vote Act. So this seems to be covered or
14 potentially covered in that window. What
15 that will allow is, essentially, if we
16 reimburse additional costs related to that
17 expenditure, that historic expenditure, it
18 would put the funds in the state fisk or
19 the county fisk as appropriate, and would
20 make those funds available for the State
21 or county to use at their discretion, much
22 like what Florida did earlier where they

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1 reimbursed themselves for the grants that
2 they had made to the counties in 2001,
3 2002. That's one alternative. And, like
4 I said, probably the most fiscally
5 beneficial, if you will.

6 The second alternative that I
7 can think of is the fact that in addition
8 to providing a great deal of information
9 with regards to how funds can be used, the
10 Circular that we have been talking about
11 also tell us how we're supposed to deal
12 with the disposition or sale of pieces of

13 equipment that were purchased using
14 federal funds. The dollar threshold that
15 is important here is \$5,000 per unit
16 because we believe that the per unit value
17 of the pieces of equipment that the State
18 of Florida is interested in replacing is
19 probably less than \$5,000. The State of
20 Florida would be entitled to retain the
21 funds that it would obtain from that sale,
22 so the State of Florida would also be able

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1 to use that money to finance anything that
2 they wanted to, including the purchase of
3 additional optical scan pieces.

4 The last alternative, I think,
5 has probably already been mentioned today.

6 There are pieces of federal legislature
7 pending that would specifically change

8 HAVA to allow for the funding of this type
9 of activity. And while I am certain that

10 the State of Florida wants to move forward
11 with this activity as soon as possible, it

12 is an alternative, in terms of the
13 possibility of those bills passing and
14 additional funding, or even frankly, the
15 funding that you have available to be
16 become fully available for this type of

17 activity.

18 Madam Chair, that concludes my
19 remarks, and I am happy to answer any
20 questions.

21 CHAIR DAVIDSON: The first
22 question I had is, when you talked about
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1 the sale of equipment that they currently
2 have, does that also mean, if they were
3 given a trade-in value, does that include,
4 encompass that?

5 MS. HODGKINS: Yes, Madam Chair.
6 The actual term used is disposition, so it
7 does not matter whether or not it is a
8 sale, trade, barter, what have you.

9 CHAIR DAVIDSON: Okay. I will
10 open it to questions. First, we will take
11 turns, so I will go to Commissioner
12 Rodriguez.

13 VICE-CHAIR RODRIGUEZ: Thank
14 you, Madam Chair. I am more interested in
15 the Secretary of State's response to Ms.
16 Hodgkins' statement, so I will pass.

17 Thank you.
18 CHAIR DAVIDSON: Would everybody
19 like to have comments first?

20 COMMISSIONER HILLMAN: I have a
21 question.

22 CHAIR DAVIDSON: Okay. All
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1 right.

2 COMMISSIONER HILLMAN: Julie,
3 the term, "reasonable," that standard, is
4 that our standard or is that a standard on
5 OMB Circular; where does that term,
6 "reasonable," come from, who defines that?

7 MS. HODGKINS: The term,
8 "reasonable," and the element reasonable
9 comes from the OMB Circular A-87. This
10 part of the test is required to be applied
11 for any funding requests under a grant
12 program or any federal award program that
13 is governed by that particular Circular.

14 It is obviously our, as the awarding
15 agency, the Election Assistance
16 Commission, decision as to what is
17 reasonable as it would be the Department
18 of Homeland Security under grants that
19 they administer. I hope that answers your
20 question.

21 COMMISSIONER HILLMAN: But that
22 is actually the term used in the Circular?
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1 MS. HODGKINS: It is.

2 CHAIR DAVIDSON: Okay.

3 Secretary Browning, I guess we'd all like

4 to have some comments.

5 MR. BROWNING: Thank you, Madam

6 Chair. I am honestly a little

7 disappointed. I believe that since we

8 have complied with all the requirements of

9 HAVA, we have certified to the EAC that we

10 do believe this is an improvement to

11 federal elections, which is one of the

12 uses of Section 251 funds. In fact, not

13 just an improvement to federal elections,

14 but to the overall elections process.

15 Listen, Florida has been through the

16 ringer and back. We're wanting to do

17 something. And it is tough to justify --

18 and I understand the reasonable standard,

19 I do. And I too had the same question as

20 Commissioner Hillman, as far as who sets

21 the reasonable standard. But it's tough

22 to justify when you are sitting there on

95

1 \$91 million dollars, and you can't use it

2 to improve the elections process.

3 Granted, Florida did make improvements to

4 the elections process, and we used a very
5 small -- about a fifth of the total
6 funding of all voting system dollars spent
7 were HAVA dollars. The counties and the
8 state bore four-fifths of that cost and
9 yet, obviously, with us sitting on \$91
10 million dollars, and our hands are tied at
11 this point to use any portion of that,
12 even if we use 22 or 27, 28 million
13 dollars of that money, still leaves a
14 significant piece there to fund our Bureau
15 of Voter Registration Services and/or
16 Florida registration system.

17 I guess where I have issues, and
18 I'm just a local election official, I
19 don't get too involved with the federal
20 bureaucracy, but it deals with that whole
21 common sense approach; if you can make
22 things better, why wouldn't you want to

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1 make things better.

2 I understand the whole idea of
3 spending money twice, and I kind of
4 respectfully disagree with the whole idea
5 that we spent money twice. 25 million
6 dollars was spent for ADA-compliant

7 equipment. That is still going to be used
8 in Florida at our precincts on early
9 voting sites. That is going to be used.
10 It's not like we're replacing that
11 equipment. The only piece we spent, HAVA
12 money being used is that 11.8 million some
13 odd dollars that reimbursed the state out
14 of 102 dollars.

15 Florida wants to move on. The
16 thing about it is, we don't have a lot of
17 time. We want to put this in place for
18 2008. Our legislature has made it clear
19 they do not have the general revenue to do
20 it. We're sitting in one billion dollars
21 of less revenue next year. We had to make
22 cuts. It is a priority, or our Governor

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1 stated it better on March 6th, and that
2 was, that we need to get beyond this.
3 Florida is weary. We're elections weary.
4 We want to do the right thing and we
5 believe the right thing to do is to allow
6 the use of those HAVA dollars to do
7 exactly what the state is requesting.
8 I think not only is it an
9 improvement to federal elections but also
10 the elections process. My concern is not

11 going to be Florida, but it's going to be
12 any other state that may be sitting on any
13 amount of HAVA dollars. And I am not
14 certain where the other states are with
15 the balances of those dollars that are
16 left. I think Florida may be an anomaly
17 to be sitting on 91 million dollars, but I
18 think it's because of our efficiencies on
19 our state plan.

20 Our plan was to fund out Bureau
21 of Voter Registration Services, our plan
22 of voter registration system, but now what

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1 we want to do is we want to change our
2 plan. We just -- I guess I am a little
3 disappointed. I was hoping to come to
4 Washington today to have consensus so we
5 could ask our legislature to move ahead
6 and fund this improvement with HAVA
7 dollars.

8 So with that, I will take any
9 questions that you may have.

10 CHAIR DAVIDSON: Commissioner
11 Rodriguez.

12 VICE-CHAIR RODRIGUEZ: Thank
13 you, Madam Chair. I wonder if I could

14 direct a question to our counsel, and that

15 is, when you're talking about amounts that

16 the State of Florida could use to fund

17 their improvement plan, can you talk about

18 amounts or is it except for the 12 million

19 dollars that they spent in earlier

20 acquisitions of HAVA-compliant equipment,

21 they can use funds up and above the amount

22 of that \$11,581,000?

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1 MS. HODGKINS: Yes, Commissioner

2 Rodriguez, that is correct. We would

3 assess actually the percentage of the

4 \$11,581,000 that went to fund

5 reimbursement grants, and they apply to

6 the 15 counties that are affected, and

7 reduce the amount of the request by that

8 total amount of whatever the percentage is

9 times that \$11,581,000, and we would fund

10 anything other than that excluded amount.

11 MR. BROWNING: May I ask a

12 question? If I understand Ms. Hodgkins,

13 the alternative that she listed was that

14 under Section 251(c) we would be able to

15 take 251 dollars, reimburse the state or

16 the counties for dollars that they have

17 already expended, and then use those

18 dollars for the purchase of the equipment.

19 MS. HODGKINS: That's correct.

20 MR. BROWNING: Of course, at

21 this point, that looks as though it's the

22 only alternative that I have, but it seems

100

1 kind of like going through the back door

2 to get to where we want to be. And I

3 understand, I think I understand. It's

4 just a lot cleaner when you are able just

5 to go ahead and pay for that out of one

6 account, which is the HAVA account, as

7 opposed to having to reapportion that.

8 Because the problem we're going to run

9 into with that is that the state, at this

10 point then, would not have been reimbursed

11 only for the \$11,500,000 or \$700,000. So

12 that's all we could reimburse the state

13 for, and then we would have to go with the

14 balance of that to the counties and

15 reimburse the counties, and then have some

16 assurances from those counties that they

17 were going to spend that reimbursement

18 money on the equipment that that the state

19 is directing them to purchase.

20 I think it becomes somewhat of a

21 real auditable nightmare for us.

22 MS. HODGKINS: Well, I guess my
101

1 only response to that, maybe it's more of

2 a question than a response, is that of the

3 24 million dollars in grants that you

4 issued in 2001, 2002, as I understood your

5 testimony, \$11,581,000 was actually

6 reimbursed to the state with federal

7 funds. The rest of that was not

8 reimbursed; is that correct?

9 MR. BROWNING: That's correct.

10 I think it was out of 102 dollars, yes.

11 MS. HODGKINS: Then perhaps the

12 easier accounting method would be to

13 reimburse the state for the additional

14 funds that it out laid, rather than the

15 counties out laid, so that you don't have,

16 essentially, the disbursement out to the

17 counties and the issue of redirecting the

18 state funds. You would only have the

19 state fund issue.

20 MR. BROWNING: But if I

21 understand you correctly, the only amount

22 we would reimburse the state was for the

1 24 million dollars that we initially
2 invested and the \$11,581,000 that we
3 reimbursed ourselves with 101 dollars, so
4 that's roughly 12 million dollars. So
5 that still leaves us about, let's say, 15
6 million dollars, in round numbers, short
7 because that's money that the counties
8 would have to be reimbursed for.

9 MS. HODGKINS: I understand
10 where you're going, but as I figured it,
11 according to the information that was
12 provided by your office, in terms of the
13 amounts that were distributed to the 15
14 counties that actually have DREs in
15 Election Day and early voting, about 12
16 million dollars of that 24 million was
17 actually distributed to them. So it may
18 actually cover the expense that we would
19 deduct from whatever it is that we would
20 cover if fully funded.

21 I know that's very complicated,
22 there's a lot of numbers there, but I
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1 think it may actually work out.
2 COMMISSIONER HUNTER: I was
3 going to point out, Julie, just a point of
4 clarification. So the state would be

5 reimbursed for the amounts that they
6 expended back in 2000, 2001. Could they,
7 in addition to that do what we talked
8 about, reimburse the state for the funds
9 that the counties spent that were never
10 reimbursed by anyone back in 2000, 2001.

11 So it's two different streams, instead of
12 one or the other.

13 MS. HODGKINS: I think the
14 question would be more one of Florida law.
15 I think the question you are asking is
16 whether or not you could reimburse the
17 state for expenditures that the county
18 made. I think that might be a difficult
19 concept. That's why I was trying to focus
20 on the expenditures that the state made as
21 opposed to the expenditures that the state
22 and county made. I think it's possible

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1 that both of those would be reimbursed
2 under that provision.

3 COMMISSIONER HUNTER: Without
4 having the numbers in front of us, it's
5 possible it makes us close to or to the
6 approximately 24 million dollars that
7 we're here talking about. It's possible,

8 because your testimony was that

9 approximately four-fifths of the cost back

10 in 2000, 2001 were borne by the counties.

11 So we can ascertain that that number is

12 obviously times however many counties are

13 affected. Fifteen counties, that maybe

14 pretty much gets us pretty close to the

15 number we're talking about, I think.

16 MR. BROWNING: Oh, it would.

17 Where I was having the issue was

18 reimbursing the state, if I may,

19 reimbursing the state for a county

20 expense, although we're turning around and

21 getting that newly purchased equipment

22 back to the county. Did that make sense?

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1 In other words, what we're going to do,

2 your line of questioning, Commissioner

3 Hunter, is we would reimburse the state

4 for the balance of that 24 million dollars

5 so we have, let's say, 12 million dollars

6 sitting there. Then we go back in and

7 reimburse the state, county expenses,

8 dollars that counties have put into it.

9 COMMISSIONER HUNTER: The

10 four-fifths.

11 MR. BROWNING: The four-fifths,

12 or whatever we needed of the four-fifths.

13 And under the new proposal, the county's

14 going to be the recipients of the new

15 equipment, so it's not like they are

16 getting anything in turn.

17 If that's acceptable to the EAC,

18 I think that we could move down that road

19 very quickly.

20 COMMISSIONER HUNTER: It is a

21 back door, saying here's money that you

22 could have spent back in the day, and you

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1 decided not to, for your own reasons.

2 Now, Julie's saying you didn't spend it

3 then, but we will give it to you now. It

4 is a little back door, but it's at least

5 -- Julie, think it might be a way.

6 CHAIR DAVIDSON: I think what

7 this really brings out is every state's

8 going to be different. It depends on what

9 happens, what the decision the staff will

10 be making, and future decisions. We're

11 going to have to work with the state very

12 closely to know what they have done. I

13 think that brings it to light.

14 As we know, election is one size

15 doesn't fit all. This is what's going to

16 happen here is one size is not going to

17 fit all in this type of process.

18 MR. BROWNING: I do believe,

19 Madam Chair, that I could justify

20 reimbursing the state for county

21 expenditures up to the amount that we

22 would need to purchase the new equipment,

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1 being though those counties would be the

2 recipients of that new equipment. If that

3 is acceptable to the EAC as a proper use

4 or reasonable use, allocable use, and

5 allowable use, then we will probably be

6 able to get there.

7 COMMISSIONER HUNTER: If I may,

8 I think Julie, am I correct, that would be

9 reasonable because it's not using federal

10 dollars twice for the same equipment?

11 MS. HODGKINS: That's correct.

12 Essentially, we would be paying for

13 something that we could have paid for the

14 first time around.

15 COMMISSIONER HILLMAN: And EAC

16 would though just presume that you would

17 take care of any state or county issues

18 with that?

19 MR. BROWNING: Yes, ma'am.

20 COMMISSIONER HILLMAN: You're

21 not asking EAC if it's allowable or

22 reasonable for Florida to reimburse itself

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1 for county expenditures, because I don't

2 know that we can answer that. That would

3 be for the State of Florida to determine.

4 MR. BROWNING: Well, I want to

5 make sure that when you folks send

6 auditors down to Florida, and you will

7 send auditors to Florida, that when your

8 auditors come in to audit us and they see

9 Section 251 -- 2 money, dollars, funds,

10 being used to reimburse the state for the

11 balance of their initial investment,

12 what's left, roughly 12 million dollars,

13 and then also the use of 251 dollars to

14 reimburse county funding up to the amount

15 we need to fund this new proposal, that

16 the EAC auditors are not going to look at

17 us. A word that I use regularly is wack

18 us.

19 COMMISSIONER HILLMAN: Well,

20 that would certainly be our responsibility

21 but the piece I was raising was you are

22 not expecting EAC to take responsibility
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1 if the Florida state auditors would say
2 it's okay for Florida to do that, or if
3 the counties pushed back, they are pushing
4 back on you and not us.

5 MR. BROWNING: And I understand
6 exactly what you're saying now. That
7 would be something that we would need to
8 make sure that our state auditors don't
9 have a problem with.

10 But what I want to make sure is,
11 if we were to commit 251, let's make an
12 assumption that the state audit says not a
13 problem, I want to make sure that the EAC
14 auditors are not going to have issues with
15 Florida when we take 251 money and
16 reimburse for those voting system
17 purchases that were made in 2001, 2002 and
18 we're make that reimbursement in 2007.

19 CHAIR DAVIDSON: I guess the
20 statement I would like to make is I would
21 like to ask our general counsel that she
22 renders an opinion to you that definitely

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1 clarifies and that you will have whenever

2 an auditor is looking at it, whether it's
3 your state audit, for knowing what the EAC
4 is willing to do, and for our auditors, if
5 they come down and audit Florida, that
6 they understand what the EAC -- the
7 decision that the staff is making.

8 So, definitely, I would ask that
9 they would do that as quickly as possible,
10 knowing that you've got a legislature that
11 is getting ready to adjourn. You said
12 they adjourn Friday?

13 MR. BROWNING: Yes, ma'am.
14 CHAIR DAVIDSON: If you had that
15 letter by Thursday, that would be timely
16 enough, or do you need that letter -- we
17 will say by Wednesday?

18 MR. BROWNING: It is so time
19 constraining right now in Florida, they
20 are waiting for a phone call from me
21 because they are trying to get some bills
22 on special order so that they can be

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1 heard. This is a bill that's passed out
2 of the State Senate that does provide
3 currently that HAVA funding will be used
4 for this purpose. It's not over until
5 it's over, signing by Friday, but the

6 House is not going to be moving until they
7 get some definitive clarification from the
8 EAC whether or not that would be an
9 acceptable use of those dollars.

10 MS. HODGKINS: Madam Chair, I
11 think if the EAC staff can have a few
12 minutes after this meeting, I think if we
13 can work through the numbers for a few
14 minutes, I believe we can get to the
15 numbers that you need without actually
16 having to address the issue of the county
17 expenditures. If they might have the time
18 and would indulge me, I think we can get
19 to this issue today.

20 MR. BROWNING: Certainly. Thank
21 you.

22 CHAIR DAVIDSON: Then I'm going
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1 to close this session of it and I'm going
2 to take a five-minute recess because I
3 think that our translators really need
4 that, whether it's the hand translators or
5 doing all of the transcription. So I'm
6 going to take a five-minute recess and
7 give them a break. Thank you very much.
8 (Short Recess.)

9 CHAIR DAVIDSON: Okay. I think
10 we have everybody back. This is going to
11 the EAC advisory on maintenance of effort.
12 I'm going to turn to Curtis Crider for
13 your presentation, and I see you have one
14 in our book. It's all ours.

15 MR. CRIDER: Good afternoon,
16 Madam Chair and Commissioners. We
17 appreciate the opportunity to talk today a
18 little bit about maintenance of efforts.
19 As you know --

20 CHAIR DAVIDSON: Pull closer.
21 MR. CRIDER: As you know, we are
22 out in the states doing audits. When we

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1 go into a state, one of the first
2 questions we have is on maintenance of
3 effort. There is a lot of confusion out
4 in the states as to what is maintenance of
5 effort, how it should be documented, what
6 is included, and how they should go be
7 maintaining the records. Some states have
8 done a pretty good job included
9 information in their states plans, whereas
10 other states have not done any type of
11 documentation, haven't calculated their
12 amounts, and they don't know how to go

13 about doing it, whereas other states have
14 not included everything they should have.

15 This is an area of concern
16 because there is no guidance out there.
17 They are asking when is the EAC going to

18 come out with guidance, when can they
19 expect to get direction, in terms of how
20 they should go about doing this. They
21 want to do it right. They are very
22 concerned about it, because every way we

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1 get further way in the base years, it
2 turns into a problem because of the record
3 keeping, maintenance of records. Some
4 states have record retention of three
5 years, some have longer. They need to get
6 their documentation on maintenance of
7 effort together, put it in the file tab,
8 and the say, oh, here's our maintenance of
9 effort. They are looking to the EAC
10 saying, okay, EAC, we need some help here.

11 We need to you give us some guidance.
12 When we did the presentation in
13 February to the NASAD group in Washington,
14 one of the states went back and looked at
15 their maintenance of effort and totally

16 recalculated it based on those

17 conversations that we had. They have a

18 complete documentation package. They have

19 it in a binder. When we walked in to do

20 the audit, they handed it to us. That's

21 what we like to see, and that would save

22 everybody a lot of aggravation and grief

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1 because they have to maintain this

2 documentation for however long in the

3 future that they have HAVA dollars. This

4 is something they are very concerned

5 about. When we talked to the Secretary of

6 State, they said, whenever we went in

7 February, it was a revelation to us. We

8 had no clue what was involved in doing it.

9 We were operating under informal

10 guidelines from 2002, 2000. They said,

11 what we heard was totally different from

12 that.

13 That is where the EAC needs to

14 step up, come up with guidance. Like I

15 said, we're looking to you to help us with

16 this guidance. We have had several

17 conversation was general counsel. This is

18 where the project started, in terms of

19 some of the questions coming from the

20 states, and general counsel has started to
21 put a paper together. And I think that
22 she's here today to discuss the guidance

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1 that she has developed.

2 CHAIR DAVIDSON: Okay. Next, I
3 will turn to Julie Hodgkins, our general
4 counsel, to present the advisory for our
5 consideration.

6 MS. HODGKINS: Thank you, Madam
7 Chair, Commissioners. I guess where I
8 probably should start is with maintenance
9 of effort. It's kind of an usual term,
10 even in the Federal Government, but it is
11 a cost sharing provision. It is a way
12 that the Federal Government helps assure
13 that the states are participating in the
14 program in a financial sense so there is
15 some equal participation or some ownership
16 of a part of the state.

17 It is specifically contained in
18 Section 25487 of HAVA in a very, well,
19 confusing section, and I will quote it for
20 you in HAVA. "In using requirements
21 payments will maintain at a level that is
22 not less than the level of such

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1 expenditures maintained by the state for
2 the fiscal year ending prior to November
3 2000."

4 Well, that's about as confusing
5 as it gets. Essentially, what does this
6 mean? Essentially, what HAVA wants a
7 state to do is maintain its effort,
8 maintain its outlays at the same level
9 that the state expended money in the state
10 fiscal year proceeding the 2000 election
11 in every year that it has and uses a
12 requirements payment. In that way, it is
13 somewhat like a supplantation restriction,
14 which is a pretty common restriction
15 placed on federal grant programs,
16 particularly under HHS, where the goal
17 here that we ask that the states not take
18 federal dollars and replace their state
19 expenditures with those federal dollars.
20 In other words, just maintain what you
21 were doing prior to the time this federal
22 grant program came along.

1 The difference in this
2 particular provision and what would be a

3 supplantation restriction, primarily, is
4 the fact that it's tied to a particular
5 fiscal year. So we have a number of bases
6 on which we can determine what is
7 maintenance of effort. It does beg a
8 question, I guess, as to what does
9 maintenance of effort mean in comparison
10 to the matching fund requirement that is
11 also required.

12 States are required to match
13 federal dollars at the five percent of
14 state percentage. First of all, they are
15 both cost sharing. One cannot be used to
16 satisfy the other because HAVA clearly
17 stated two requirements. And, yes, that
18 is somewhat unusual, but it is quite
19 explicit in the statute. The impact of
20 the maintenance of effort requirement is
21 this, in that in order to obtain federal
22 funding, every state in the nation had to

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1 certify to the fact that they would
2 maintain this effort.
3 So the question that I think the
4 inspector general is facing now and the
5 states are facing, in light of the fact
6 that he is out auditing in these various

7 places, is how do we document what our
8 maintenance of effort is, and whether or
9 not we maintain it. So the first thing
10 that has to be accomplished is determining
11 what is the base level of effort. And
12 what I am proposing in the advisory to be
13 sent out is sort of an easy approach and a
14 more complicated approach.

15 The easy approach is this: If a
16 state can show that its annual outlays are
17 the same or greater in this year as they
18 were in 2000, then they have met their
19 maintenance of effort requirements. Now,
20 that is to say that this is an easy
21 paperwork burden to me, but in reality,
22 that probably overstates what the
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1 maintenance of effort requirement is.
2 Because in reality, maintenance of effort
3 only applies to expenditures that are
4 related to the same things that you could
5 use a requirements payment for, things
6 like purchasing voting systems, having a
7 voter registration list, providing
8 information at the polling place,
9 provisional voting and verification

10 requirements, in addition to other
11 activities that they may have been
12 conducting that would improve the
13 administration of elections for federal
14 office.

15 So if the state can't meet the
16 easy test and save themselves some
17 paperwork, what they can go back and do is
18 document the amount of money that they
19 spent on those particular activities in
20 2000, thus creating a base level of
21 expenditure, and then compare that
22 expenditure in 2000 to the

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1 election-related activities that they have
2 had in years in which they have had a
3 requirements payment, so probably 2004,
4 2005, etc.. That is a more
5 paperwork-intensive process, but it is, in
6 fact, a way of documenting the fact that
7 the state has maintained its effort.

8 There is one important point to
9 make here as well, that is, that HAVA
10 views the state as an entity, an entity
11 that encompasses its political
12 subdivisions. So when we look at the
13 State of Georgia or the State of

14 Tennessee, we're not only looking at the
15 entity that is the state, but also the
16 entities that make up its political
17 subdivisions, as counties, local
18 jurisdictions. And as we know in the New
19 England area, the cities and townships are
20 actually engaged in activities. So when
21 we look to the issue of maintenance of
22 effort, we look for not only the state to

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1 maintain its expenditures, but the
2 political subdivisions of the state to
3 maintain their expenditures.

4 That summarizes the advisory
5 that I am proposing for the Commission,
6 and if you have any questions, I'll be
7 happy to answer.

8 CHAIR DAVIDSON: I left you out,
9 Mr. Wilkey, last time. Do you have any
10 questions?

11 DIRECTOR WILKEY: Just one. And
12 I think it may have been what has caused
13 the confusion over the years in this
14 regard. A jurisdiction, state or local
15 could conceivably have its budget lower
16 and still be able to meet its maintenance

17 of effort requirements because, for

18 example, it lost money in an area that

19 wasn't covered under these guidelines,

20 correct?

21 MS. HODGKINS: That's correct.

22 DIRECTOR WILKEY: Because I
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1 think that's, essentially, based upon that

2 early information that jurisdictions were

3 given before the Commission was in

4 existence, was driving some of this. The

5 thought was, oh, well, I had to maintain

6 my budget across the board in order to

7 maintain my maintenance of effort. And I

8 think what we've done here, and this is

9 good, is that we have identified the areas

10 that they must continue to meet, and if

11 they lose money for something that isn't

12 in this list, it has no effect on that

13 maintenance of effort.

14 MR. CRIDER: That is one of the

15 reasons the general counsel proposed two

16 alternatives. State has the option of

17 going either way. We do recognize, in

18 some cases, states had a very high 2000

19 based year, for a variety of reasons, that

20 all of it was into the 251 activities, and

21 over the years, the budget may be reduced.

22 That's why they have the alternative of

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1 going either way, give them that option.

2 DIRECTOR WILKEY: That stands to

3 reason because 2000 is the presidential

4 election year. If you look at normal

5 expenditures throughout that four-year

6 cycle, you go up and down, based upon

7 whether it's a federal election year,

8 state election year, local, how those

9 expenditures are going to rise and go up

10 and down. So I think that was the

11 misconception that helped drive a lot of

12 the problems.

13 MS. HODGKINS: Yes. Mr. Wilkey,

14 in a previous life, I was at the same

15 seminars where you came away with that

16 same impression. That is the intent of

17 this piece of guidance, is to not only

18 allow states to continue, if they can, in

19 the easy approach and ease their paperwork

20 burden, but also to allow those that have

21 not had the same budget to document their

22 maintenance of effort in a different way.

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1 CHAIR DAVIDSON: Ms. Hunter, any

2 questions?

3 COMMISSIONER HUNTER: My only

4 question, Madam Chair, is can states

5 alternate ways of doing it? In other

6 words, right now, they may prefer the one

7 approach, but later they want to use it

8 for the other approach. Is that possible?

9 MS. HODGKINS: I don't see why,

10 if we have both of those options out

11 there, that may be appropriate. It may be

12 a headache for our inspector general.

13 MR. CRIDER: Just because of

14 documentation issues, so there is risk

15 here. And yet if they want to go back and

16 forth between the two, I think it's going

17 to cause an auditing nightmare. It's

18 going to cause them more maintenance,

19 because we will walk in and say, show us

20 your documentation.

21 CHAIR DAVIDSON: Ms. Rodriguez.

22 VICE-CHAIR RODRIGUEZ: Thank

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1 you, Madam Chair. I guess I appreciate

2 the translation into English from Section

3 sub-paragraph 7, and I have no questions.

4 I think it's clear and it should be a

5 great resource to the states.

6 CHAIR DAVIDSON: Commissioner

7 Hillman.

8 COMMISSIONER HILLMAN: Thank

9 you. Mr. Crider, you, in your

10 presentation, had four bullets under

11 guidance needed.

12 MR. CRIDER: Right, yes.

13 COMMISSIONER HILLMAN: And in

14 listening to our general counsel's

15 presentation, do you think what she's

16 proposing addresses the four points that

17 you raised?

18 MR. CRIDER: We would like to

19 see a little bit more. In her summary, we

20 would like to see some type of discussion

21 of documentation to be maintained. We

22 would like to see that the states be

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1 required to submit the number to the EAC

2 for future purposes, so before we go out,

3 we would have an idea what that number is.

4 It also will force the states to come up

5 with a number. Because right now, some

6 states put it in their state plans, others

7 did not. We would like to see some type

8 of reporting requirement because I think

9 one of the issues is going to be, at the

10 county level, is how do you go about

11 determining that and documenting that.

12 COMMISSIONER HILLMAN: Ms.

13 Hodgkins, does your draft advisory address

14 these last two points?

15 Ms. HODGKINS: It does not

16 address the issue of actually requiring

17 the states to report that information to

18 us independently of that information being

19 provided through documentation for an

20 audit. I believe it does address the

21 issue of how to document, and leaves open

22 the forms of documents that they may use

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1 to actually show or prove that maintenance

2 requirement has been met.

3 MR. CRIDER: There is no way to

4 come up with an exact level. Each program

5 is different, so coming up with a specific

6 list of documents -- but in terms of

7 general requirement, as to what the

8 documentation should look like, I think we

9 can work with the general counsel toward

10 come up with something.

11 COMMISSIONER HILLMAN: On his
12 last point, would it be appropriate for it
13 to be covered in the advisory, the last
14 point being the states reporting to EAC?

15 MS. HODGKINS: That actually
16 would be more appropriately covered in the
17 reporting requirements that we already
18 have in place. States were already
19 required to submit a Form 269 report on an
20 annual basis, depending upon funding
21 source.

22 Obviously, maintenance of effort
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1 applies to 251 funds. So, therefore, you
2 would only apply that particular time
3 period, but I think it would be
4 appropriate to add that if you guys so
5 deem to do that, the reporting
6 requirements.

7 COMMISSIONER HILLMAN: Would
8 that work?

9 MR. CRIDER: That would work.

10 COMMISSIONER HILLMAN: I want to
11 go back to the question of determining the
12 base level of expenditure, and it follows
13 a little on the question Commissioner
14 Hunter asked, but it's also slightly

15 different; it's level of expenditure prior

16 to November, 2000 in the fiscal year.

17 MS. HODGKINS: In the state

18 fiscal year.

19 COMMISSIONER HILLMAN: So can

20 the state determine which election, could

21 it have been a state primary or does it

22 have to be a federal election?

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1 MS. HODGKINS: I'm not sure that

2 I follow the question.

3 COMMISSIONER HILLMAN: That is,

4 when they determine the level of effort,

5 the expenditures they were making prior

6 to, does it have to be expenditures in a

7 federal election or could it be

8 expenditures in a state election?

9 MS. HODGKINS: I understand your

10 question. The expenditures could possibly

11 be for either. And I guess the purpose or

12 response is this: One of the things that

13 a state could have done to create a

14 maintenance of effort program for itself

15 would be to purchase voting systems during

16 that fiscal year. Voting systems,

17 obviously, benefit state and federal

18 elections in an indivisible manner.

19 Therefore, that expenditure, while it

20 would benefit a state election, would also

21 benefit a federal election and would be

22 counted towards the maintenance of effort.

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1 Traditionally, I think we're talking about

2 activities related to federal elections.

3 I guess another thing that would

4 fall in the similar category as voting

5 systems would be a list of registered

6 voters, something that benefits state and

7 federal elections.

8 COMMISSIONER HILLMAN: I asked

9 the question because if I were a state or

10 county, I would like for the lowest level

11 of expenditure, so I would go to a state

12 primary or something that didn't require

13 as much activity as a federal. And what

14 I'm hearing, it doesn't matter, the state

15 gets to choose, and we just accept

16 whichever.

17 MS. HODGKINS: The list of

18 activities that we had that is listed in

19 the guidance, and I'm just noting there

20 might be one change that we want to make,

21 would be the purchase of voting equipment

22 would benefit either, so it wouldn't

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1 matter either way. Operating lists or

2 developing, operating, and maintaining a

3 list of registered voters eligible to vote

4 in a federal election likely would been in

5 it, because I am not aware of a state that

6 keeps a dual system.

7 Providing information at the

8 polling place, we would limit to federal

9 election, or perhaps we need to make an

10 alteration. Implementing or operating a

11 system of provisional voting would likely

12 benefit of system of federal election.

13 Verification procedures for registration

14 information, obviously, would benefit

15 either because it's the same list that is

16 maintained.

17 And the last category being

18 other activities that improve

19 administration of election for federal

20 office. Perhaps we should consider

21 limiting the activities under Bullets 3

22 and 4, providing information to the

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1 polling place or operating system of

2 provisional voting just to federal
3 elections, but I think that would clarify,
4 in terms of which ones apply strictly to
5 federal elections versus both.

6 COMMISSIONER HILLMAN: If I were
7 at the state level, would I get this,
8 would I understand but you are just making
9 a base year and it's the activities in
10 that year. The activities in 1999 would
11 be likely less than the activities in
12 2000.

13 MS. HODGKINS: They have to
14 go with their state fiscal year prior to
15 the 2000 election. Let's say you are
16 working with a state that has a fiscal
17 year that runs July 1, 1999 to June 30,
18 2000. They may or may not, depending upon
19 the state and the timing, have had their
20 presidential primary at that particular
21 time. So that may or may not have to be
22 counted as part of the expenditure, but

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1 they would look to that fiscal cycle for
2 the expenditures.

3 MR. CRIDER: Some states are
4 '99, most states are 2000, as a base year.

5 COMMISSIONER HILLMAN: So the
6 states that have federal and state in one
7 year get the double whammy versus the
8 states that have one?

9 MS. HODGKINS: Yes, it would be.

10 CHAIR DAVIDSON: So after all
11 the questions, do I have a motion, with
12 the few changes that Julie talked about,
13 do I have a motion? The floor is open for
14 a motion, and I guess you can state the
15 motion however you would like, instead of
16 putting it in my words.

17 VICE-CHAIR RODRIGUEZ: I'll move
18 that we adopt EAC advisory 07003,
19 maintenance of effort funding, as revised
20 by general counsel and outlined in her
21 comments today.

22 CHAIR DAVIDSON: Do you have a
135

1 second?

2 COMMISSIONER HUNTER: Second.

3 CHAIR DAVIDSON: All those in
4 favor.

5 COMMISSIONER HILLMAN: Can I
6 just ask a question. I want to make sure
7 that we're all on the record what those --
8 whatever adjustments there are, two or

9 more.

10 MS. HODGKINS: Sure. My
11 understanding of the adjustments that we
12 have discussed that we would in the two
13 lists that are provided of activities
14 related to maintenance of effort, we would
15 limit the providing information to voting
16 at the polling place to federal elections
17 and similarly limit implementing and/or
18 operating a system of provisional voting
19 to federal elections.

20 COMMISSIONER HILLMAN: And just
21 one other question. So if a state federal
22 primary came after June 30th, in fiscal
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1 year ended June 30, 2000, and their
2 primary was in September, then they would
3 not have any federal election polling
4 place expenditures in that fiscal year?

5 MS. HODGKINS: Correct, under
6 your example.

7 COMMISSIONER HILLMAN: Right.

8 So it's going to be all across the board?

9 MR. CRIDER: Right.

10 CHAIR DAVIDSON: I think that's
11 just the way the law is written.

12 DIRECTOR WILKEY: Most would be
13 2000.

14 CHAIR DAVIDSON: Motion has been
15 made and seconded. All those in favor say
16 I. Opposed? The motion carries.

17 Okay. Thank you, very much, for
18 both of your presentations, appreciate it.
19 And at this time, I will entertain a
20 motion to adjourn.

21 First, I'd like to state that
22 our next EAC meeting is May 17th. It is

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1 going to be held in this room, and I
2 believe it's on the web site, but I
3 believe it is at -- I'm not sure about the
4 time. We will print it on the web site
5 and get the information out, so I don't
6 have the time on that.

7 A motion to adjourn the meeting.

8 COMMISSIONER HILLMAN: So moved.

9 VICE-CHAIR RODRIGUEZ: Second.

10 CHAIR DAVIDSON: Everybody in
11 favor, I. Opposed? We're adjourned.

12 Thank you.

13 (Whereupon, at approximately
14 4:30 o'clock, p.m., the above
15 meeting adjourned.)

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2 CERTIFICATE OF COURT REPORTER

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4 I, Jackie Smith, court reporter in and for

5 the District of Columbia, before whom the foregoing

6 meeting was taken, do hereby certify that the

7 meeting was taken by me at the time and place

8 mentioned in the caption hereof and thereafter

9 transcribed by me; that said transcript is a true

10 record of the meeting.

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15 Jackie Smith

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