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U.S. ELECTION ASSISTANCE COMMISSION
PUBLIC MEETING

1225 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005

Taken on the date of:
WEDNESDAY, MAY 17, 2007

21 Start time: 10:00 o'clock, a.m.
22 Taken by: Jackie Smith, a court reporter

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 Christopher Thomas
- 11 Peggy Nighswonger
- 12 Dr. William Jeffrey
- 13 Brian Hancock

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

2 CHAIR DAVIDSON: All right. I'd

3 like to call the meeting to order. And if

4 everybody would put their cell phones on

5 silent, I would appreciate it.

6 I think we'll stand and we'll do

7 The Pledge of Allegiance.

8 (The Pledge of Allegiance.)

9 CHAIR DAVIDSON: I will now turn

10 to Julie Hodgkins, our counsel, to do the

11 roll call, please.

12 MS. HODGKINS: Thank you, Madam

13 Chair.

14 Members, if you will respond by

15 saying "present" or "here" after I call

16 your name. Donetta Davidson?

17 CHAIR DAVIDSON: Present.

18 MS. HODGKINS: Rosemary

19 Rodriguez?

20 VICE-CHAIR RODRIGUEZ: Here.

21 MS. HODGKINS: Caroline Hunter?

22 COMMISSIONER HUNTER: Here.

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1 MS. HODGKINS: Gracia Hillman?

2 COMMISSIONER HILLMAN: Here.

3 MS. HODGKINS: Madam Chair,

4 there are four members present and a

5 quorum.

6 CHAIR DAVIDSON: Thank you.

7 Next on the agenda is the adoption of the

8 agenda. If it meets with everybody's

9 okay, can I have a motion?

10 COMMISSIONER HILLMAN: So moved.

11 VICE-CHAIR RODRIGUEZ: Second.

12 CHAIR DAVIDSON: All those in

13 favor, I. Opposed? The motion carries.

14 Well, good morning, everybody,

15 and thank you for attending. I do

16 appreciate it, and I want to take this

17 opportunity to thank all of our panelists

18 for their comments and their guidance that

19 they are giving to us this morning.

20 Today, we're going to be hearing

21 from three chairs of our committees that

22 has being designated by HAVA. In order to

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1 address as many issues as possible, I

2 would like to have this meeting a little

3 bit more informal so we can make sure that

4 we address issues that they might even

5 have between them and us.

6 I hope all three of them, in

7 their testimony, give us, you know, an

8 exchange, as much information as possible.

9 And, again, I want to thank everybody for

10 coming, and I look forward to their

11 information that we will gain from today's

16 Juanita Millender-McDonald.

17 Unfortunately, this meeting was scheduled
18 before this memorial service was also
19 scheduled. And we regret that because I
20 know many of us here would have preferred
21 to have been at that important event.

22 Congresswoman Millender-McDonald

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1 was an outstanding individual and a good
2 friend of this Commission. She was a joy
3 to work with, and I know she'll be missed
4 by all of her colleagues in the House of
5 Representatives, and in her District in
6 the State of California.

7 We also note with sadness the
8 death of the son of Ronnie Gillespie, the
9 Election Counsel to the Senate Rules
10 Committee. His son, Jonathan, was an
11 outstanding individual, certainly went to
12 his maker much too early. And I know that
13 all of us here at the Commission who
14 worked closely with Ronnie over the years
15 send our deepest sympathy and regrets on
16 both of these occasions.

17 Now, I am going to go ahead and
18 continue with my report. Under the Office

19 of Inspector General, audits are underway
20 in the following states: Rhode Island,
21 Maryland, Wyoming, Kentucky, New Mexico,
22 and Missouri. They expect to wrap up

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1 their audits in Virginia and Indiana by
2 the end of this week. You can visit --
3 get any of this information, if you need,
4 audit reports are posted on our inspector
5 general part of our web site at,
6 "www.eac.gov."

7 As many of you are aware, our
8 Chair has requested that the Inspector
9 General review the details surrounding two
10 research projects in both the fraud and
11 intimidation report and our voter ID
12 report. That review is underway, and we
13 will distribute the findings as soon as
14 our Inspector General's Office has that
15 review complete. And we will place all of
16 the information concerning this review on
17 our web site.

18 Under administrative matters, I
19 need to update you on a few Congressional
20 inquiries we have had. Senator Dianne
21 Feinstein, Chair of the Senate Rules
22 Committee, has asked us for information

1 related to the voter fraud and voter
2 intimidation study, and the staff has
3 almost finished with her request.
4 Congressman Zoe Lofgren, who is the Chair
5 of the Subcommittee on Elections and the
6 Committee on House Administration, has
7 requested information about this same
8 topic, as well as for all correspondence
9 between EAC and the Department of Justice.

10 And I will note that after this report was
11 compiled, we were informed this morning
12 there has been some clarification on
13 exactly what was needed from us in that
14 area, and there has been some narrowing of
15 that request as we look through this.

16 Staff is scheduled to wrap up
17 the first request tomorrow, and is already
18 working on the second request. You need
19 to know that EAC takes these inquiries
20 very seriously, and responding to these
21 Congressional requests are the
22 Commission's top priority. Copies of

1 these Congressional requests and our
2 responses today are available up front,

3 and they are posted on our web site as
4 well. In the future, EAC will dedicate a
5 specific place on our web site for all
6 Congressional inquiries and EAC's
7 responses. Under voting system
8 certification, nine voting system
9 manufacturers have registered for the EAC
10 testing and certificate program. Five
11 voting systems have been submitted for
12 testing. The first test plan has been
13 submitted. And all of this information
14 is, of course, available on our web site,
15 and that will continue to be added to as
16 we get further requests for certification
17 from vendors as we move along.

18 As you will hear this morning,
19 and this was not added as part of the
20 report, we had an outstanding meeting in
21 Denver with state and local vendors and
22 our test labs, and that will be reported

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1 by state. Under voting system test labs,
2 EAC is to certify labs, test high quality
3 assurance earlier this week, as I think
4 you will hear from the Chair of NIST.

5 The National Institute of

6 Standards & Technology recommended that
7 EAC accredit Infoguard Laboratories. EAC
8 will conduct its non-technical review, and
9 within the next few weeks, ask you to make
10 a final decision regarding this
11 accreditation.

12 We're very excited and pleased
13 over our glossary, Spanish and English
14 glossary, released last month. It is
15 getting great reviews from a number of
16 places. We translate election terms from
17 Spanish to English, English to Spanish,
18 and it is a valuable resource to voters
19 throughout the country and certainly to
20 our local election administrators and
21 state election administrators. This is
22 the first update since 1979. If anyone is

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1 interested in either receiving a copy or
2 electronic copy, they can call us toll
3 free and also download it from our web
4 site.

5 As always, EAC distributes a
6 monthly electronic newsletter that
7 provides updates to our activities,
8 upcoming meetings, and other HAVA-related
9 issues. To sign up, call us toll free or

10 send us an e-mail at, "havainfo@eac.gov."

11 Finally, Madam Chair, through
12 the efforts the Commissioner Hillman, the
13 EAC will be posting the first of several
14 EAC draft documents to the Standards
15 Board's virtually meeting room for review
16 and comment. EAC will also work to do a
17 similar process with our Board of
18 Advisors. And Madam Chair, I believe it
19 would be appropriate, since this is such a
20 great deal that we'll be utilizing in the
21 future, not just for our boards but I
22 think we can use it in other areas, to

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1 have Commissioner Hillman comment on this
2 since she's done all of the work in
3 getting this started.

4 CHAIR DAVIDSON: Commissioner
5 Hillman.

6 COMMISSIONER HILLMAN: Sure.
7 Thank you. I appreciate the opportunity.
8 As we all know, the Standards Board is a
9 huge committee, it's 110 people. It takes
10 about four to six months to plan a
11 meeting of the Standards Board, and it is
12 a fairly costly enterprise.

13 In order not to restrict the
14 work and the business of the Standards
15 Board, I was trying to think of ways that
16 the Standards Board could assist EAC in
17 either reviewing draft documents or even
18 to get its own business done in between
19 meetings and still adhere to the rules and
20 regulations of the Federal Advisory
21 Committee Act for transparency and
22 accessibility.

14

1 So we have create what we call a
2 virtual meeting room. Initially, I
3 referred to it as a chat room, and one of
4 my executive members said no, I don't
5 think I want to tell people that I spent a
6 couple of hours in the chat room today.
7 So we're calling it the virtual meeting
8 room, and it is on the main web site of
9 the EAC. It is a tool where Standards
10 Board members will be able to post
11 password-protected comments. The public
12 will be able to view all of the comments.

13 For this particular exercise,
14 EAC has asked the Standards Board to
15 review a draft report that was prepared
16 for us by Design For Democracy, and that

17 record contains suggested best practices
18 as well as templates for the design of
19 voter information and ballots for optical
20 scan and DRE voting systems. It is a
21 fairly large document, broken up into
22 eight sections, to make it easy for both

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1 the public to view as well as the
2 Standards Board to review and comment on
3 it.

4 It is an exciting test. The
5 executive board and I have been talking
6 about this, and we've done little tests
7 earlier this year, and the protocols have
8 been put in place, and the idea was
9 embraced by both the executive board of
10 the Standards Board, and the full
11 Standards Board back in February when the
12 Standards Board met. So it's really nice
13 to get this off.

14 When I first started this, I
15 wasn't sure what we would be using it for,
16 but I knew it was prudent to get started
17 so when we needed it, we could pick it can
18 up right away. It is proven to be
19 something we can have up and going in less

20 than a week, if we need to. We could bump
21 up against notice requirements, but I
22 think, frequently, EAC finds that because
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1 of schedules of when draft documents will
2 be presented to us, what the turnaround
3 time will be so that we can get comments
4 on them, we will periodically not be able
5 to give 15 days notice when we're using
6 the virtual meeting room, but the flip
7 side is the virtual meeting room will be
8 open for five days, 24 hours a day.
9 People can go on any period time, see all
10 the comments posted from the beginning.
11 And so there is no confined period of time
12 that the public has to get on to look at
13 the comments. And, additionally, the
14 public will be able to send written
15 statements back to the Standards Board.
16 We have created an e-mail address for the
17 Standards Board. We're using this as a
18 test. So far, so good. I signed on
19 bright and early this morning to make sure
20 that everything was working. I had
21 election official jitters so I said, Lord,
22 let's see what's not working. And sure

1 enough for me, on my computer at home, I
2 couldn't open Section 2. But I noticed
3 that right away the administrator of the
4 site did tests on Section 2, and within an
5 hour, other people were able to open
6 Section 2.

7 So I think the tool's going to
8 work for us, and I do want to thank -- and
9 it's great that Peggy Nighswonger is here
10 today. I want to that. I thank the
11 Standards Board for being willing to allow
12 us to use their input as a test of the
13 system.

14 CHAIR DAVIDSON: And as the
15 director stated, we will then move forward
16 to do the Advisory Board the same way and
17 so that they have that capability also.
18 So we appreciate the test being done.

19 Any issues, as you said, one
20 issue this morning, but there is always an
21 issue it seems like and working those out.
22 So it will be a help in the future,

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1 obviously, and it will be a great tool.

2 Any questions for Mr. Wilkey
3 from anyone?

4 COMMISSIONER HILLMAN: I do have
5 a question. If you would like for me to
6 save it for Brian Hancock, I will.

7 MR. WILKEY: Sure.

8 COMMISSIONER HILLMAN: But you
9 mentioned something about -- and I just
10 need to be reminded, under the voting
11 system certification program, the first
12 test plan has been submitted. Please
13 remind me what that is.

14 MR. WILKEY: Basically, it is
15 the plan of how they are going to conduct
16 all the tests for the labs and it has to
17 be provided by the vendor.

18 COMMISSIONER HILLMAN: So
19 Mr. Hancock knows I'm going to ask the
20 question. He is probably going to answer
21 it. Thank you.

22 MR. WILKEY: He is shaking his
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1 head yes.

2 CHAIR DAVIDSON: Okay. If I
3 could ask the three panelists to come
4 forward. I will start in. Today, we're
5 going to be hearing from the three chairs
6 of the EAC's really advisory committees in

7 one way or another. I am hoping that
8 today's testimony will give all three of
9 our panelists the opportunity to brief the
10 Commission on how the EAC can better serve
11 their respective committees and better
12 prepare election officials in the United
13 States for the 2008 election that is
14 closely coming upon us.

15 I encourage the panel to be open
16 and frank with their comments, and offer
17 their perspectives on what the EAC can do
18 to better meet the needs. Also, the TGDC,
19 Technical Guidelines Development
20 Committee, and NIST, National Institute of
21 Standards and Technology, continue to work
22 on the next iteration of our VVSG,
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1 Voluntary Voting System Guidelines.
2 I look forward to hearing from all three
3 of them about their involvement in the
4 development of the process of this,
5 because it's important that we get the
6 chairs of the other two committees'
7 perspective in this area to create the
8 most comprehensive and thorough set of
9 guidelines possible in the future.

10 As we know, this next iteration

11 is a total rewrite of the previous
12 standards. And as such, the EAC must do
13 due diligence in reviewing and venting the
14 document through its advisory committees
15 and the public. I hope to learn from our
16 panelists today what the current feeling
17 is in their respective committees
18 regarding this next iteration and what the
19 EAC can do to meet their needs as we
20 prepare to receive the VVSG, and then
21 accept comments from the public in the
22 future.

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1 First, I'm going to turn to
2 Christopher or we call him Chris Thomas,
3 which is the Director of Elections in
4 Michigan. He has been there in this
5 position since 1981, and he currently is
6 the chair of the elections board of
7 advisors and is a founding member of the
8 National Association of the State Election
9 Directors, which he served as president in
10 1997.

11 Next in the panelists will go to
12 Peggy Nighswonger, which is the Director
13 of Elections in Wyoming, and Peggy has

14 been there in that capacity since 1996.
15 Peggy currently serves as chair of our
16 Standards Board Committee, Standards Board
17 Executive Committee, and she serves as
18 vice-president also of the executive board
19 of the National Association of State
20 Election Directors, NASED.

21 Dr. William Jeffrey is our final
22 panelist member, and he is the Director of
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1 the National Institute of Standards and
2 Technology. He was nominated by President
3 Bush on May 25, 2005 and confirmed by the
4 U.S. Senate on July 22nd of 2005. As a
5 director of the NIST, Dr Jeffrey serves as
6 our chair of the EAC Technical Guideline
7 Development Committee. And I look forward
8 to all three of your testimonies, so we
9 will start out with you, Chris.

10 MR. NELSON: Okay. Thank you,
11 very much, good morning. I bring you
12 greetings from the board of advisors. And
13 I am honored to be the chair of that board
14 and I appear before you today. I look
15 forward to working with the new
16 Commissioners, Ms. Hunter, Ms. Rodriguez.
17 And I definitely find it a pleasure, Madam

18 Chair and Commissioner Hillman, to

19 continue our dialogue.

20 I have provided written comments
21 so I will not read through those, but just
22 make comments, give the high points, and I

23

1 am certainly available to engage in any
2 questions and answers.

3 I'd like to make some comments
4 about what we're doing on the Board of
5 Advisors in preparation for reviewing the
6 next iteration of guidelines, and also a
7 few comments dealing with the vendor
8 conference clause of certification, and
9 along with the Technical Guidelines
10 Development Committee, so a few topics
11 today.

12 I think that the Board of
13 Advisors Board of Directors board, in
14 fact, need a more active role than we have
15 had in the past. Section 247 of HAVA, I
16 think, makes it clear that these boards
17 are to work with you in consultation with
18 the various studies and guidelines that
19 you are promulgating. I recall that the
20 advisory panel of the election

21 administration that was organized under
22 the Federal Election Commission really was

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1 designed as an advisory committee, but
2 never really quite made that. We would
3 show up to meetings and, essentially,
4 listen and go home. We look for a more
5 active role, and we've seen that, and I
6 think that was Congress's intent by
7 specifying what the duties of these
8 advisory boards are.

9 And our members do look forward
10 to a more active role. In the instances
11 where we reviewed studies, I believe that
12 we have been shown, basically, two
13 different modes. In a few instances, we
14 have actually reviewed the studies
15 themselves. In other cases, we receive a
16 briefing on what the status and the scope
17 of a particular study will be.

18 Now, for example, we did see the
19 provisional balloting study before it was
20 released, and I do understand that once
21 its given to the board, it becomes a
22 public document. We found some definite

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1 issues in that report, and I think the
2 comments from both boards serve the
3 process well, in terms of having that
4 report brought up to snuff, if you will.
5 There must be some avenue provided to
6 these boards to be more actively involved
7 in either the work groups or peer review
8 of your studies. And we did at our last
9 meeting, frankly, support your decision on
10 the fraud and intimidation study not to
11 release certain aspects of that. We see
12 that as your right of ownership of that
13 and definitely stood behind your position
14 there.

15 I would urge you also to
16 continue to look to the academic community
17 for research resources. The academic
18 community is discovering you, and they
19 know that you're here. I have had the
20 opportunity to work with Mike Troudette
21 from the University of Michigan, who has
22 been active in studying in a scientific

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1 manner optical scan and DRE systems, and I
2 think this is the type of research and the
3 type of individuals that would really
4 serve this panel very well. And I would

5 urge you to keep partisan and ideological
6 concern out of the decision on balancing
7 research teams. I do believe that good,
8 solid research that is closely monitored
9 under exacting contractual provisions,
10 under thorough peer review will carry the
11 day.

12 Members of the board, again,
13 we'd like to be much more involved in that
14 peer review process, and I would urge that
15 all studies, after it goes through your
16 rigorous internal reviews, be submitted to
17 the boards before you decide whether to
18 accept or reject the studies themselves.

19 With regard to the Denver
20 conference on certification, it is one of
21 the better conferences I have attended,
22 and that's because all the stakeholders

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1 are at the table. Brian Hancock really
2 ran a first rate meeting and should be
3 congratulated for that.

4 A number of issues came up to
5 me, as I sat through that conference, the
6 first which I think was one of the aims of
7 this process, was that several testing

8 protocols can be employed to actually
9 reduce state certification cost. One of
10 the prime examples of that is volume
11 testing, that few of the states had
12 undertaken. I think if that were done by
13 the national labs, all the states would
14 benefit from that type of testing.

15 Second, it became apparent to
16 me, a major stakeholder who is not
17 involved in the TGDC, and that is the
18 voting system manufacturers, as they are
19 not represented on this critical
20 committee. And I urge EAC and Dr. Jeffrey
21 to find a spot at the table for the
22 manufacturers.

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1 It is my understanding that
2 NIST's general pattern and practice of
3 developing standards is to pull everybody
4 together that are in the field and reach a
5 consensus, so that would involve
6 manufacturers as well.

7 We had a very dynamic speaker in
8 Denver who was in charge of the gaming
9 standards for gaming in Nevada. He also
10 related his process, very collaborative,
11 in terms of dealing with gaming operators,

12 gaming machine manufacturers, as he
13 developed standards that those systems
14 need to meet. And I think that model fits
15 well here in the elections community.

16 Now, I don't know whether
17 manufacturers are really interested in
18 sitting at the table or not. They may
19 not, but I think they need to be there
20 because I think they have something to add
21 to the development of the guidelines, and
22 I would like them to take some
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1 responsibility for those guidelines.

2 So, again, I would just urge that they be
3 included in this process, and I do know
4 they have access. I am not suggesting
5 they don't, by any means, but I'd like to
6 see them there as a voting member where
7 they have got to sign on along with
8 everybody else.

9 The third thing I found which is
10 kind of interesting, listening to all the
11 technical people disagree on some very
12 basic items that a non-technical person
13 would have thought to be easily agreeable.
14 So it shows you that in this field,

15 probably not most everything is not nailed
16 down and there's lots of room for
17 interpretation.

18 And, finally, the conference on
19 cost was important, but really I think the
20 more critical aspect of the guidelines is
21 the eventual cost that it will have for
22 voting systems. My question is, is there
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1 a cost benefit analysis being made with
2 regard to the impact that these guidelines
3 will have on the bottom line cost of
4 voting systems. And I understand that
5 manufacturers make various claims about
6 the impact of cost due to the guidelines,
7 and I believe they must be verified and
8 not taken at face value. And I understand
9 that some of that has been done, and
10 that's a good thing, I think, should
11 continue.

12 As a state person, we have, as
13 all the states have, used a large portion
14 of our HAVA money to buy voting system.
15 We either have done that as direct
16 purchases by the states and granted the
17 equipment to local units, or we have
18 served as a pass-through, providing the

19 funds for local government to purchase
20 these systems.

21 Suffice it to say there is an
22 expectation that has been created by this
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1 that there will be some sort of state aid
2 when voting systems are purchased in the
3 future. And this is a major shift.
4 Traditionally, very few states
5 participated in the financial part. It
6 has generally been a local responsibility.
7 We're now into that, and when the next set
8 come along to be purchased, we, no doubt,
9 will be looked to, to pay some share of
10 that.

11 Now, I am told by some of the
12 manufacturers that the life span of the
13 optical scan system may be as short as
14 seven years, a frightening aspect. So we
15 cannot have guidelines that drive voting
16 system cost beyond reasonable levels. And
17 I just really urge that there be some
18 component that attempts to discern what
19 those costs may be.

20 As the Board of Advisors
21 prepares to review the next iteration, I

22 would note that we're very pleased with
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1 the virtual meeting. I think that will
2 assist us tremendously in our work. We're
3 going to participate in this, and I think
4 that makes a very reasonable and
5 meaningful process both to us and to you.
6 I also understand there is a contract to
7 make -- put these guidelines into English.
8 And I would note that we seriously believe
9 that must precede any review period. We
10 cannot call upon our board members or the
11 public to digest the implication of these
12 guidelines if it's going to be totally
13 technical language. And, frankly, I think
14 we will need nine months to a year to do
15 the review that's necessary, given that
16 this is an entire rewrite of the existing
17 standards, and I assume many additions.
18 And I would not be a bit surprised that
19 after the review and your review of it,
20 that another trip back to the table will
21 be necessary to update or correct some of
22 the guidelines based on comments received.

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1 I think it's important that everything

2 that you all and the public and
3 manufacturers and interest groups and
4 election officials believe that need to be
5 in the guidelines get included in this
6 version so that you can put this process
7 to rest for several years.

8 Timing should be key on the next
9 purchase period, not on the next one or
10 two election cycles. For example, the
11 2005 standards, which were minimum in
12 nature, have not yet gone into production,
13 in terms of equipment, by all the
14 manufacturers. Some of them tell me that
15 for optical scan, they are going to have
16 to create a new box. Whether that's true
17 or not, I don't know, but they indicate
18 they may have to create a whole new
19 tabulator in order to comply. Well, I
20 don't think we're going to be discarding
21 the tabulators that we bought that are
22 2002 compliant, and repurchase new

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1 tabulators as they become 2005 compliant.

2 The reality, people are going to
3 hang on to what they have. If at some
4 reasonable cost, software upgrades are
5 feasible, fine, but if we're talking about

6 buying all new hardware, I don't see that
7 happening. And what I would expect is
8 we're going to hang on to this equipment
9 until its life span has run its course,
10 and then we're going to go out and buy the
11 next iteration.

12 I would urge you to aim your
13 next iteration of guidelines for that
14 purchasing cycle. That cycle is going to
15 affect most of the states in this country,
16 given the large amount of purchases that
17 have occurred in the last three years.

18 So my question is, basically,
19 what is the rush. And I think folks need
20 to make sure that everything that's in
21 there that needs to be in these guidelines
22 is in the guidelines, and that it is cost

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1 effective, and that it does not result in
2 a gold standard system that none of the
3 states or localities can afford. I don't
4 really expect there to be another three
5 billion dollars coming from the Federal
6 Government to make the next purchase. So
7 I would really urge you to move in that
8 area.

9 Regarding current software
10 upgrades, I know a number of the systems
11 have started to come in. The concern from
12 the elections community is that we need
13 those upgrades in order to, basically, run
14 the 2008 election. The one example I'll
15 give you is Automark. That's a system
16 that is I'd say still in development. It
17 has a few shortcomings that can be
18 corrected by software upgrades, so we're
19 very concerned that these will actually
20 make it through the process as these
21 systems are being required to come in from
22 testing.

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1 I understand your decision not
2 to accept the 2002 certifications by
3 NASED, but I am hoping that this does not
4 result in a number of states being forced
5 to conduct elections with software that
6 really needs to be upgraded.

7 So with that, I thank you for
8 the opportunity to report on the Board of
9 Advisors' activities, and for the
10 opportunity to present my thoughts on
11 these critical issues.

12 CHAIR DAVIDSON: Thank you.

13 Next, Peggy Nighswonger.

14 MS. NIGHSWONGER: I too want to

15 thank you for the invite to this hearing.

16 The executive board of the National

17 Standards Board made two initial

18 determinations. The first that it would

19 make recommendations to the Standards

20 Board for deliberation and action, and

21 that it would not make recommendations

22 directly to the EAC. So I am today here

37

1 not as an executive board member, but

2 rather to represent the full 110-member

3 board of the Standards Board. And I have

4 reported to you actually before, so I just

5 want to give you a brief background on our

6 recent activities as a board.

7 At the end of the 2006 meeting

8 in May of 2006, a call was issued to seek

9 volunteers to serve on committees to the

10 Standards Board. There was a seven-member

11 bylaws committee, and then the five-member

12 nominating committee. And both committees

13 have worked really hard this year to

14 satisfy the procedures for nominating

15 people onto the board of directors board

16 and also getting our bylaws in the proper
17 format. And so we gave -- all of those
18 committees actually reported to the
19 Standards Board at the February meeting.
20 And the meeting in Atlanta actual was very
21 well attended. I feel like a lot of
22 things were accomplished at this meeting.

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1 There was solid discussion about what the
2 board really wanted to accomplish in the
3 next year, and there was a lot of
4 discussion about the voting system
5 guidelines and what part our board really
6 needed to play in the process of guideline
7 determination and implementation.

8 And so from that work, actually
9 the board did pass five resolutions at the
10 February meeting, and I'd like to just
11 give you a brief overview of those
12 resolutions that were passed. The first
13 one actually recommended that the EAC
14 should be strong, and in a bipartisan
15 fashion, inform Congress and the public
16 that while HAVA is still being
17 implemented, it should remain untouched
18 for a longer period of time so it can be
19 determined just what the effects and the

20 benefits and the detriments really were
21 going to be, and that Congress should
22 provide full funding, as was promised to
39

1 the states in the beginning. Also, that
2 after Congress meets its promises under
3 HAVA, that any further changes, that such
4 changes only be promulgated with full
5 funding, that Congress promote a time
6 line, and that in no case should changes
7 proposed have effective dates before July,
8 2010.

9 The next resolution recommended
10 that the EAC consider the value and
11 importance of having NIST and the TGDC
12 conduct with at least two elected and
13 independent election groups, such as
14 NASED, the election center, IACREOT, from
15 our national groups that could secure
16 consultation on the impact of the complex
17 new standards that are coming into effect.

18 The third resolution actually
19 was a resolution that recommended that the
20 EAC provide a period to receive public
21 comments, to allow election officials and
22 the voters the opportunity to provide

1 observations of the impacts of NVRA. And
2 this would allow you to include an
3 analysis of such observations in the
4 report and your recommendations to
5 Congress which you will be making on June
6 30, 2007.

7 The fourth resolution
8 recommended that the EAC seriously narrow
9 the scope of the next iteration of the
10 VVSG to only include those matters that
11 are time sensitive and emergency in
12 nature. Also, that there be a regular
13 schedule established for future changes to
14 the VVSG that keeps each new version in
15 scope and understandable for
16 manufacturers, the public, and election
17 administrators.

18 And the last resolution that was
19 passed recommends that the EAC give
20 careful consideration to the need for a
21 policy about the VVSG updates. The VVSG
22 should not be updated more frequently than

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1 every four years after the instance of the
2 next iteration. We felt like there needs

3 to be time for proper implementation and
4 observation, and we just didn't feel like
5 it would be wise to continue to hurry into
6 the next versions of equipment.

7 So those were the resolutions
8 that were passed at the meeting in
9 February.

10 And I guess my next remarks I'd
11 like to make more as an individual and as
12 a state election director. And the three
13 topics that I'd like to address with you
14 are attention to the voting system
15 standards, assistance to states regarding
16 voting system certification and testing,
17 and then obtaining full fund so that HAVA
18 can be implemented as it was intended to
19 be.

20 As you know, the Federal
21 Government and the states have spent huge
22 amounts of money in the last couple of

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1 years on new voting equipment. And
2 purchase of that equipment had to occur
3 very quickly, and many states rushed
4 deadlines in order to deliver the
5 equipment, have it tested, and be
6 certified in order to conduct the election

7 in 2006. And, generally, that equipment
8 performed fairly well around the nation.

9 Now, next steps are underway
10 with the development of the next iteration
11 of the voting system standards, and I
12 think there are three items that I would
13 like to suggest to the EAC with regard to
14 the new voting system standards, and I,
15 like Chris, would really like to have you
16 assure that the right players are at the
17 table to give input on the next iteration
18 of the standards.

19 And I too learned at the Denver
20 meeting that NIST, election officials,
21 vendors, independent testing companies and
22 public interest groups, each provide a
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1 perspective that will lend to a better
2 whole.

3 And also from that meeting, I
4 think we learned that other entities, as
5 Chris said, like the gaming industry, have
6 experience in writing equipment standards.
7 And so I'd like to urge you all to include
8 all the players and utilize the experience
9 that all of those players can bring so

10 that the next iteration can be the best
11 they can be.

12 The next thing I'd like to urge
13 you to think about is the timing. As
14 Chris also brought up, not to
15 intentionally rush, not to intentionally
16 delay, I guess I would say it, during the
17 next couple of years, rapid time frames
18 are going to, I think, bring some problems
19 for vendors, for independent testers, or
20 for the election community. And I think
21 we generally fared well in the 2006
22 election, but I know that it's going to be

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1 very difficult for us all to meet the time
2 lines that are ahead of us. So I'd like
3 you to just consider being wise about the
4 timing of the future standards.

5 When the standards are finished,
6 the race is just going to begin for
7 several things. Vendors are going to need
8 to develop changes that meet those
9 standards. The states and the local
10 jurisdictions are going to need to see the
11 changes. There will be a need for
12 contracts and purchases. There will be a
13 need for deployment of all these, these

14 procedures, and the training will begin.
15 As all of us know, the training is really
16 the thing that makes the election happen.
17 So I'd like to ask you to give serious
18 consideration when the standards become
19 effective, that they are realistic for
20 time lines, and we request that you really
21 weigh the conduct of the 2008 election
22 more highly than you weigh your political
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1 pressures that I know are upon you.
2 My second key issue is to call
3 your attention to the assistance that
4 states need in regard to the voting system
5 certification. And I think too that it
6 was clear in Denver, at the Denver summit
7 meeting, that a stronger testing program
8 at the federal level is needed, a good,
9 solid testing program at the federal level
10 that could provide small states with
11 needed protections and assist large states
12 by reducing redundancy in the federal and
13 state testing programs.

14 I think there needs to be
15 attention to scale and efficiencies, and
16 the EAC can take a strong lead in that. I

17 know that testing of voting systems will
18 be expensive, and likely more expensive as
19 this equipment is designed to require more
20 things. So I know the cost of testing and
21 the liability of not testing are worse,
22 yet testing improperly can be a huge
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1 burden and a problem.

2 So I'd really like to have you
3 take note of this problem and do what you
4 can do about the cost of testing. I think
5 additional tests at the federal level
6 would be good so that there is less
7 redundancy of tests across states, and
8 possibly the EAC could orchestrate
9 communications, such as providing voting
10 system testing templates and protocols to
11 small states so testing can be performed
12 at the state level appropriately and
13 accurately.

14 And I guess my last point,
15 again, and I know I probably am preaching
16 to the choir, but since I am on record, I
17 would like to once again ask the EAC to
18 take every opportunity that you can take
19 when you are with Congress and have
20 availability to them to, again, request

21 full funding. States have HAVA-compliant

22 voting equipment but the maintenance, the

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1 testing and ongoing financial burden to

2 states is going to be a huge item that

3 states aren't going to be prepared to

4 handle.

5 So just to conclude, I would

6 like to thank you for the opportunity to

7 speak and to be on record pertaining to

8 these issues. I have had a really good

9 experience, wonderful experience,

10 representing the National Standards Board.

11 And it's a group of very highly qualified

12 professionals, and I really regard the

13 work that everyone has done, and I think

14 we have been really diligent this past

15 year in our work as a board. The

16 110-member board is gracious. It is very

17 difficult to do work with 110 people and

18 to accomplish things, but I feel like this

19 with what your leadership has been, we

20 have accomplished a lot this year.

21 We all look forward to your

22 action. Thank you, very much.

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1 CHAIR DAVIDSON: Thank you.

2 And, finally, we'll take Dr. Jeffrey's
3 testimony, then I will take a break and
4 then we will come back for questions.

5 MR. JEFFREY: Thank you, very
6 much, Chair Davidson, Commissioners
7 Hillman, Hunter, and Rodriguez. Thank you
8 for the opportunity to testify today on
9 NIST's goal in voluntary voting system
10 guidelines and testing.

11 The major items assigned to NIST
12 by HAVA include, one, human factors report
13 which was delivered in 2004, sharing and
14 providing technical guidelines, technical
15 support, to the TGDC in the following
16 areas; security of computers, methods to
17 detect and prevent fraud, privacy of
18 voting, accessibility and usability of
19 voting systems, and three, conducting an
20 evaluation of independent, non-federal
21 laboratories in order to commit to the EAC
22 a list of those laboratories that NIST

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1 proposes to be accredited by the EAC test
2 voting systems.

3 HAVA provided for creation of

4 the TGDC and mandated that the first set
5 of recommendations for voting system
6 guideline, known as VVSG 2005, be
7 delivered to the EAC within nine months
8 after the creation of the TGDC. The VVSG
9 2005 built upon the strengths of the
10 previous voting system standards, enhanced
11 areas needing improvement, and included
12 new material, primarily in usability,
13 accessibility, and security.

14 The resulting document was
15 delivered on schedule to the EAC in May of
16 2005. Now, immediately after completing
17 that work, NIST and TGDC began working on
18 the next iteration of the VVSG, which is
19 your recently planned for delivery to the
20 EAC in July, 2007.

21 The new VVSG differs from the
22 2005 version in significant ways. It will
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1 be, one, is a complete rewrite with
2 requirements that are clear and
3 unambiguous. Two -- we went to task on
4 two. Two constrains significantly
5 expanded security material. Three contain
6 updated requirements for liability and
7 accuracy, and four, contain usability

8 requirements based on benchmarks from user
9 testing.

10 Let me describe a few of the
11 major changes. In December of 2006, the
12 TGDC approved a resolution to include
13 requirements in the VVSG only for those
14 voting systems that are software
15 independent. This means, essentially,
16 that the voting system can be audited
17 through the use of voter-verified paper
18 records so that the election fraud and
19 errors that would result in changes would
20 be readily detected. To encourage
21 innovations in voting systems that produce
22 producible, reliable designs, the new VVSG

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1 will include what we call an innovation
2 clause. Some innovations resulting from
3 this clause could result in voting system
4 that would not rely on voter-verified
5 paper records. Other securities
6 requirements have been updated and
7 expanded to make them more comprehensive
8 and productive, which includes access
9 control, cryptography, physical security,
10 and open-ended vulnerability testing,

11 upgraded software coding systems, and
12 software development practices to enable
13 vendors to produce code that is easier to
14 come and test.

15 The commercial, off-the-shelf
16 software has been narrowed, resulting in
17 more comprehensive vetting of codes.
18 Usability requirements are now based on
19 actual performance benchmarks for voting
20 accuracy and ease.

21 There will be a TGDC meeting
22 next week to discuss the remaining drafted

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1 material for the VVSG. Details of this
2 meeting, including all reports to be
3 presented, are on NIST's web site. NIST
4 has been directed to recommend qualified
5 labs for EAC accreditation. NIST first
6 accredits a voting system test according
7 to NAVLAP's criteria, then recommends them
8 to the EAC. In January of 2007, NIST
9 proposed Ibeta (sic), under provisions of
10 HAVA. On May 11, NIST proposed Infoguard
11 Laboratories to EAC for accreditation.
12 Currently, NAVLAP is proceeding with four
13 other applicant laboratories.

14 NIST is also developing other

15 comprehensive test suites so that the
16 requirements in the draft VVSG can be
17 tested uniformly and consistently by all
18 testing laboratories. NIST will be
19 developing these tests throughout 2007 and
20 2008, and will release them incrementally
21 to the public, as they are developed.

22 These tests will help to increase public
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1 confidence, regardless of which lab has
2 performed the test.

3 Currently, NIST is developing a
4 formal structure for specifying test
5 inputs and outputs for ballot variations.
6 NIST is very pleased to be working on
7 national boards like this, and we
8 definitely appreciate our board and our
9 progress from the EAC and all of the TGDC
10 members.

11 I'd like to thank you for the
12 opportunity to testify, and I'd be happy
13 to answer any questions.

14 CHAIR DAVIDSON: Thank you.
15 We're going to take a quick break, just
16 ten minutes, then come back, and we will
17 get started with the questions. Thank

18 you.

19 (Short Recess.)

20 CHAIR DAVIDSON: All right.

21 Thank you. I'm going to go ahead and

22 start in on questions now. I'm sorry but

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1 we had to find one place or another for a

2 break, so I appreciate everybody getting

3 back so promptly.

4 I think that I'll start with

5 Commissioner Rodriguez. Would you like to

6 start with questions?

7 VICE-CHAIR RODRIGUEZ: Thank

8 you, Madam Chair. And I appreciate all of

9 you joining us today.

10 Mr. Thomas, you talked a little

11 bit about studies that you had had the

12 opportunity to review, as a member of the

13 Board of Advisors, before they were

14 adopted. And, you know, I think I'm going

15 to get in trouble. Our general counsel

16 will notify me. But in light of the some

17 of the current controversies that we're

18 experiencing right now, do you think we're

19 going to be able to find research

20 universities and other research groups who

21 will be willing to work with us?

22 I'm a little bit worried, and I
55

1 am here in D.C. where I am a little bit
2 insulated. So I am interested in your
3 perspective.

4 MR. THOMAS: I would think that
5 would will not be a problem. I think you
6 will find there are folks that have been
7 struggling in the academic world
8 attempting to apply social science to
9 voting technology, voting behavior. And
10 to be real frank, if you are a funding
11 source for that, I believe that they will
12 come. And I believe though that what they
13 will be looking for, perhaps as a result
14 of the current controversy, is a clear
15 road map as to what your procedures are,
16 what the process of your review is, who
17 owns the report at the end of the day, and
18 all that.

19 As I have talked to a few of
20 these research folks, they have offered up
21 the Bureau of Justice statistics, and
22 Bureau of Labor statistics as models of

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1 organizations that work quite a bit with

2 the academic communities, and have
3 suggested that you all may find some good
4 models, in terms of the collaborative
5 efforts between the academic professor or
6 person who you bring on board and your
7 needs, in terms of having to review.

8 So, yes, I think they are there,
9 and I think they are there and have been
10 really chumping at the bit to get into
11 this. I would note that there is a trust
12 program. You may see folks come out of
13 the good work for that.

14 We, in fact, in Michigan are
15 exploring going for a grant along with the
16 University of Michigan to study auditing,
17 post election auditing. So I think that
18 the researchers are there.

19 VICE-CHAIR RODRIGUEZ: That's my
20 only question right now, but as the
21 discussion goes on.

22 CHAIR DAVIDSON: Sure.

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1 Commissioner.

2 COMMISSIONER HUNTER: Thank you,
3 Madam Chair, and I also express my thanks
4 for coming in for this meeting today. I

5 have a question for Ms. Nighswonger, and
6 that is, you mentioned that the board,
7 Standards Board, passed five resolutions
8 in February. And I want to get your
9 comment on what you believe the EAC should
10 be doing with those resolutions.

11 Is it your opinion that there is
12 good follow-up, and how can we best
13 respond to the concerns of the Standards
14 Board?

15 MS. NIGHSWONGER: Thank you for
16 asking the question, because I think that
17 the 110-member board certainly expects
18 response or a follow-up to them. I don't
19 know if there was very good follow-up
20 maybe after the first meeting where some
21 resolutions were passed. So I think that
22 there could be some follow-up from the EAC

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1 to the board, maybe just some
2 communication that goes out that you have
3 the resolutions, you are looking at them,
4 and I think the executive board can be a
5 part in working with you on that, in
6 making sure that information gets back to
7 the full board about what you're doing
8 with those resolutions, how you are

9 considering them, if that answers your

10 question.

11 COMMISSIONER HUNTER: Yes, it

12 does. Thank you. May I ask another?

13 CHAIR DAVIDSON: Just to add to

14 that, I think we've done one thing,

15 especially with the TGDC. Obviously, the

16 people that sit on there is a lot of

17 people. It was mentioned that they wanted

18 to have information, direct information,

19 in working on the guidelines, the VVSG,

20 but also we have put additional -- we're

21 paying at the EAC to bring in an

22 individual from the Standards Board and an

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1 individual from the Advisory Board to the

2 meetings that we're having at NIST with

3 the TGDC, so they will be there this next

4 week.

5 Also, they were at the last one,

6 and they will be at the next one. They

7 help report back to the board, so it's one

8 more point. They are really sitting in

9 the audience, but they get a perspective

10 of what's going on, and help report back

11 to them. So that's one that I can say

12 that we have improved upon since the
13 resolution was done.

14 COMMISSIONER HUNTER: May I ask
15 another question? Another question is,
16 the chemistry from both of our boards
17 today is a little bit of why we are
18 rushing. Let's make sure that the
19 standards are done in a manner that
20 represents all of your collective
21 concerns. Christopher said, let's make
22 sure that it's a key towards the next
60

1 buying round, which I believe the machines
2 last approximately six years. So what
3 would you say is the next time for the
4 buying round?

5 MR. THOMAS: Well, a number of
6 us began purchasing for the '04 election
7 and some in '06. You could be looking at
8 as early as 2011, 2012, in that area, up
9 to 2013. That buying round is the current
10 buying round going on, is I think --
11 understand a number of states are looking
12 to go to optical scan from the current
13 DRE's, but that's going to happen pretty
14 quickly.

15 So I would key these along with

16 Peggy said, are there critical things that
17 need to be done right now. Go ahead and
18 do those that improve things for security
19 issues and what not, but make sure that we
20 have got a complete set and can put this
21 to rest for a while. And if they are in
22 place within the next year or two, then I
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1 think manufacturers will have plenty of
2 time to do their RD and be ready to go as
3 that next buying round emerges sometime in
4 2010, 2011.

5 COMMISSIONER HUNTER: Okay.
6 Thank you.

7 And one last question, if I may,
8 Madam Chair, to Dr. Jeffrey, I have heard
9 this within the office, but I didn't hear
10 it in your testimony today, so I wanted to
11 give you an opportunity to explain. I am
12 hearing that NIST is willing to stick
13 around and help EAC. In other words, you
14 are not going to ship it to us and run off
15 to the green pastures, which is -- thank
16 you, very much, in this fact is true.

17 Could you comment on not only
18 that, but the decision -- Commissioner

19 Rodriguez and I were not here when the
20 decision was made to hand off the
21 standards of the VVSG in July. So could
22 you talk about the decision -- something
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1 that's set in stone, are you willing to at
2 least explore things that our boards may
3 want a little bit more input before you
4 hand it off.

5 MR. JEFFREY: Sure, we're
6 absolutely sticking around. We're tied to
7 the hip with you. When the VVSG 2005 came
8 up, we continued to support the EAC's
9 evaluation comments. Absolutely, you have
10 my commitment, just as TGDC, NIST
11 director, that NIST will continue to
12 provide whatever technical assistance we
13 can to the EAC to make this as good a
14 product as possible.

15 In terms of the schedule, the
16 schedule for July, 2007, seems to at best
17 be agreed on between TGDC and EAC to meet
18 deadlines discussed. For example, if you
19 follow-up and say within a year from now,
20 do you really want these things
21 essentially formalized so this gives the
22 vendors time to produce that, given the

1 number of the changes in the documents,
2 you are going to need a public comment
3 period of probably nine months to a year
4 to assess public comments. So really July
5 is probably not a bad time frame.

6 Now, having said that, we have a
7 meeting next week and we skip a couple
8 weeks. We cannot give you a product
9 before we feel confident that that's,
10 essentially, the best product that we can
11 give you. We don't feel that there is an
12 arbitrary that we absolutely have to meet.

13 In terms of the comments about
14 additional comment period, I actually may
15 offer a hybrid model that we might
16 consider that we'd be willing to use. I
17 do believe that the public comment period
18 is going to be critical. That's going to
19 be the way to really get, in a very rapid
20 amount of time, get comments from all of
21 the possible constituents out there. I
22 think opening it up at that point will be

1 great. I think, in addition, getting
2 additional comments from the two boards,

3 obviously, we look forward to that. And I
4 think that when we provide you the next
5 iteration of the VVSG, I would offer the
6 technical staff of NIST, we have worked on
7 this to go and spend as much time as
8 necessary to walk both boards through all
9 the details to make sure it's clear,
10 unambiguous. That would be a fast way of
11 also expediting during the public comment
12 period getting additional comments.
13 We would be willing to do that. We have a
14 lot of invested time and energy in this.

15 COMMISSIONER HUNTER: Thank you.

16 I think that's a good discussion.

17 COMMISSIONER DAVIDSON:

18 Commissioner Hillman.

19 COMMISSIONER HILLMAN: Let me

20 start with the comment about the July,

21 2007 delivery of the draft. One of the

22 things that I am sensitive to, and I need

65

1 a little reality therapy from Ms.

2 Nighswonger or Mr. Thomas, election

3 officials made it very clear it's going to

4 be very difficult for them to spend

5 quality time reviewing the draft

6 guidelines in 2008. So part of the reason
7 for wanting to get the draft posted this
8 summer was so that election officials
9 would have 2007 to weigh in with
10 substantive comments and, therefore, 2008,
11 the time needed for primaries and other
12 elections through 2008 won't interfere
13 with their interest and desire to
14 participate in the review of the draft.
15 But as I said, I need a little reality
16 therapy back from the Standards Board and
17 the Board of Advisors on that schedule.
18 The Board of Advisors, maybe less so
19 because, you have fewer election
20 officials, but the Standards Board is all
21 election officials.

22 MS. NIGH SWONGER: Right. We had

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1 this discussion actually in Atlanta, if
2 this is going to be taking place during
3 the year 2008. Most of us are just
4 consumed. And so your assessment is
5 correct, before 2008. Honestly, the 2008
6 election begins in the fall of 2007
7 because already you are just changing for
8 the next year. And if not then, then
9 probably not until after 2008.

10 COMMISSIONER HILLMAN: I think
11 that would be a real problem. I don't
12 think we can put this on hold for 18
13 months. I understand, don't rush, don't
14 delay, but we have got to capture the
15 input of our election officials.

16 A lot of what drives the work
17 schedules of EAC is trying to work around
18 not only the federal election schedule but
19 the election cycles that the election
20 officials need to be involved in.

21 Peggy, one of the committees
22 that you forgot to mention that the

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1 Standards Board set up, we're calling it
2 the VVSG Ad Hoc Committee. That committee
3 will be a committee of the Standards
4 Board, will be working with the executive
5 board to really figure out how the
6 Standards Board can be thoroughly engaged
7 in commenting on the draft VVSG between
8 the time the draft document hits and the
9 close of the public comment period,
10 because one of the things that we were
11 advised in, and I believe it's accurate,
12 that comments from the Standards Board and

13 the Board of Advisors would have to come
14 to EAC during the public comment period,
15 whether that public comment period is six
16 months, eight months, or whatever that
17 length of time is. So we sort of have to
18 kind of figure it out, and then we have to
19 figure out when the Standards Board meets
20 during that public comment period. So this
21 is all a wonderful, logistical challenge.

22 Chris, on the software
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1 certification issue, I just wanted to
2 follow up with you a little bit. It
3 sounded like you were concerned about
4 whether or not software submitted by
5 vendors for testing and certification,
6 that election officials believed or was
7 required for the 2008 elections to be
8 tested and certified within the prescribed
9 time period. And we're talking about
10 software testing to the 2005 VVSG, is that
11 what you were talking about?

12 MR. THOMAS: I think, likely, to
13 2002.

14 COMMISSIONER HILLMAN: 2002. So
15 what do you see as the delay on that? I
16 mean, vendors have known since 2004, 2003,

17 that the 2002 standards have been out, and
18 have known since 2005 that the 2005
19 guidelines are out. I'm not sure where
20 the delay might kick up that is causing
21 concern among election officials.

22 MR. THOMAS: I think the reality
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1 of how this works is like how legislatures
2 look at the most recent election to fix
3 the one coming up.

4 Vendors also look at the most
5 recent election and make software changes
6 to correct those to improve their system.
7 And to some extent, again, I will go back
8 to Automark. We're living in the reality
9 there really was not the time under HAVA
10 for newer systems to get fully RD'd and
11 approved and out there without any bugs
12 in them still prior to the '06. I think
13 that that time crunch, we're still all
14 paying for it. If you look around, there
15 aren't a lot of new products that have
16 been offered subsequent to the passage of
17 HAVA, some improvement.

18 So our discussions about
19 software or with vendors about software is

20 that they will always have a whole list of
21 software changes that need to be made.
22 And at some point, they have got to draw
70

1 the line, freeze the frame, make the
2 changes, and then get them submitted for
3 testing.

4 The issue is whether you are
5 going for end to end testing, which is far
6 more significant than if they were going
7 for an upgrade testing. Your decision was
8 that they needed to do end to end, as you
9 were not taking NASED's certificate
10 forward and just allowing an upgrade to be
11 discussed.

12 I see that vendors have started
13 to put their software in for testing.
14 Much of that has just occurred quite
15 recently, so within the last month or so.
16 We're quite nervous. They put it in. I
17 don't know when it comes out. I know
18 there's a lot of different factors; how
19 many systems are there for testing, how
20 well the software was done, how many times
21 it has to go back and forth. But for us
22 to get new software in December, we

1 haven't had a February 5th presidential
2 primary. I think a lot of us are going to
3 be under a crunch to get new software
4 installed in many cases. In most cases,
5 it is a physical installation.

6 We have 4,500 machines out
7 there. We have got 1,500 -- or 5,000
8 precincts with tabulators. So there is a
9 lot of logistics involved in moving that
10 software out into the field. So that was
11 our concern.

12 As I note, I see a few of them
13 have come in and have started that
14 process, which is good. What we were
15 hearing, again, that's a longer process
16 than an upgrade would be in the future
17 because they have to go back and do full
18 end to end.

19 I am not really here to argue
20 with your decision on that. I understand
21 it. I was involved in the NASED program,
22 and I think we did what needed to be done

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1 at the time. And my hats off to
2 Congressman Allard (Sic) for inviting NIST
3 into this process, and I think they have

4 done a wonderful job, in terms of raising
5 the bar in the confidence that we all and
6 the public have with these systems, but
7 there is a time crunch we're under right
8 now.

9 With regard to your first
10 question in terms of timing, while I think
11 we can get a significant jump in '07 on
12 these and I think we can continue into '08
13 at some technical level, but by the end of
14 '07, we can get a feel as to which parts
15 of the guidelines really need to be
16 focused on that and use this time to
17 really narrow that down and really focus
18 in. And perhaps through this Commission,
19 we can see some research done on the
20 implications of these guidelines with
21 regard to the voting systems themselves.

22 COMMISSIONER HILLMAN: Okay.

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1 Thank you.

2 Peggy, at some point in the
3 middle of your testimony, you wanted your
4 comments to be reflective of your position
5 as state election director, but I am
6 wondering if you think that the sentiments

7 that you shared with us and the
8 observations and recommendations would be
9 generally reflected by the Standards
10 Board?

11 MS. NIGH SWONGER: Absolutely,
12 yes.

13 COMMISSIONER HILLMAN: Thank
14 you.

15 And then my last question for
16 Dr. Jeffrey, and it's actually a
17 conversation that I'd like to see happen
18 among the three of you, so let me
19 instigate this a little bit, and that is a
20 comment that I believe Chris Thomas has
21 made about the density and technical
22 aspects of the guidelines, and how the
74

1 guidelines can be written in a way that
2 election officials, particularly election
3 officials at the local level, appreciate
4 and embrace and not be afraid of. It
5 would be a shame if only a handful of the
6 7,000 or so election officials in this
7 country embrace Florida that as an useful
8 tool. And so I don't know what that means
9 with respect to the language that's used
10 and how it doesn't diminish the technical

14 intentionally drafted. It is very
15 different from the 2005. It is
16 intentionally drafted to be more
17 accessible to non-technical experts in the
18 field. It's been -- the formal language
19 has been reviewed by the board, and its
20 gotten very high marks, in terms of its
21 comprehensibility to non-experts, but
22 first and foremost, it is geared towards

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1 vendors, test groups, who have to be
2 absolutely unambiguous as to what it
3 means. It won't make great literature,
4 but I think it actually goes a long way to
5 being accessible.

6 MR. THOMAS: Well, as a lawyer,
7 I won't hold people to a double standard
8 in terms of writing in English. I
9 absolutely understand that these standards
10 or guidelines need to be written in
11 technical terms. I am not suggesting they
12 try to do otherwise. Likewise, I don't
13 see election officials as a major audience
14 of the standards.

15 We will deal with the results of
16 the standards. As Dr. Jeffrey indicates,
17 it's really the manufacturers, the testing

18 labs that are going to have to deal with
19 this. So that's where I come back in:
20 Tell us what the implications are, what
21 does this standard do that wasn't done
22 before, how has this standard changed,

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1 where does this take us, in terms of
2 really changing the world in this area.
3 And I'll come back to what are the cost
4 benefit analysis of these changes.

5 And I really think that from an
6 election official, that's what we need to
7 understand, not just the money end, but
8 what are the implications of the standard.
9 I don't expect that I'm going to
10 understand, even if it's well written in
11 English, and I'm sure with folks involved
12 with access and what not, they can do a
13 nice job. But I'm really looking as an
14 administrator at what's different, what
15 are the implications, and how much is it
16 going to cost.

17 MS. NIGH SWONGER: And I would
18 agree with that because we're going to
19 have to administer. I am not technical,
20 but in just reading through a draft that I

21 saw a few weeks ago on even the
22 definitions, I was like I don't think that
78

1 is the definition of a general election.
2 So I think just in using election
3 officials to get their input about even
4 something simple like the definitions, I
5 think that we can utilize a little more --
6 not technically maybe, but just their
7 understanding the language.

8 MR. JEFFREY: One thing I will
9 add, in terms of the changes, there is
10 actually an entire chapter called,
11 specifically, changes from the 2005 to
12 2007, basically representing your first
13 comment, which is written for the vendors
14 and testing labs. It's not the most
15 fascinating read, but it has in one place
16 a compilation of the major changes. So
17 you can get an idea what that is.

18 Again, I reiterate my offer that
19 we would be happy to have the technical
20 folks come forward and sort through what
21 the technical changes are and help
22 understand what the implications.

1 MR. THOMAS: And I think you may
2 find that too within your management
3 guidelines. In other words, do these
4 affect guidelines, how we run elections,
5 what is the impact there, do those have to
6 be changed or modified in order to
7 instruct election officials on how to
8 operate this agreement in the real world
9 of elections.

10 COMMISSIONER HILLMAN: I think
11 my final point, it's my understanding that
12 the Board of Advisors is likely to also
13 set up a committee to help plan its
14 exercise of reviewing the draft
15 guidelines.

16 MR. THOMAS: Yes, that's
17 correct, we're in the process of doing
18 that, and will find your virtual meeting
19 as a real helpful tool for us.

20 COMMISSIONER HILLMAN: And I
21 think between the two committees and
22 hopefully their will be points in time we

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1 will all have joint conference call
2 meetings or whatever. But I think the
3 point that you made is excellent about
4 tell us what the impact is, tell us, in

5 election administrative terms, what the
6 impact is.

7 CHAIR DAVIDSON: Okay. I'm
8 going to ask a couple questions. First of
9 all, taking it a step further, the
10 question was really talking about earlier,
11 Chris, that you talked about the testing
12 and the end to end testing on the 2002.
13 And that's the equipment that was utilized
14 in the election of 2006; correct?

15 MR. THOMAS: Yes.

16 CHAIR DAVIDSON: The equipment
17 that's been brought in right now, end to
18 end, because they are wanting it certified
19 either to 2002 and 2005. One is asking
20 for the 2005. So in doing that, as you
21 stated in your testimony, there is a lot
22 of changes that were made from the

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1 election that was held in 2000. So it's
2 not the same. We'll say it is the same
3 hardware for 2002, but it's not the same
4 software. It's an upgrade to that
5 software that they found and the issues in
6 the last election or improvement.

7 Am I correct on that; is that

8 the way you really are wanting to state

9 that? Would you explain that?

10 MR. THOMAS: Yes. I think that
11 generally is correct. There may be a few
12 hardware changes, but by and large, they
13 are software enhancements. For example,
14 with Automark the major change there is
15 that in our state, we have stubs on our
16 ballots. When the stubs are detached,
17 there is a perforation. If that
18 perforation is too course, the Automark
19 has a difficulty in recognizing the edge
20 of that ballot to tell us that you can see
21 this ballot and you can flip this ballot
22 over and print the back side now. They
82

1 have made software changes there
2 to lower those tolerances so that
3 perforation is not going to be the problem
4 we saw it to be in '06.

5 I would guess every vendor has
6 some aspect similar to that where they
7 have an '06 or before issue that are
8 currently in their software submissions.
9 So the systems you are seeing come in are
10 not the same systems from beginning to end
11 that were certified prior to this year,

12 but I think that's accurate.

13 CHAIR DAVIDSON: I think there
14 is a misunderstanding in the community
15 from the public, in some ways, that they
16 feel like we're bringing in what was used
17 in 2006 and having it retested. My
18 understanding is it is an improved
19 version, we will say of what was utilized
20 in 2006. And so we're not going to be
21 testing exactly what was utilized then.
22 It's an improved version.

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1 MR. THOMAS: That's correct, it
2 won't be exact.

3 CHAIR DAVIDSON: In some cases,
4 we will say.

5 MR. THOMAS: Right.

6 CHAIR DAVIDSON: All right. I
7 appreciate that. Another thing that you
8 talked about is the Denver meeting. You
9 both gave high praises for that meeting.

10 I will turn to you Peggy. What
11 is the next step? You are saying we need
12 more information on the cost of whatever
13 the cost might be for testing. We need to
14 understand the cost of equipment.

15 Obviously, that means we have all the
16 players at the table.

17 What do you recommend for the
18 EAC as our next step?

19 MR. THOMAS: I would see if
20 there is some sort of ongoing -- not every
21 month, but ongoing dialogue that was
22 started at that meeting. As state folks,
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1 we can sit back, but we did enjoy watching
2 this discussion between scientists who are
3 working to improve labs and also who have
4 been in the business a long time, along
5 with the labs, along with actual
6 developers. I believe Diebold actually
7 had their developer at the table.

8 It was a fascinating discussion.
9 As I indicated, I was surprised to see the
10 number of disagreements over some fairly
11 -- what I would think would be easy things
12 to discern. In other words, how do you
13 tell what version control one is working
14 on, how is that book marked on the
15 software.

16 So I think next steps would move
17 in that direction, with movement towards
18 indications of the standards themselves.

19 CHAIR DAVIDSON: Peggy, would
20 you like to add anything?

21 MS. NIGH SWONGER: Briefly. At
22 this meeting, the minimum funded states,
85

1 of which I am one, I think we feel like we
2 just don't have the resources to do
3 sophisticated testing and certification
4 programs. And so there was discussion at
5 this meeting about consortium, mainly a
6 western region where we would all kind of
7 do -- and I think I realized I was going
8 to be thrown in with California, and I
9 said I don't want to be that consortium.
10 No offense, but I think it kind of gave
11 some more discussion about how it was all
12 to be handled. And I do think that as you
13 all take a role in looking at something,
14 more on the federal level, that would give
15 assistance, especially to small states,
16 with the way they do certification and
17 testing. Because right now, I feel like
18 we're sort of out there doing things that
19 we probably could use a little more help
20 with.

21 So I think it will be nice to

22 have more discussion around the table that
86

1 we had in Denver and get more ideas about
2 that. It was profitable.

3 CHAIR DAVIDSON: Dr. Jeffrey, in
4 your testimony, you talked about the 2005
5 VVSG was with controlled access, and
6 really very controlled. The counties and
7 states could use wireless, mainly for
8 election night results, wireless back into
9 we'll say a county facility for that
10 location, but the RF or radio frequency
11 wiring should be prohibited entirely will
12 be in the new version.

13 Can you, in common terms,
14 describe for this group -- and it had to
15 happen to me, so that's the reason I am
16 asking you to do it for everybody else,
17 what you are exactly talking about when
18 you talk about radio frequency, because I
19 think it's really not a well understood
20 term.

21 MR. JEFFREY: Absolutely, and I
22 will avoid -- this is what I mean. This
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1 is a Blackberry or cell phone. It

2 communicates through radio frequencies.
3 Your radio in the car, in the home, that
4 communicates through that. It means that
5 the information goes through walls. While
6 we're sitting here, I got 20 e-mails. I
7 didn't know I got them. So information
8 can be passed through the device without
9 you knowing that it was updated. Software
10 could be updated. Again, it could be from
11 anywhere outside of this group, and that's
12 why in the new version, if specifically
13 that's a vulnerability to the system,
14 where you don't have knowledge of who
15 might be sending information and where it
16 could be coming from. Does that help?

17 CHAIR DAVIDSON: That certainly
18 does. Thank you.

19 Any other questions?

20 VICE-CHAIR RODRIGUEZ: Just one
21 follow-up. Thank you, Madam Chair. It's
22 becoming pretty important, this

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1 translation into English, of these
2 documents is really on my mind right now.
3 And we actually do not have someone in our
4 contract to do that. And I wonder if we
5 could prevail upon the three of you and

6 possibly one of the advocates from public
7 interest groups that was on the Denver
8 trip to review names and resumes of people
9 we might contract with to help us with
10 that, and then see if we could get your
11 empyemata.

12 CHAIR DAVIDSON: If we can have
13 Dr. Jeffrey -- I think part of what they
14 are doing really does give us that part.
15 If you could explain further what they are
16 doing at NIST.

17 MR. JEFFREY: We actually have
18 somebody under contract and are hoping to
19 translate a lot of this into -- again, I
20 hate to use the word English.

21 COMMISSIONER HILLMAN: Election
22 ease.

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1 MR. JEFFREY: Exactly. It's not
2 a fascinating work of literature, but we
3 do have somebody under contract helping to
4 do that. Hopefully, the procedure that we
5 provide you will go a long way to meeting
6 those goals. It may not go as far as you
7 would like, but we would certainly be glad
8 to give you names of who we're currently

9 using and examples of where we want to go.

10 The important thing we need to

11 make sure is that the process of

12 translation into something more

13 accessible, that it doesn't inadvertently

14 change the technical substance, which is

15 why it's never going to be great

16 literature.

17 VICE-CHAIR RODRIGUEZ: Thank

18 you. I appreciate that point. Thank you.

19 CHAIR DAVIDSON: Did you want to

20 add anything, either one of you? You're

21 okay. Commissioner Hillman, do you have

22 any additional questions?

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1 COMMISSIONER HILLMAN: No, I

2 don't. Thank you.

3 CHAIR DAVIDSON: I don't believe

4 I have any additional questions, but the

5 one statement I think that we heard from

6 you two, you really feel there needs to be

7 time. Because if I understand you right,

8 this is a complete rewrite this time, and

9 you don't feel 90 days is enough time for

10 a comment period, because the last one

11 was, obviously, much shorter, or less

12 changes to the VVSG, and this one is a

13 complete rewrite, so you feel you need
14 more time, even with it being an election
15 year and moving forward.

16 Okay. I appreciate that, and
17 thank you, committee, for all of our
18 chairs. Thank you, very much for your
19 testimony, and we appreciate it.

20 CHAIR DAVIDSON: Take just a
21 second and bring Brian Hancock up. While
22 Brian Hancock is getting settled here, I

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1 think you have heard us several times say
2 that he's got over twenty years of
3 experience in the arena of election
4 administration and voting certification.
5 Obviously, Brian, we definitely appreciate
6 it. It sounds like your idea to host the
7 meeting in Denver, and you were very
8 successful in doing that. So you have
9 reached the first step of your goal,
10 obviously, in your testimony. And later,
11 I think it would be interesting to see how
12 you feel.

13 We should be moving forward in
14 the future to be able to accomplish some
15 of the things that we feel we need to

16 accomplish. I'm going to turn it over to

17 you for your testimony.

18 MR. HANCOCK: Thank you, Madam

19 Chair, and Commissioners. It is my

20 pleasure to give you a summary of what

21 went on in Denver a few weeks ago.

22 And you certainly heard some of the

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1 highlights from Mr. Thomas and Ms.

2 Nighswonger, but I will get into a little

3 more, better detail.

4 On April 30th and May 1st, the

5 EAC did convene a meeting in Denver,

6 Colorado to discuss voting system testing

7 cost and factors associated with such

8 testing. Invited participants represented

9 a cross section of interested parties,

10 including state election officials, voting

11 system test labs, members of our boards,

12 of course, staff from NIST, and NAVLAP,

13 voting system manufacturers, public

14 interest groups, group representatives,

15 etc, state testers and guest speakers, the

16 technology division chief from the Nevada

17 Gaming Commission.

18 Discussion sessions were led by

19 individuals from each of the major groups

20 represented, and they definitely, I think,
21 as you heard, proceeded in a very lively
22 and free-flowing give and take, over the
93

1 course of the two days.

2 State election officials

3 expressed numerous concerns, including the
4 lack of both financial and human resources
5 when conducting state certificate testing.

6 Smaller states, as you heard from Ms.

7 Nighswonger, were particularly concerned

8 with this ongoing lack of resources.

9 State representatives were also concerned

10 about cost associated with duplicating

11 some of the tests conducted at the

12 national level.

13 California noted that testing

14 costs in that state have increased tenfold

15 since the enactment of the Help America

16 Vote Act. This cost for California did

17 not include the approximately \$150,000 for

18 going parallel testing of two different

19 systems in a handful of counties. This

20 was also prior to the presently enacted

21 top down review of voting systems ordered

22 by the Secretary of State.

1 When asked if additional funding
2 is the answer to these concerns, state
3 representatives said that funding might
4 help with state level testing, but an even
5 bigger problem was local acceptance
6 testing. At the local level, the lack of
7 trained human resources, especially in
8 small rural jurisdictions often in the
9 past, has forced the election officials to
10 rely on manufacturers' assistance in this
11 process, which we all know is not the
12 proper way to do this.

13 The test laboratory
14 representative discussed the cost
15 associated with the NAVLAP review and how
16 they structured their pricing. Both EAC
17 accredited labs do bill the manufacturers
18 on a time and materials basis for the vast
19 majority of testing conducted. Full cost
20 of system testing appears to be dependent
21 on three things from the labs' point of
22 view: One, the number of lines of source
95

1 code reviewed. Two, the amount of costs
2 with the system. And three, the maturity

3 of the system, meaning certainly, new
4 systems will generally take longer to test
5 than more developed systems will.
6 Cost associated. NAVLAP,
7 include a \$4,500 application, \$5,500
8 one-time fee, and on-site assessments cost
9 of approximately \$15,000 for each two-year
10 reevaluation of their initial
11 accreditation. Ramp up cost for one of
12 our new labs, Ibeta, to meet the
13 requirements of the NAVLAP review were
14 estimated to be between 75 and \$100,000.
15 And they stated that that took
16 approximately 1,500 staff hours to
17 complete.

18 The voting systems manufacturers
19 noted the biggest impact on their cost for
20 system testing was when and how often
21 standards or guidelines are updated, and
22 the impact of the new EAC program. One

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1 manufacturers noted that their costs
2 testing to 1990 voting system standards
3 was about \$100,000. Cost of their testing
4 to the 2002 voting system standards was
5 over \$200,000, and the costs of testing to
6 the 2005 VVSG were expected to be between

7 \$400,000 and \$800,000.

8 Although none of the
9 manufacturers ventured a guess as to
10 possible cost of testing to the next
11 iteration of the VVSG, they all agreed
12 these costs would likely be from six to
13 ten times the cost of testing to the 2005
14 VVSG. Several manufacturers suggested
15 that a cost benefit analysis be done for
16 each new iteration to identify testing
17 costs.

18 One manufacturers also noted
19 that the cost for state testing for his
20 particular organization in saying they
21 divide states into, essentially, three
22 categories, those states in which testing
97

1 costs are between 100 and \$500,000, those
2 states that cost over \$5,000 but less than
3 \$100,000, and those states that cost less
4 than \$5,000 to conduct state certificate
5 testing.

6 Representatives from voter
7 groups noted that transparency of the
8 process was the most important aspect,
9 from their point of view. Both

10 representatives thought that the new EAC
11 program generally addressed a number of
12 their transparency concerns and
13 acknowledged that a balance needs to be
14 found between the increased security of
15 voting machines and the cost of making
16 those machines secure.

17 Our panel of state experts noted
18 that the cost of state certificate testing
19 was to make sure that a system is suitable
20 for use in the particular state and that a
21 state also can be run on that voting
22 system. They also noted that local
98

1 acceptance testing should be properly
2 funded, resourced, and made as simple and
3 affordable as possible. They also agreed
4 that when a voting system received federal
5 certification, states should have
6 confidence that the only additional thing
7 they needed to test would be whether that
8 system will function as required within
9 their individual states.

10 Our guest from the Nevada Gaming
11 Commission spoke about the similarities in
12 certification in elections and the gaming
13 industry. He was quick to point out that

14 he was not trying to equate gambling with
15 voting, only that both industries had
16 similarities issues and challenges
17 regulating the industry and compliance.
18 He noted stakes were high in both areas
19 regarding user trust and confidence, the
20 proper implementation of innovations in
21 the field, and the proper implementation
22 of security. As background, he noted that
99

1 the revenues collected by the Gaming
2 Commission generate 32 percent of the
3 budget for the State of Nevada. The
4 Gaming Commission was responsible for the
5 continuing certification of 215,000 slot
6 machines and other gaming devices in 12
7 major manufacturers and hundreds of
8 smaller manufacturers.

9 The Gaming Commission was also
10 responsible for over 2,400 casinos'
11 operation rate force. It was last stated
12 that the Gaming Commission is a part-time
13 board, making final decisions on all
14 matters, with a full-time staff of 405
15 individuals, including 60 in the
16 technology and testing branch, 120

17 auditors, and 60 investigators. The
18 commission has found from 50 years of
19 experience that new system approval still
20 takes between six and 18 months, depending
21 on the described circumstances, with a
22 fixed testing cost of about \$150 per hour.

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1 To make it all work, the Gaming Commission
2 notes no one aspect of oversight is
3 enough. They may rely on compliance with
4 technical standards, examination of people
5 and organizations. They must continue to
6 verify those people, organizations, and
7 systems, and continually examine the
8 physical security component of all
9 systems.

10 In conclusion, the meeting
11 produced several recurring themes that
12 participants suggested, and I think some
13 of what you will hear from me reflects
14 what Mr. Thomas and Ms. Nighswonger talked
15 about earlier.

16 One, the involvement of
17 development of a matrix comparing
18 requirements of federal certification and
19 state certification. I would note this
20 would eliminate unnecessary overlapping in

21 most instances.

22 Two, was a request for an
101

1 additional formal cooperation between
2 states and EAC to explore specific ways to
3 reduce duplication in testing, and push as
4 much testing up to the federal level as
5 possible, specifically, as Mr. Thomas
6 noted, the very expensive volume testing.

7 Three, that the EAC should
8 facilitate information sharing with and
9 among states, the EAC should document best
10 practices in state and local acceptance
11 testing, and translate the best practices
12 in a saleable way so they can be used by
13 all jurisdictions, and then, of course,
14 share this information.

15 Next, provide the manufacturers
16 with a seat at the table when standards
17 and guidelines are being developed, as is
18 done in other industries.

19 And finally, the EAC, TGDC, and
20 NIST, should provide an estimated
21 implementation cost with each new
22 iteration of the VVSG, as you have already
102

1 heard this morning.

2 And before closing, I do need to
3 thank the other EAC staff that helped put
4 this meeting together and were very
5 instrumental in making it happen; Gavin
6 Gilmore and others.

7 With that, I'd be happy to take
8 any questions that you might have.

9 COMMISSIONER HUNTER: I don't
10 have any questions at this time.

11 VICE-CHAIR RODRIGUEZ: No
12 questions. Maybe a comment. I think it's
13 apparent from the Nevada Gaming Commission
14 that we might be under resourced for the
15 size of job that you all are doing.

16 MR. HANCOCK: Well, the one
17 thing they did note is they have been in
18 existence for 50 years. They didn't start
19 out at that level, but over the course of
20 the years, did feel they needed that level
21 of staffing.

22 VICE-CHAIR RODRIGUEZ: I got the
103

1 point.

2 CHAIR DAVIDSON: Commissioner
3 Hillman.

4 COMMISSIONER HILLMAN: My
5 question is actually sort of a follow-up
6 to Commissioner Rodriguez's question, but
7 I'm wondering if any of what the Gaming
8 Commission shared would be a constant for
9 EAC. For example, the \$150 an hour, the
10 six to 18 months. I know the rest of it
11 would have to be scaled with respect to
12 the number of manufacturers that could at
13 any one time be presenting their hardware
14 or software for testing, as well as the
15 number of different types of machines and
16 equipment that would be coming before us.

17 But I wondered if you were able
18 to determine if the hourly cost and the
19 length of time was applicable, different?

20 MR. HANCOCK: Well, I think at
21 least what we've seen in the voting system
22 testing up to this point and what they

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1 found in their gaming testing, the time
2 that the testing seems to be fairly
3 closely related, that did seem to be a
4 very close fit. The \$150 per hour cost of
5 testing, there is a major difference there
6 that. I didn't know that the Gaming
7 Commission has their own testing

8 laboratory and does all testing in-house

9 and they are funded by the state.

10 They do meet some cost savings

11 there under the current structure we

12 cannot meet, but I do think there is room

13 for more discussions with that

14 organization, simply because they have 50

15 years of experience doing this, and as the

16 speaker noted, they have run into many of

17 the problems that we seem to be running

18 into in this field.

19 It was very interesting. I

20 think people that were there would note

21 that, often times, we are so hyper focused

22 on what we're doing in this field. So

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1 with other nose to the grindstone, we

2 ignore the fact other people might be

3 doing this. So it was very enlightening

4 to know there are more people with more

5 problems out there.

6 COMMISSIONER HILLMAN: Okay. A

7 question which might actually need to go

8 to the general counsel, but there have

9 been concerns expressed from the public

10 and from members of the Congress about

11 manufacturers paying the testing
12 laboratories directly for the work that is
13 done to test their equipment and software,
14 and being able to self select which
15 laboratory among the accredited would do
16 the testing.

17 I'm just wondering if we know if
18 there has been any effort to introduce
19 legislation that would fund EAC to pay
20 those costs?

21 MS. HODGKINS: Sure.

22 Commissioner Hillman. In HRA-11, which
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1 was marked up last week, and actually a
2 substitute was offered to the house
3 administration committee, there is a
4 provision that would provide for an escrow
5 account. It would be the holder of funds
6 transmitted from the vendors to the
7 laboratories. We would hold those funds
8 in escrow and distribute them to the labs.
9 We would also select the labs on as random
10 a basis as is possible.

11 COMMISSIONER HILLMAN: Okay.
12 Thank you, very much.

13 MS. HODGKINS: And TGDC provide
14 an unspecified amount of money to EAC for

15 the activities that we would have to

16 undertake in administering that account.

17 COMMISSIONER HILLMAN: Did you

18 say unspecified or unlimited, blank check?

19 MS. HODGKINS: Unspecified, in

20 that there is no dollar amount there. So

21 I will let you draw your own conclusion as

22 to what that means.

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1 COMMISSIONER HILLMAN: All

2 right. Two other questions. One of our

3 earlier panelists, and I don't remember if

4 it was Chris Thomas or Peggy Nighswonger,

5 mentioned about the manufacturers having a

6 seat at the table when EAC is considering,

7 you know, voting system guidelines and

8 testing certificate protocols, so on and

9 so forth, since they have a major stake in

10 this.

11 I just wondered the extent to

12 which -- again, maybe this is a general

13 counsel in part question -- that there are

14 any rules or regulations or conflict of

15 interests.

16 I know that HAVA doesn't owe a

17 lot the seat at the table to a

18 manufacturer, but I just wondered if there
19 was anything that would prohibit that?

20 MR. HANCOCK: I do not know if
21 there is anything that would specifically
22 prohibit that, but I'll leave the legal

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1 research to our general counsel.

2 COMMISSIONER HILLMAN: Do you
3 want a minute? I can ask another
4 question.

5 MS. HODGKINS: Just give me 30
6 seconds. So go ahead and ask your next
7 question.

8 COMMISSIONER HILLMAN: Going
9 back to the executive director's report,
10 he talked about the first test plan
11 submitted. And my memory needed to be
12 refreshed as to what this was, and what
13 that meant.

14 MR. HANCOCK: The test plan is,
15 essentially, the guide, the plan for how
16 the test lab will test a very specific
17 voting system to the standards that they
18 are being tested against. It's an outline
19 and it shows exactly how the testing will
20 be conducted.

21 COMMISSIONER HILLMAN: And who

22 submits the plan?

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1 MR. HANCOCK: The test lab

2 submits the plan.

3 COMMISSIONER HILLMAN: So each

4 test lab submits the plan it is going to

5 use then?

6 MR. HANCOCK: Each test lab will

7 submit a voting system.

8 COMMISSIONER HILLMAN: So the

9 first test plan was submitted by who?

10 MR. HANCOCK: I believe it was

11 by Ibeta.

12 CHAIR DAVIDSON: I need to add,

13 isn't it true that in our guidelines, that

14 they would not have to give us a test plan

15 prior to them testing. Can you explain

16 that; it's not a mandate that we have a

17 test plan before they can start that

18 process, is it?

19 MR. HANCOCK: Well, while it's

20 not specified, we do know very

21 specifically that if any testing is done

22 prior to the submission of a test plan, it

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1 is at the risk of the vendor because we do

2 review the test plans. And should we find
3 some deficiencies with those test plans,
4 those tests would need to be redone at the
5 cost of the vendor.

6 CHAIR DAVIDSON: So it really
7 benefits the individual that's being
8 tested to make sure that the lab has a
9 test plan in place?

10 MR. HANCOCK: Absolutely. It is
11 not an entirely linear process. There is
12 work that can be done in advance. The
13 technical data package is often hundreds
14 and hundreds and maybe thousands of pages
15 of literature to review before the actual
16 testing gets started. And things like
17 that can be accomplished, to some degree,
18 ahead of time, but I certainly would agree
19 with you that it behooves everybody to get
20 the test plan in as early as possible.

21 CHAIR DAVIDSON: The other
22 question I have, I asked earlier to Chris,
111

1 how he would suggest that we proceed in
2 trying to accomplish what really the
3 election community would like for us to
4 accomplish. We have talked about even

5 having some forms of some sort of another
6 with manufacturers to talk about, and I
7 know you have done this in the past, but
8 to talk about the cost of what is the new
9 iteration going to cost to develop, trying
10 to get a handle on costs in several
11 different areas; the cost of the
12 equipment, the cost of testing.

13 How do you see the EAC -- what's
14 the next steps; what do you think that we
15 should be doing?

16 MR. HANCOCK: Well, I do think,
17 as you heard this morning, there were some
18 recurring themes. And some of those, I
19 think staff can work on, if the Commission
20 wishes. We really should do that, to
21 present options to the Commission.
22 Everything that we do, of course, has

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1 budget and resources impact. We certainly
2 may not be able to do everything, but
3 there are a lot of cooperative things that
4 we can do.

5 We can work with our boards,
6 work with the interest groups. We can
7 convene, meet also like this, to gain
8 input, I think, to sit all the interested

9 parties at the same table. To my
10 knowledge, that's the first time anything
11 like that has been done recently. As you
12 heard, it was very beneficial for
13 everyone.

14 At the very minimum, those are
15 some things that we can do.

16 COMMISSIONER HILLMAN: I'm
17 sorry. If I could just get the response
18 from counsel.

19 CHAIR DAVIDSON: Okay.

20 MS. HODGKINS: Let me just
21 repeat the question for everyone. The
22 question, as I understood it, from

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1 Commissioner Hillman was whether or not
2 there was anything in HAVA that prohibits
3 EAC from allowing a seat on the TGDC to a
4 vendor.

5 COMMISSIONER HILLMAN: Or in any
6 of our other working group tables,
7 whatever we do, in addition to TGDC.

8 MS. HODGKINS: Well, let me
9 start with HAVA. HAVA, obviously,
10 specifies to some degree the membership of
11 the TGDC, requires that it be a 15-member

12 panel. Currently, all seats are filled.

13 CHAIR DAVIDSON: We have a
14 vacancy that just occurred.

15 MS. HODGKINS: Okay. I believe
16 all about four of those seats are filled
17 in a representative capacity, and that is,
18 the persons who serve there represent some
19 other agency or organization that is
20 specifically identified in the law.

21 However, there are four
22 positions that EAC and NIST jointly
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1 appoint to the committee, and those
2 persons must have expertise, either of a
3 technical nature or scientific nature,
4 related to voting systems and voting
5 equipment.

6 I believe it's a pretty safe
7 assumption to say that voting system
8 vendors could have technical expertise
9 with regard to voting equipment, so I
10 don't think there would be any prohibition
11 for one of those four seats being held by
12 a person who was a member of the vendor
13 community.

14 That being said, I do believe
15 those four seats are currently filled, so

16 that would require action on the part of
17 EAC and NIST, if you were to pre place one
18 of the members that is currently holding
19 those seats.

20 As to the other boards, their
21 membership is much more specified in terms
22 of the Standards Board and Board of
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1 Advisors, and I don't think that would be
2 as easy a possibility to put together
3 there. Working groups are a little
4 easier, in terms of informal working
5 groups. Technically those where we're
6 soliciting individual opinions as opposed
7 to the group opinion, if you will, of a
8 board or committee such as the TGDC,
9 Standards Board, or Board of Advisors.
10 Each of those is a federal advisory and
11 you are asking for their consensus as
12 opposed to their individual opinions, so
13 it's much easier for that participation on
14 the working group, but not impossible, to
15 have this provision in the TGDC.

16 COMMISSIONER HILLMAN: Thank
17 you.

18 CHAIR DAVIDSON: Mr. Wilkey, I

19 forgot, on the last panel, I had it

20 written down also. Do you have any

21 questions for Brian?

22 MR. WILKEY: You just didn't
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1 want me to grill my former colleague.

2 Just a comment and fast

3 question. The comment being that I have

4 always spoken highly about the quality of

5 individuals working at EAC, and you see a

6 primary example of that seated before us

7 today. He's taken on an enormous

8 responsibility for a program that is going

9 to continue to grow, and has met every

10 single one of his obligations well. And I

11 am very proud of him and his work, as well

12 as everyone that works with him.

13 I am wondering and I would have

14 asked this of Chris and Peggy, but I think

15 since they were both at the meeting,

16 again, I have had a number of comments

17 about the quality of that meeting and how

18 very vital and important it was, but I'm

19 wondering if there was any discussion

20 about -- we heard in their testimony that

21 they want a strong federal program.

22 Now, when we adopted the 2005

1 guidelines we gave, for a number of
2 reasons, one of them being we wanted state
3 legislatures to have the opportunities to
4 get the language right and the statutes to
5 allow for the adoption of this program. I
6 don't think to date we've seen much
7 progress in that area.

8 And so in talking about having a
9 strong federal program, was there any
10 discussion about how we move about getting
11 by in to this? I know from past
12 experience it took a long time to get them
13 to buy into the previous program. But was
14 there any discussion about how we move
15 forward, and that level of cooperation of
16 getting that buy-in, and also getting more
17 of the state -- this has always been an
18 issue, getting more of the state
19 requirements into those federal
20 requirements so they don't have to do it.

21 MR. HANCOCK: There was not a
22 discussion about this, but it came up on

1 the periphery of a number of discussions.
2 I think one of the big issues with the

3 climate right now is the need for
4 increased security and increased testing.
5 A lot of the states have decided on their
6 own volition to do more testing over the
7 past three to five years. And certainly
8 that along with the increased standards
9 have increased their cost.

10 Issues that may not have been
11 present a few years ago now are starting
12 to be present. I think one of the things
13 that was and always has been present is
14 the lack of funding at the local level, as
15 I said, for good acceptance testing. Some
16 of the states, California, and others,
17 have also had reasonable budgets to do
18 testing.

19 MR. WILKEY: Its always
20 intrigued me, because if we really scratch
21 the surface and make an assessment of the
22 problems that came out of, for example,

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1 the last election, an enormous amount of
2 those problems would have been obfuscated
3 had they done good, quality acceptance
4 testing pre election.

5 Thank you.

6 CHAIR DAVIDSON: I think the
7 time factor of the delivery of the
8 equipment close to election and acceptance
9 testing wasn't done to the level that it
10 needed to be in a lot of states. So,
11 obviously, we hope that is being done now,
12 that they start meeting those goals for
13 the next elections, which we know is right
14 around the corner.

15 I don't have any other
16 questions. Does anybody on the Commission
17 have any questions?

18 Thank you, Brian. We appreciate
19 your testimony and your comments.

20 In wrapping up, I do want to
21 thank everybody for the presentations
22 today. I appreciate it, and I think that
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1 the information will help us as well as
2 everybody else.

3 I just want to announce that our
4 next putting meeting is currently
5 scheduled for June 14th, and it will be
6 here at the EAC. We'll have it out on the
7 our website, "www.eac.gov." I don't have
8 a time that it will start, but it will
9 probably be about the same time. We will

10 get that all decided.

11 Is there a motion to adjourn the
12 meeting?

13 COMMISSIONER HILLMAN: I'm
14 sorry. Don't move out on me too quick.
15 Earlier when I talked about the virtual
16 meeting room, I did neglect to thank all
17 the staff who have worked with me over the
18 past several months to make the virtual
19 meeting room a reality, and that included
20 the staff in our communications
21 department, Sheila Banks, my special
22 assistant, and Lydia, who is now the
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1 administrator for the site, as well as our
2 consultants. It took a lot of work. It
3 was a lot of human hours to go into it.
4 And so I am very pleased with the end
5 result, but wanted to make sure I
6 acknowledged and thanked them for that.

7 VICE-CHAIR RODRIGUEZ: Madam
8 Chair, I just wanted to mark the
9 anniversary of my first two-and-a-half
10 months as a member of the Election
11 Assistance Commission. And I readily
12 admit that a learning curve was certainly

13 the first thing that I had to overcome,
14 but I cannot think of myself as new any
15 more.

16 So any crutch that I use would
17 have passed, is not mine to claim. I want
18 to acknowledge in a public way that I am
19 accountable for the actions of the agency
20 as we move forward. I believe, as
21 evidenced today, there are lots of good
22 things going on at the EAC, but as with

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1 any agency, agencies can be strengthened,
2 and I hope to be a part of the
3 strengthening of the agency.

4 And I want to say that I have made
5 two requests of the agency in the past
6 four weeks. One was that any
7 correspondence from Congress be shared
8 with all Commissioners, and that we have
9 input into the response. And my second
10 request is that all future budget
11 documents be discussed and adopted in
12 public. Budgets are planning tools, and I
13 think the public has a right to see what
14 we have planned.

15 And two weeks ago, I received a
16 correspondence from Brad Friedman, who

17 asked me to move the EAC post notices
18 regarding a certain voting system.
19 I don't know how to respond to that, but
20 it is important for me to acknowledge his
21 request.

22 And with this statement, I am
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1 going asking the director to provide
2 Mr. Friedman with a response, and I will
3 give you his initial inquiry to me.

4 I thank you for the time, Madam
5 Chair.

6 CHAIR DAVIDSON: All right.

7 Now, I will look for a motion to
8 adjourn.

9 COMMISSIONER HILLMAN: So moved.

10 COMMISSIONER HUNTER: Second.

11 CHAIR DAVIDSON: The meeting is
12 now adjourned.

13 (Whereupon, at approximately 12:30
14 o'clock, p.m., the above meeting was
15 adjourned.)

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CERTIFICATE OF COURT REPORTER

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

Jackie Smith